COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM (MONEYVAL)

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Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

BOSNIA AND HERZEGOVINA

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LIST OF ACRONYMS USED

AML/CFT	Anti-Money Laundering and combating the financing of terrorism
AML Law	Anti-Money Laundering Law
BD	Brčko District
BiH	Bosnia and Herzegovina
CC-BD	Criminal Code of Brčko District
CC-BiH	Criminal Code of Bosnia and Herzegovina
CC-FBiH	Criminal Code of the Federation of Bosnia and Herzegovina
CC-RS	Criminal Code of the Republic of Srpska
CPC-BD	Criminal Procedure Code of Brčko District
CPC-BiH	Criminal Procedure Code of Bosnia and Herzegovina
CPC-FBiH	Criminal Procedure Code of the Federation of Bosnia and Herzegovina
CPC-RS	Criminal Procedure Code of the Republic of Srpska
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CID	Criminal Investigation Department of SIPA
CFT	Combating the financing of terrorism
CTR	Cash Transaction Reports
DNFBP	Designated Non-Financial Businesses and Professions
Entities	Collectively the Federation of Bosnia and Herzegovina and the Republic of Srpska
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
ESDP	European Defence and Security Policy
EUPM	European Union Police Mission
FATF	Financial Action Task Force
FBiH	Federation of Bosnia and Herzegovina
FID	Financial Intelligence Department of SIPA (the BiH FIU)
FIU	Financial Intelligence Unit
IN	Interpretative Note
ICITAP	International Criminal Investigative Training Assistance Program
IT	Information Technology
ITA	Indirect Taxation Authority of Bosnia and Herzegovina
KM	Konvertibilna marka – National currency of BiH
LEA	Law Enforcement Agency
LPML	Law on the Prevention of Money Laundering
MEQ	Mutual Evaluation Questionnaire

MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MLPD	Money Laundering Prevention Directorate
NCCT	Non-cooperative countries and territories
OFAC	Office of Foreign Assets Control (U.S. Treasury)
OSA	Intelligence and Security Agency
PEP	Politically Exposed Persons
ROSC	Report on standards and codes
RS	Republic of Srpska
SBS	State Border Service
SFRY	Socialist Federal Republic of Yugoslavia
SIPA	State Investigation and Protection Agency
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Bosnia and Herzegovina was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), complemented – due to the specific scope of evaluations carried out by the Committee – by issues linked to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "Third EU Directive" and Directive 2006/70/EC "implementing Directive", in accordance with MONEYVAL's Terms of Reference and Rules of Procedure, and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by Bosnia and Herzegovina, and information obtained by the evaluation team during its on-site visit to Bosnia and Herzegovina 24 May to 3 June 2009, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex I to the mutual evaluation report.

2. The evaluation team comprised: Ms. Stela Buiuc, (Deputy Director, Centre of Legal Approximation, Ministry of Justice of the Republic of Moldova) and Dr. Lajos Korona, (Public Prosecutor, Budapest, Hungary) who participated as Legal Evaluators, Mr. Daniel Azatyan, (Head of Financial Monitoring Centre, Central Bank of Armenia) and Mr. Herbert Zammit Laferla, (Director, Financial Stability Division, Central Bank of Malta) who participated as Financial Evaluators, Mr. Yehuda Shaffer, (Head, Israel Money Laundering and Terror Financing Prohibition Authority) who participated as a Law Enforcement Evaluator and Ms. Elham Farsaii, (U.S. Treasury Department, Financial Crimes Enforcement Network (FinCEN), USA) who participated as a Law Enforcement Evaluator for the FATF; and a member of the MONEYVAL Secretariat. The examiners reviewed the institutional framework, the relevant AML Laws, regulations and guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all the systems.

3. This report provides a summary of the AML/CFT measures in place in Bosnia and Herzegovina as at the date of the on-site visit or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened (see Table 2). It also sets out Bosnia and Herzegovina's levels of compliance with the FATF 40 + 9 Recommendations (see Table 1). Compliance or non-compliance with the EC Directives has not been considered in the ratings in Table 1.

[1] As updated in February 2009.

II. EXECUTIVE SUMMARY

1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Bosnia and Herzegovina (BiH) as at the date of the third on-site visit from 24 May to 3 June 2009, or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out BiH's levels of compliance with the FATF 40 plus 9 Recommendations (see Table 1).

2. Following the breakup of the Socialist Federal Republic of Yugoslavia, the Dayton Peace Agreement established BiH as a State comprising two entities: The Federation of BiH (FBiH), and the Republic of Srpska (RS) (the entities). Subsequently, an Arbitration Tribunal established Brčko as a special District which is internationally supervised. As a result of this division both of the entities and Brčko District (BD) have established their own legislative frameworks including Criminal Codes, Laws on Banks, etc.. This legislation is, in some cases (e.g. Criminal Codes), in addition to legislation at the level of the state of BiH. In these circumstances the evaluators have needed to consider relevant legislation at entity and BD level as well as state level legislation.

3. Although certain law enforcement agencies and supervisory bodies operate across the whole of BiH, this legislative framework is largely replicated in law enforcement and supervisory structures. For example the State Protection and Investigation Agency (SIPA), which houses the Financial Intelligence Unit (FID) which is the FIU, has authority to operate across the whole of BiH, whereas each of the entities and BD maintain their own police forces. In these circumstances the evaluators have needed to consider bodies operating both at state level as well as at the level of the entities and BD in order to assess the overall effectiveness of the AML/CFT regime.

4. This is the second mutual evaluation of BiH by MONEYVAL. There have been a number of changes since the first on-site visit in November 2003. An AML/CFT Law was enacted at state level which replaced separate laws for FBiH, RS and BD with one unified AML Law for the whole country. Guidance on application of the new AML/CFT law was provided by the publication of a Book of Rules on Data, Information, Documents, Identification Methods and Minimum Other Indicators Required for Efficient Implementation of Certain Provisions of the Law on the Prevention of Money Laundering (Book of Rules) which clarifies the requirements for obligors. With regard to law enforcement, enactment of the Law on the State Investigation and Protection Agency provided for the formation of SIPA which hosts the FIU for BiH.

5. At the time of the on-site visit the AML/CFT law in place was the Law on the Prevention of Money Laundering which was enacted on 4 May 2004. The evaluators based their questions for the on-site visit and the initial drafts of their report on this law. On 15 June 2009 a new AML/CFT law, the Law on the Prevention of Money Laundering and Financing of Terrorist Activities, was enacted. In accordance with MONEYVAL's Rules of Procedure, as this new law came into force and effect within two months of the conclusion of the on-site visit, this new law has also been taken into account in drafting the mutual evaluation report. Although the old law has been superseded by the new law the evaluators have taken the old law into account as this was in effect during the on-site visit and it was the effectiveness of implementation of this law that was assessed. The new law has, however, also been taken into account as this law has addressed a number of deficiencies in the old law. To avoid confusion between the two laws the law that was in effect at the time of the on-site visit is described as either the "LPML" or the "old AML Law" and the new law has been described as the "new AML Law". Where both the LPML and the new AML Law are being discussed generically these are merely described as "the AML Law".

6. One of the legacies of the war within BiH was the growth of organised criminal activity which developed out of the general state of lawlessness that prevailed at the time. The authorities have sought to establish a legal and law enforcement framework within BiH. BiH is situated centrally within the Balkans and has open borders with a number of countries which increases the threat of a number of classes of crime as set out below. Furthermore, the fragmented nature of BiH and the multiple levels of law enforcement and financial services (e.g. state, entity, canton, etc.) create opportunities for criminal exploitation. This crime threat does inevitably give rise to a greater threat of money laundering.

2. Legal Systems and Related Institutional Measures

Criminalisation of Money Laundering

7. Money laundering is a criminal offence under both the state-level Criminal Code of BiH and the respective Criminal Codes of the entities and BD – that is, it is one of the offences that are criminalised at all levels of criminal legislation. All the four offences show significant similarities especially as regards the range of physical (material) elements. The physical (material) elements of the offence have not changed at all since the four Criminal Codes came into force back in 2003. All the definitions are largely in accordance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention yet their scopes still do not cover all the physical (material) elements as required.

8. *Conversion* of property is addressed by the term "exchange" and indeed, this sort of activity has already occurred in case practice. The notion of "transfer of property" appears to go far beyond what can be covered by the conduct described as "disposing of". On the other hand, most of the money laundering cases, either at state level or at that of the entities and BD are based on concealing of proceeds of tax evasion that is, the actual laundering activity is transferring in every such case. This potential loophole in the wording of the money laundering offence has been adequately addressed and remedied by case practice. *Concealment* of property is covered but only in general terms ("otherwise conceals") and not according to the enumerative approach followed by the Vienna and Palermo Conventions. All four Criminal Codes equally provide for the *acquisition* (acceptance) *possession* (keeping) as well as the *use* of proceeds, though the latter term is somewhat restricted in the Criminal Code of RS which only criminalises it when committed in commercial activity (while the others refer to commercial "and other" activities in this respect). Another common characteristic of the four money laundering offences is that no particular purpose or motive is defined as a prerequisite element thereof. As a result, the notion of conversion (or transfer) and concealment (or disguise) of property appears to cover laundering activities committed for the purpose of either concealing or disguising the illicit origin of the proceeds, or assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his action.

9. Money laundering offences in all four Criminal Codes equally extend to "money" and "property" and the notion of "property" does include any type of property that directly or indirectly represents the proceeds of the predicate crime, and therefore it is flexible enough to encompass an adequately wide range of proceeds, including immovable property as well.

10. The evaluators note that the laundering activities listed in the state-level Criminal Code would establish the offence of money laundering only if committed in relation to money or property of "larger value" while two alternative conditions that need, arguably cumulatively, to be proven, that is, whether the offence endangered the common economic space of BiH or had it detrimental consequences to the operations or financing of its institutions, may also add to this restrictive character. (Value limits are defined by courts of the highest level, both in terms of the State and the entities and BD, which are competent to define the exact amount of money that corresponds to such limits.). Taking into account the respective offences in the other three Codes, that do not contain value limitations, the evaluators are however satisfied that there is no money laundering

activity in the territory of BiH which would not be subsumable under either the state-level or the entity/BD level legislation. On the other hand, there is a well-defined subset of money laundering offences that can equally fall under the competence of either the state-level authorities or those at the level of the entities and BD.

11. The criminalisation of money laundering is based at both levels on a very extensive "all crimes approach" as the scope of predicate offences explicitly cover all criminal offences. The evaluation team found that all the designated categories of offences are covered except for market manipulation for which there are no criminal sanctions in BD. No conviction for the predicate offence is necessary to establish that the laundered assets are proceeds of the predicate offence and to convict a person for the criminal offence of money laundering. Though some case practice exists, none of the four money laundering offences cover explicitly the case where the proceeds laundered on the territory of BiH stem from a predicate offence committed abroad.

12. Money laundering offences do not explicitly include or exclude those who have committed both the laundering and the predicate offence. It is noted, however, that there is some divergence of opinion about whether self-laundering would constitute a crime on its own and there are no cases to support this. Most ancillary offences are provided by the General Part of the respective Criminal Codes with a potential applicability to any criminal offence defined in the Special Part, including money laundering. All four Criminal Codes provide for *sui generis* criminalisation of such an attempted act which may therefore establish a completed offence on its own. General criminal principles on attempt apply to all the other ways money laundering can be committed and further ancillary offences are similarly sanctioned on the base of intention.

13. The respective criminal offences provide for the actual knowledge standard in respect of those who engage in money laundering activity. The mental element of the money laundering offence requires knowledge of acquisition through perpetration of criminal offences.

14. Corporate criminal liability is incorporated into the respective Criminal Codes and all legal persons (both domestic and foreign) have criminal responsibility. Liability of legal persons does not exclude criminal liability of physical persons responsible for the criminal offence.

15. Natural and legal persons, once convicted of money laundering, are subject to effective and dissuasive sanctions under all of the respective Criminal Codes, taking into account the sanctions for other crimes and according to the economical situation.

Criminalisation of Terrorist Financing

16. BiH ratified the International Convention for the Suppression of the Financing of Terrorism (hereafter "Terrorist Financing Convention") on 10th June 2003 and it has since been binding on the country. At the state level, the Criminal Code of BiH defines the criminal offence of Funding of Terrorist Activities and at the level of the entities and BD, a similar offence can be found in all three Criminal Codes. All four terrorist financing offences follow the language and concept of Article 2 of the 1999 UN International Convention for the Suppression of the Financing of Terrorism yet they fall short of providing full compliance with its requirements. The criminalisation achieved in BiH is deficient as it does not cover the funding of terrorist organisations or individual terrorists. Furthermore, in the absence of jurisprudence, it is also unclear whether the offence(s) would cover the full definition of "funds". As the money laundering offence follows an all crimes approach, the respective terrorist financing offences, as far as they extend in coverage, are predicate crimes for money laundering.

17. The Criminal Code provides for the possibility of prosecuting the offence of terrorist financing irrespective of whether the terrorist offence for which the funds were gathered is committed abroad or domestically.

18. Funding of terrorist activities is not among the criminal offences frequently being investigated and prosecuted in BiH with only one case mentioned as having occurred in the time period under examination.

Confiscation, freezing and seizing of proceeds of crime

19. The current legal framework applicable to confiscation and provisional measures seems rather complicated. There are parallel regimes both in terms of criminal substantive and procedural law; a different set of rules has to be applied for instrumentalities, another one for the proceeds of crime and, as far as the criminal offence of money laundering is concerned, there is still a *sui generis* offence-specific confiscation rule regarding property that has been laundered. In addition, criminal and administrative provisions can sometimes be applied at the same time. On the other hand, there is still need for a clear understanding of the respective provisions especially in terms of their scope of application

20. The confiscation and provisional measures regimes are practically identical at all levels of jurisdiction. As a general rule, the confiscation regime is conviction based. The language of the Criminal Code leaves no doubt that confiscation of proceeds is compulsory and makes it the most robust part of the confiscation regime. However, high evidential standards as applied by trial courts, the structure of the confiscation regime and the small number of confiscations (particularly at non-State level) and provisional measures not being taken with the desirable regularity all give rise to concerns over effectiveness. Furthermore, provisional measures (seizure or freezing of assets) are seldom if ever applied in the preliminary stage of criminal proceedings, an apparent consequence of which is that there are hardly any convictions followed by actual confiscation of proceeds of crime.

21. With regard to the confiscation of material gain, the language of the respective Criminal and Criminal Procedure Codes appear to be wide enough to cover any sorts of property. Material gain is considered to include all property acquired through or resulting from the perpetration of a criminal offence, including objects or rights, moveable or immoveable assets as well as acts or documents proving a title or right to such property. The confiscation regime also covers substitute assets and other indirect proceeds of crime.

22. The Criminal Code provides for the confiscation ("forfeiture") of instrumentalities as well as objects resulting from the commission of a criminal offence and also appears to provide for obligatory confiscation of assets intended to finance terrorism. It is noted that value confiscation is not applicable in case of instrumentalities and other objects confiscatable. The specific confiscation regime for money laundering cases does not allow for value confiscation**.**

23. Confiscation from third parties is possible under the law of BiH. Rights of *bona fide* third parties are also protected by criminal procedural law. However, confiscation of proceeds commingled with legitimate assets or that of income or benefits derived from proceeds of crime is not provided for by RS criminal legislation.

24. There do not appear to be any provisions in place to prevent or void actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

Freezing of funds used for terrorist financing

25. A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place. The existing legal framework consists of parallel and overlapping regimes which either are incomplete particularly when it comes to procedural rules or are designed for other purposes.

The Financial Intelligence Unit and its functions

26. The FID has been established, with operational independence within SIPA, as the BiH Financial Investigation Unit (FIU) cooperating internationally as a member of the Egmont Group and shares information internationally with its counterpart FIUs.

27. The FID serves as the national centre for receiving analysing and disseminating disclosures of STRs and other relevant information concerning suspected ML or TF activities. Nevertheless, in practice, the law enforcement agencies in the entities and BD do not submit requests to FID and instead gain access to STR information through Court orders and not directly from the FID. Overall the FID appeared to the evaluators to be isolated from the general law enforcement effort due to restrictive interpretation of existing laws, and other organisational issues. During the on-site visit law enforcement agencies in the entities and BD clearly stated that they were not willing to freely cooperate with the FID. Furthermore, the power of FID to disseminate financial information to domestic authorities is limited by law.

28. It is noted that the FID has only limited access to the full range of administrative, financial, and law enforcement databases required to perform proper analysis. Such information is not always accessible on a timely basis. Cash transactions reported to the FID are not utilised as no alert system is in place to detect transactions connected to criminal or suspected persons.

29. At the time of the on-site visit the FID was significantly below its budgeted complement of staff and, in the opinion of the evaluators, Staffing of the Investigation Department at FID is not in proportion to the commonly understood expectations of other law enforcement agencies regarding FID's role in initiating ML investigations in BiH.

Law enforcement, prosecution and other competent authorities

30. BiH has designated law enforcement authorities on all levels (state, entity, and cantonal) that have responsibility for ensuring that ML and FT offences are investigated. The evaluators are concerned that the investigation of ML and FT offences are not seen as a priority for law enforcement. It is noted that there is a backlog of cases related to serious economic crimes which is affecting not only the effectiveness of the judicial process but also the investigative capacity of law enforcement agencies in BiH.

31. Furthermore, in the view of the evaluators, the low level of trust between governmental agencies on all levels (vertically and horizontally) and between the public and private sector as well as the perception of corruption compromises the ability to conduct effective AML investigations.

Cross Border Declaration or Disclosure

32. BiH has not implemented a comprehensive system with reporting obligations for incoming and outgoing cross-border transportations of currency or bearer negotiable instruments that could be related to money laundering or terrorist financing. Furthermore, there are significant limitations on those powers of the authorities that are in place with regard to cross border movements of cash.

3. Preventive Measures – financial institutions

Risk of money laundering / financing of terrorism

33. No formal national assessment of the risks to the country for money laundering and the financing of terrorism has been carried out although a strategy document is in the process of being developed[1].

Customer due diligence

34. In general a customer identification procedure (not full CDD measures) is in place. The evaluators note that the situation for the banking sector is better and more effective than that for the rest of the financial sector. Indeed brokerage houses hold that since their customers have to open a bank account, they do not believe it is their responsibility to identify a customer as this should be done by the bank; even though they are providing a financial service to that customer. Furthermore, the evaluators found a number of shortcomings in relation to certain essential criteria for Recommendation 5, including where key elements are required to be provided for through legislation. A number of these findings have now been addressed by the new AML Law but it was not possible to assess the effectiveness of these new provisions.

35. Although there is a broad awareness amongst the industry as regards customer identification legal obligations, this does not appear to be the case in practice. The concept of the beneficial owner and the resultant identification requirements, although now better identified under the new AML Law, still need to be addressed and implemented more effectively. Indeed, the lack of legal obligations in some instances appeared to impact on the effectiveness of the system.

36. Weaknesses identified relating to CDD requirements included the possibility of allowing the opening and retention of bearer savings accounts in foreign currency under particular circumstances, no obligation to apply CDD measures in all instances, no timing specified for the verification of identification information, no mandatory obligation to apply CDD measures to all existing accounts for all areas within the financial sector, no overall obligation to establish and identify the 'mind and management' of a legal person, the treatment of beneficial owners that are PEPs is not clearly defined in the law, no requirement for banks to document the AML/CFT responsibilities of respondent banks and no provisions for financial institutions to take measures to prevent the misuse of technological developments.

Third Parties and introduced business.

37. Although the old LPML does not specifically prohibit or allow third party reliance or introduced business, likewise it does not specifically allow it. However, there are provisions that appear to indirectly allow such procedures. Notwithstanding the fact that the new AML Law has now clarified this matter, in that it specifically allows 'persons' under obligation' to rely on third parties, yet the new provisions do not fully cover the FATF criteria for Recommendation 9.

Financial institution secrecy or confidentiality

38. Confidentiality obligations under the respective laws are strict, often not providing gateways particularly when disclosing information specifically related to AML/CFT. However the provisions in the AML Law, override confidentiality clauses in the respective laws.

[1] Both the Strategy and the Action Plan were adopted by the Council of Ministers of Bosnia and Herzegovina on September 30, 2009.

Record keeping and wire transfer rules

39. Although both the AML Law requires the retention of all documentation and information obtained on the basis of these laws, yet this falls short of meeting all the essential elements of Recommendation 10. In particular, there is no distinction between identification and transaction information; and there are no clear provisions for the initiation of the 10 year retention period. The availability of identification information and transactions data to the authorities is indirectly addressed with the only reference on obliged entities being that of delivering the data "without delay or within 8 days" to the FID upon its request.

40. Although wire transfers are covered by the Law on Payment Transactions of the entities and BD most of the criteria for SR VII are not met as the law only covers the technical operational aspects. The new AML Law now addresses some of the missing aspects identified at the on-site visit but does not differentiate between domestic and cross-border payments and hence it is difficult to identify compliance with the respective criteria.

Monitoring of transactions and relationships

41. It appears that the objective of Recommendation 11 is not totally understood or even recognised. In the course of the evaluation the evaluators were constantly informed by the industry that all transactions are examined for the purposes of the old LPML and that written findings are retained in the form of the reports filed. The evaluators are not of the view that this fulfils Recommendation 11 effectively. The situation remains the same under the new AML Law.

42. With regard to Recommendation 21, there is no specific obligation to terminate or to decline business relationships or to undertake a transaction with legal/natural persons from countries not sufficiently applying AML/CFT measures. Furthermore, there is no specific obligation to monitor and examine such transactions in the banking and insurance sectors, or to keep a written statement of findings and to make these statements available to the authorities.

Suspicious transaction reports

43. Financial institutions are required by law to file suspicious transaction reports (including suspicions of financing of terrorism) regardless of the amount. The reporting requirement includes both attempted and performed transactions. The evaluators are however, concerned about the low level of transactions reported, particularly as all STRs received are from banks with none received from the insurance and securities sectors. It was noted that there was a high level of misunderstanding together with a lack of awareness within financial institutions concerning the reporting obligations.

44. There appear to be conflicting reporting requirements between the requirements of the AML Law and the Law on Banks in RS and FBiH.

45. With regard to safe harbour provisions and tipping off provisions the evaluators considered that most of the criteria had been met. There are, however, concerns that protection from criminal and civil liability not extended to directors, and officers of obliged entities and that there are loopholes in the law where information can be disclosed without breach of the legislation.

46. With respect to Recommendation 19 the evaluators consider that the cash reporting regime is effective, although manually reviewing of large cash transaction reports at FID brings into question the effectiveness of the computerised database.

47. At the time of the on-site visit there was a lack of provision of meaningful feedback. With regard to the provision of feedback the new AML Law has introduced a mandatory obligation to provide

feedback. The evaluators are not, however, in a position to assess the effectiveness of this new provision.

Internal controls, compliance, audit and foreign branches

48. Some of the obligations arising out of the provisions of Recommendation 15 are addressed either at the new AML Law or, at least for the banking sector, through the relevant Decisions on Minimum Standards at Entity level. Some shortcomings however remain, including exemptions to small obliged entities from appointing a compliance officer and applying internal controls and the lack of adequate procedures for screening at recruitment stage.

49. The respective Laws on Banks include provisions that require banks to fully implement the provisions of internal controls and procedures at their branches and subsidiaries abroad. There are not, however, similar provisions for the insurance and securities sectors. There is no requirement to apply the higher standard where standards differ and no obligation for financial institutions to inform the home supervisor when a foreign branch or subsidiary is unable to apply standards.

Shell banks

50. Overall the cumulative effect of the requirements for establishment of a bank seems to imply the need for a physical presence. However, the definition of "shell bank" is not fully compliant with the FATF Recommendations.

The supervisory and oversight system

51. Prudential regulation and supervision of financial institutions is implemented at entity level based on laws, rules, and regulations, which are mainly identical in FBiH and in RS. The banking sector is supervised by the respective Banking Agencies, the insurance sector – by the Insurance Agencies, and the securities market – by the Security Commissions.

52. Overall the banking and securities supervisors appeared to possess adequate powers to monitor and ensure compliance with AML/CFT requirements within their respective sectors. However, there is a lack of adequate powers for supervisors in the insurance market, including a lack of legislatively provided sanctioning powers. Furthermore, there is a lack of clearly defined supervisory powers of the FID and no mechanisms in place for the enforcement of its decisions regarding removal of irregularities in the operations of obligors.

53. With regard to sanctions, there appeared to be divergences in the penalties that can be applied as well as duplication and overlap in the state level AML Law and the entity level Laws on Banks of FBiH and of RS. Furthermore there appeared to be a lack of proportionate and comparable sanctions throughout the applicable legislation.

54. Sectoral laws and regulations contain provisions regulating market entry by means of becoming the holder or beneficial owner of a significant or controlling interest and there are procedures covering the appointment to management positions in financial institutions and for "fit and proper" tests of management members. There is, however, no prohibition for criminals and their associates from holding a significant or controlling share in securities market intermediaries in FBiH and in BD.

55. There is a lack of licensing/registration procedures for and monitoring of persons involved in money transfer and exchange services, as well as for the persons exercising professional activities of sale and purchase of claims; safekeeping, investing, administering, managing or advising in the management of property of third persons; issuing, managing and performing operations with debit and credit cards and other means of payment, crediting, offering and brokering in negotiation of loans.

56. Many of the obligors (especially the representatives of non-bank financial institutions) fail to have a proper understanding of their obligations under the AML/CFT framework and not all sectors have developed indicators for suspicious transactions. As a result of this many of the obligors (especially the representatives of non-bank financial institutions) fail to have a proper understanding of their obligations under the AML/CFT framework.

Money or value transfer services

57. Money or value transfer operations are exclusively provided by banks most of whom have contractual agreements with Tenfore Ltd (Cyprus). In BiH, Tenfore d.o.o is not a licensed or supervised entity. Money or value transfer services are also provided by the Post Office which, however, does not appear to be supervised entity for AML purposes.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

58. The scope of coverage of preventive measures under both the old and the new AML Law has been extended to other businesses and professions beyond the FATF definition of DNFBPs. Unfortunately monitoring of the implementation of requirements and compliance thereto is almost inexistent and hence the evaluators express concerns on the effectiveness of this extension when there are no effective monitoring mechanisms in place to assess implementation.

Customer due diligence and record-keeping

59. The concerns expressed and weaknesses identified regarding Recommendation 5 for the financial sector also apply for DNFBPs. There are however additional weaknesses and shortcomings identified for DNFBPs. The legal, notary and accountancy professions are more guided by their governing laws as opposed to the AML Law. When meeting the representatives of the legal profession, including public notaries, for both FBiH and RS it became clear that both professions are strongly opposed to being subjected to the provisions of the AML Law.

60. Although the concept of PEPs under intensified identification procedures is addressed through legal provisions and hence also for DNFBPs, in practice it is not addressed by DNFBPs as there is a complete lack of awareness of the risks involved.

61. There is a need for increased awareness of threats from new or developing technologies among DNFBPs. There is also a need for the DNFBPs to be made more aware of the threats to money laundering and the financing of terrorism arising out of large complex transactions that may not have economic reasons.

Suspicious transaction reporting

62. DNFBPs are in principle subject to the same reporting obligations and the maintenance of internal controls as for the financial sector. However, the application of the relevant FATF Recommendations to DNFBPs appears to be even lower than in the financial sector. There are concerns that some of the main sectors, in particular the legal and notary professions, closely followed by the accountancy profession, appear to be reluctant to totally accept their obligations under the AML Law, in protection of the relevant laws governing their respective professions.

Regulation, supervision and monitoring

63. Some of the DNFBPs are subject to supervision by designated supervisors (e.g. notaries, lawyers, auditors and accountants). Even in these circumstances, the Chambers of Lawyers, the Chambers of Notaries, and the Associations of Accountants and Auditors at entity level do not have legislatively provided powers for supervising implementation of the obligations set forth in the new AML Law, and no systems and mechanisms are established for them to ensure compliance of the obligors with the national AML/CFT framework. Where there is no designated supervisory

body, by default, FID is the relevant agency to supervise these entities for AML/CFT compliance. However, FID does not have any mechanisms and tools available for monitoring and ensuring compliance of the said persons with national requirements to combat money laundering and terrorist financing.

64. Whereas the contents of the Book of Rules appears to be comprehensive in order to assist obligors to implement and comply with their AML/CFT obligations, the meetings with the representatives of DNFBPs, indicated that many of them lack a proper understanding of the provisions and practical implementation of the Book of Rules. Moreover not all sectors have completed their list of indicators for suspicious transactions as is required under the Law. Specific feedback is not provided although the new AML Law now makes it mandatory on the FID to provide such feedback to the person under obligation who would have filed the report.

Modern secure transaction techniques

65. Notwithstanding the measures taken and being taken by the Central Bank, there is a need to intensify the drive to reduce the use of cash and develop further the use of more modern and secure electronic means of settlement. The evaluators welcome the measures taken under the new AML Law limiting cash payments to persons and entities other than those specified to €15,000. However, the evaluators do not consider this to be an overarching policy for setting up the strategy for reducing the use of cash.

5. Legal Persons and Arrangements and Non-Profit Organisations

Legal persons

66. Registration of legal persons is done at the competent Registration Courts at entity and BD level and it is obligatory. The legal framework regulating the registration of business entities establishes a clear mechanism ensuring a uniform procedure of registration of business entities on the territory of BiH. Laws do not specify the existence of a single electronic register. It appears that such a register started to be implemented only recently and consequently, there is a risk that this has led to a weak exchange of information between registration courts, double registration of business entities and a low level of access to information by the relevant competent authorities.

67. The registration courts are responsible for the validity of data that they enter into the Register. Despite the verification powers in place it appears that the control carried out by courts is limited to a formal check to ensure that the required documents are submitted. This approach can facilitate the practice of setting up fictitious companies. Although the new AML Law gives a definition of the "real owner of a legal entity" and "real owner of a foreign legal entity", there is no express requirement for the courts to carry out the identification of the beneficial owners.

68. It remains unclear whether the shareholding information for all legal persons is updated in a timely manner at the Main Book of Registration at the Courts. It appears that there is no recourse by obligors to the Registry of Securities for shareholding companies, obliged entities may, therefore, not be able to complete the identification process satisfactorily for legal persons.

69. BiH prohibits the issue of bearer shares by corporate bodies. There are, however, no prohibitions for other legal entities being shareholders in a company. The evaluators were not given satisfactory replies as to whether a foreign company with bearer shares can be a shareholder in a legal person registered in BiH.

Legal Arrangement

70. The concept of trusts is not recognised in legislation. BiH is not a signatory to the Hague Convention.

Non-profit organisations

71. No review of the adequacy of the relevant laws and no outreach has been undertaken by the authorities in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes.

72. While at each level a mechanism for registering the NPOs is in place, there is no legal impediment for an NPO to be registered at the same time at two or three levels, i.e. in two or three registers. The statistics on the number of the existing NPOs in BiH are not accurate enough, considering the lack of a clear mechanism on the reciprocal recognition of associations and foundation and the possibility that certain NPOs are registered, for example, at the entity and state level and counted twice. There is no single Register of non-profit organisations, although there is for churches and religious communities,.

73. Other deficiencies include the lack of an express legal provisions requiring that the business records of the NPOs are kept for at least five years, a lack of a mechanism for national cooperation and information exchange between all agencies involved in the investigation of predicate offences and lack of outreach to the NPO sector.

6. National and International Co-operation

National Cooperation

74. Because of the fragmented political structure of BiH, national cooperation is not to be taken for granted. Although the legal basis for national cooperation and information exchange between competent authorities in BiH is in place there are significant concerns about its effective operation and, in practice, the actual cooperation and exchange of information is limited.

75. The main mechanism in BiH for enhancing cooperation between Policy makers, the FIU, law enforcement and supervisors and other competent authorities has been the establishment of the "Working Group of Institutions of Bosnia and Herzegovina for Prevention of Money Laundering and Financing of Terrorism", as a inter-ministerial and professional body of Council of Ministers of BiH.

76. The evaluators have not been given any meaningful information that the systems in place for preventing money laundering and terrorist financing are reviewed periodically to assess effectiveness and, to date, the Working Group's main focus has been the drafting of the new AML Law.

The Conventions and United Nations Special Resolutions

77. BiH has been a party to the Vienna Convention since 1993 by succession, as it was originally ratified by Yugoslavia in 1990. BiH ratified the Palermo Convention and it's first two Protocols in 2002 and acceded to its Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition in 2008. The 1999 UN International Convention for the Suppression of Financing of Terrorism was ratified by BiH and became effective in 2003. Also, BiH is party to all 9 conventions mentioned in the Annex of the TF Convention.

Mutual legal assistance

78. BiH has ratified the European Convention on Mutual Assistance in Criminal Matters and its second Additional Protocol although, BiH is not a party to the first Additional Protocol of the Convention. BiH has ratified the European Convention on the transfer of proceedings in criminal matters and the European Convention on transfer of convicted persons. BiH has also recently

passed a new Law on Mutual Assistance in Criminal Matters (MLA Law). Overall, the possibility for BiH to provide mutual legal assistance appears quite broad.

79. Although dual criminality is required for rendering mutual legal assistance, including extradition cases MLA Law on MLA only requires dual criminality in case of extradition requests although it contains no such explicit provisions as regards MLA issues. BiH does not have a special fund for confiscated assets and a competent authority for keeping and managing seized or confiscated assets.

Extradition

80. All rules relating to BiH's ability to extradite equally apply to cases involving money laundering and financing of terrorism. Extradition issues are also governed by the European Convention on Extradition and its Additional Protocols.

81. BiH does not extradite its own citizens. Extradition of persons with dual citizenship continues to be a problem.

Other Forms of International Co-operation

82. Competent authorities, including financial supervisors and FID are authorised by law to provide international cooperation to their foreign counterparts in a rapid, constructive and effective manner.

83. Overall, The identified legal deficiencies in the criminalisation of ML and TF may have a negative impact on providing MLA in an effective manner.

7. Resources and Statistics

84. FID does not appear to have sufficient staff resources available to fully perform its functions[2] and FID's IT system does not provide sufficient operational scope or capacity to effectively support FID's operations. It did however appear that FID had the requisite powers and that there are adequate security controls in place.

85. Some representatives of law enforcement bodies that the evaluation team met with expressed dissatisfaction with their working condition, means and the resources available. The evaluators learnt that the understaffed prosecution and judiciary wrestles with a significant backlog of cases related to serious economic crimes because of the pressure of workload and lack of specific expertise.

86. Lack of training is a major problem throughout all supervisory bodies, with some relative "advantage" of the Banking Agencies, which seem to be in a better position in terms of the frequency and coverage of training events attended by the staff.

87. Apart from the FID who did produce statistics to support their annual report, there are very few meaningful statistics available. Furthermore the evaluators are of the view that, apart from FID, those statistics that were produced for the evaluators had merely been produced at the request of the evaluators and that no use was being made of statistics to review the effectiveness of their systems for combating money laundering and terrorist financing on a regular basis.

[2] The FID is, however, involved in an ongoing recruitment process.

III. MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Bosnia and Herzegovina

General information

1. Bosnia and Herzegovina is situated on the Balkan peninsula of South-eastern Europe with an area of 51,129 square kilometres (19,741 sq mi). It is bordered by Croatia to the north, west and south, Serbia to the east, and Montenegro to the south, Bosnia and Herzegovina is almost landlocked, except for 26 kilometres of Adriatic Sea coastline, centred on the town of Neum. Bosnia and Herzegovina has an estimated population of approximately 4 million.

2. Following the breakup of the Socialist Federal Republic of Yugoslavia, the Dayton Peace Agreement established Bosnia and Herzegovina as a State comprising two entities: The Federation of Bosnia and Herzegovina (FBiH), which is principally populated with Bosniaks and Croats, and the Republic of Srpska (RS) which is primarily Serb. In Accordance with Annex 2, Article 5, of the Dayton Peace Agreement, which left the status of Brčko District unresolved, an Arbitration Tribunal was formed which established Brčko as a special District which was internationally supervised. Furthermore, the Constitutional Court of Bosnia and Herzegovina rendered a decision whereby Bosniaks, Croats and Serbs are recognised as a constituent people throughout the territory of Bosnia and Herzegovina.

3. As a result of this division both of the entities and Brčko District have established their own legislative frameworks including Criminal Codes, Laws on Banks, etc. This legislation is, in some cases (e.g. Criminal Codes), in addition to legislation at the level of the state of BiH. In these circumstances the evaluators have needed to consider relevant legislation at entity and Brčko District level as well as state level legislation. Although certain law enforcement agencies and supervisory bodies operate across the whole of BiH, this legislative framework is largely replicated in law enforcement and supervisory structures. For example the State Protection and Investigation Agency, which houses the Financial Intelligence Unit (FID) which is the FIU, has authority to operate across the whole of for the whole of BiH, whereas each of the entities and Brčko District maintain their own police forces. In these circumstances the evaluators have needed to consider bodies operating both at state level as well as at the level of the entities and Brčko District in order to assess the overall effectiveness of the AML/CFT regime.

4. The Capital of Bosnia and Herzegovina is Sarajevo. Bosnia and Herzegovina became a member of the United Nations in 1992; and a member of the Council of Europe in 2002. It also participates in regional co-operation through the Stability Pact, Central-European Initiative (CEI), Southeast Europe co-operation Initiative (SECI) and the Southeast Europe Co-operation Process (SEECP). It is also a founding member of the Mediterranean Union upon its establishment on July 13, 2008.

Economy

5. Bosnia and Herzegovina faces the dual problem of rebuilding a war-torn country and introducing market reforms to its formerly centrally-planned economy. This has resulted in some legacies in the economy. Industry is overstaffed, reflecting the rigidity of the planned economy. Although agriculture is almost all in private hands, farms are small and inefficient, and the republic traditionally is a net importer of food with imports (estimated at $11.94

billion in 2008). Some of the main industries are steel, coal, iron ore, tobacco products, and textiles. The tourism sector is recovering, with popular winter skiing destinations as well as summer countryside tourism. An estimated 500,000 tourists visit Bosnia and Herzegovina every year and contribute much of the foreign currency in the country.

6. Of particular note is the diaspora population which often returns home during the summer months, bringing in an increase in retail sales and food service industry. Estimated GDP for 2009 is $32.59 billion with growth of c.5.5%. Unemployment is running at 29% of the working age population although, statistics are limited and do not capture black market activity.

7. The national currency is the konvertibilna marka (KM) which was introduced in 1998 and is pegged to the Euro[1]. Confidence in the currency and the banking sector has increased. Due to Bosnia's strict currency board regime, inflation has remained low in the entire country with an estimated inflation rate of 1.5% in 2008.

8. Privatisation has been slow and local entities only reluctantly support national-level institutions. Banking reform accelerated in 2001 as all the Communist-era payments bureaus were shut down; foreign banks, primarily from Western Europe, now control most of the banking sector.

9. A sizable current account deficit and high unemployment rate remain the two most serious economic problems. The country receives substantial amounts of reconstruction assistance and humanitarian aid from the international community.

System of Government

10. Bosnia and Herzegovina has several levels of political structuring under the state government level. BiH is divided into two entities, RS and FBiH. The Brčko District in the north of the country was created in 2000 out of land from both entities. It officially belongs to both, but is governed by neither, and functions under a decentralised system of local government. The third level of Bosnia and Herzegovina's political subdivision is in FBiH which is divided into ten cantons, all of which have their own cantonal government, which operate under the law of the FBiH. The fourth level of political division in Bosnia and Herzegovina is the municipalities. FBiH is divided into 74 municipalities and RS into 63. Municipalities also have their own local government, and are typically based around the most significant city or place in their territory.

11. As a result of the Dayton Accords, the civilian peace implementation is supervised by the High Representative for Bosnia and Herzegovina selected by the Peace Implementation Council. The High Representative has many governmental and legislative powers, including the dismissal of elected and non-elected officials.

12. The representation of the government of Bosnia and Herzegovina is by elites who represent the country's three major groups, with each having a guaranteed share of power. The Chair of the Presidency of Bosnia and Herzegovina rotates among three members (Bosniak, Serb, Croat), each elected as the Chair for an eight-month term within their four-year term as a member. The three members of the Presidency are elected directly by the people. The Chair of the Council of Ministers is nominated by the Presidency and approved by the House of Representatives. He or she is then responsible for appointing a Foreign Minister, Minister of Foreign Trade, and others as appropriate.

[1] At the time of the on-site visit the exchange rate was approximately KM2 to €1.

13. The Parliamentary Assembly is the lawmaking body in Bosnia and Herzegovina. It consists of two houses: the House of Peoples and the House of Representatives. The House of Peoples includes 15 delegates, two-thirds of which come from the Federation (5 Croat and 5 Bosniaks) and one-third from the RS (5 Serbs). The House of Representatives is composed of 42 Members, two-thirds elected from the Federation and one-third elected from the RS.

Legal system and hierarchy of laws

14. The Court of Bosnia and Herzegovina performs its functions at the state level. It has jurisdiction over the entire territory of Bosnia and Herzegovina and has performed its functions since January 2003. The Court of Bosnia and Herzegovina has three divisions: criminal, administrative and appellate. The Criminal Division of the Court of Bosnia and Herzegovina has three sections: Section I for war crimes, Section II for organised crime, economic crime and corruption, and Section III for all other criminal offences under the jurisdiction of the Court. The Court has jurisdiction over criminal offences defined in the Criminal Code of Bosnia and Herzegovina and other laws of Bosnia and Herzegovina.

15. The Constitution of Bosnia and Herzegovina has established a jurisdiction of Prosecutor's Offices at both state and entity level. The BiH Prosecutor's Office is established by the Law on the BiH Prosecutor's Office and it is a *sui generis* institution that is not hierarchically superior to the prosecutor's offices of the entities. It possesses a specific jurisdiction for the procedures before the Court of BiH against criminal offenses of war crimes, organised crime, economic crime and corruption and other criminal offenses established by the state-level laws from within the jurisdiction of the Court of BiH.

16. The Federal Prosecutor's Office of FBiH is the "supreme" Prosecutor's Office for the area of FBiH, i.e. for the ten Cantonal Prosecutor's Offices from FBiH.

17. The Republic Prosecutor's Office of the RS is a "supreme" Prosecutor's Office for the area of the RS, i.e. for the five District Prosecutor's Offices within the area of the RS.

18. There are three levels of courts in the RS (Primary Court, District Court and Supreme Court). There is also the Constitutional Court of the RS for issues in relation to the entity Constitution. In the RS a process is ongoing for the establishment of the District Economy Courts. The five District Courts have both the first instance and the appellate jurisdiction. The Supreme Court of RS is obliged to provide equal application of laws by courts with lesser jurisdiction. In the RS, there are also 19 Primary Courts competent for the areas of municipalities.

19. The Prosecutor's Office of the RS is organised as a two-tier structure. District Prosecutor's Offices cover the area of the courts of the relevant districts, and the Office of the Republic Prosecutor covers the entire territory of the RS. The Prosecutor's Office of the RS is a "supreme" Prosecutor's Office for the area of the RS, i.e. for the five District Prosecutor's Offices from the area of the RS.

20. FBiH consists of ten federal units (cantons), with different levels of responsibility of governments, determined by their Constitutions. Principally the judiciary is based on cantonal jurisdiction, while the third instance jurisdiction is on cantonal level. Obligations and organisation of the courts is determined by the ten cantonal Laws on Courts. In FBiH there are 28 Municipal Courts. In criminal matters, the ten Cantonal Courts have a first instance jurisdiction over criminal matters, for which a prison sentence of over 10 years is provided, except if the law does not provide the jurisdiction of some other court. The Cantonal Courts also have jurisdiction over appeals against decisions of Municipality Courts, as well as regular and extraordinary legal remedies, if so provided by the law. The Supreme Court of FBiH decides, *inter alia*, on appeals in relation to decisions of the Cantonal Courts that refer to

constitutional and legal matters, except for those within the jurisdiction of the Supreme Court of FBiH.

21. The Constitutional Court of FBiH has jurisdiction to decide on disputes between cantons, between FBiH and cantons, between cities and cantons of FBiH to which a city belongs, or between institutions of FBiH. The Supreme Court also determines constitutionality of laws and provisions upon request, and decides on constitutional matters arising within the Courts of FBiH or the Cantonal Courts.

22. The system of Prosecutor's offices of Bosnia and Herzegovina Federation is a two-instance system and centralises the municipal level in the cantonal prosecutor's offices. The Federal Prosecutor's Office of FBiH is the "supreme" Prosecutor's Office for the area of FBiH, i.e. for the ten Cantonal Prosecutor's Offices from FBiH. The cantonal prosecutor's offices are in charge of the criminal prosecution of persons considered to be perpetrators of criminal offences and economic offences as well as other functions defined by the laws of FBiH and the cantons. Money laundering may fall within the jurisdiction of these offices.

23. The Republic of Srpska Prosecutor's Office has a two-stage system i.e. it is made of the Republic Prosecutor's Office and the District Prosecutor's Offices. The District Prosecutor's Offices are established for the area of district courts, whereby the Republic Prosecutor's Office is competent for the whole territory of the Republic of Srpska. The District Prosecutor's Offices act in district and primary courts, whereas the Republic Prosecutor's Office acts in all courts of the Republic of Srpska, as well as in the Republic of Srpska Constitutional court, only when a matter of constitutionality emerges in one of the legal regulations that are being applied in a certain case. Money laundering is within the area of responsibility of the District Prosecutor's Offices.

24. In Brčko District the Judiciary is defined by the Law on Court of Brčko District and the Law on Prosecutor's office. The Primary Court is competent for first instance decisions on criminal, magistrate, economic, civil and other cases. The jurisdiction of the Appellate Court is to decide upon regular remedies against decisions of the Primary Court as well as special remedies against final decisions of the court. The Prosecutor's Office is in charge of criminal prosecution of perpetrators of criminal offences and directs the Brčko District Police in the course of investigations of criminal offences.

Transparency, good governance, ethics and measures against corruption

25. BiH signed the UN Convention against Corruption in on 16 September 2005 and ratified it on 26 October 2006. BiH is a Party to the UN Convention against transnational organised crime having signed it on 12 December 2000 and ratified it on 24 April 2002. As is well known, this Convention recognises that corruption is an integral component of transnational organised crime and must be addressed as part of efforts to combat organised crime. BiH signed the Council of Europe's Criminal Law Convention on Corruption and Civil Law Convention on Corruption on 1 March 2000 and ratified them on 30 January 2002. Bosnia and Herzegovina has not, however signed or ratified the Council of Europe's Additional Protocol to the Criminal Law Convention on Corruption[2] and OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

26. The Second Evaluation Round Evaluation Report on BiH was adopted in December 2006 by GRECO (the Group of States against Corruption). The GRECO report made 16 recommendations to BiH. GRECO subsequently adopted the Compliance Report of Bosnia

[2] However evaluators were informed after the on-site visit that the Presidency of Bosnia and Herzegovina brought a decision on 27.07.2009 to ratify the Council of Europe's Additional Protocol to the Criminal Law Convention on Corruption although this has still to be signed and ratified.

and Herzegovina in February 2009. In the conclusions of the Compliance Report GRECO noted that a very low level of implementation of the recommendations made by GRECO during its Second Round evaluation had been achieved. BiH has implemented satisfactorily or dealt with in a satisfactory manner only a quarter of the recommendations contained in the Second Evaluation Report. The need for sustained and material efforts in virtually all areas is underlined in this report. The report further states that more determined action is clearly required in the area of public administration to attain uniform and satisfactory levels of implementation of the recommendations dealing with ethics, pantouflage, and whistleblower protection, and more cooperation is needed among the different levels of Government to efficiently deter and punish corruption.

27. In its recently published 2009 Progress Report, the European Commission states that corruption in BiH is prevalent in many areas and continues to be a serious problem, especially within government and other State and Entity structures linked to public procurement, business licensing as well as in the healthcare, energy, transportation infrastructure and education sectors. Although the adoption of a new strategy for fight against corruption 2009-2014 and the related Action Plan and preparation of the draft law on Agency for Prevention of Corruption and on Cooperation in Fight against Corruption are positive developments, as underlined in the report of European Commission, considerable further efforts remain necessary in this area. The report further highlights the following concerns:

    - lack of effective investigation, prosecution and conviction of suspects of high-level cases of corruption;
    - weak coordination of anti-corruption efforts at the State level;
    - no available overall survey and analysis of statistics on anti-corruption case;
    - ineffective use of special investigative means applicable for corruption cases;
    - need for strengthening the cooperation between police and prosecutors;
    - slow judicial follow-up of cases of corruption; and
    - the persistent lack of final convictions.

28. The Transparency International 2008 "Corruption Perception Index" ranked BiH 92nd out of 180 (where 180 is considered the most corrupt country in the world). The Transparency International "Global Corruption Report 2009" states that the draft law giving legitimacy to an anti-corruption institution, as part of BiH's obligation to the UN Convention against Corruption, which was prepared in 2007 by a working group composed of representatives from relevant institutions, has never come before the parliament because of administrative barriers in the BiH Council of Ministers. The Report also criticises the RS Government due to lack of transparency on the privatisation process of an oil refinery in Bosanski Brod in 2007.

1.2 General Situation of Money Laundering and Financing of Terrorism

29. One of the legacies of the war within Bosnia and Herzegovina was the growth of organised criminal activity which developed out of the general state of lawlessness that prevailed at the time. The authorities have sought to establish a legal and law enforcement framework within Bosnia and Herzegovina. Bosnia and Herzegovina is situated centrally within the Balkans and has open borders with a number of countries which increases the threat of a number of classes of crime as set out below. Furthermore, the fragmented nature of Bosnia and Herzegovina and the multiple levels of law enforcement and financial services (e.g. state, entity, canton, etc.) create opportunities for criminal exploitation.

30. In 2006, the Ministry of Security published a "Strategy of Bosnia and Herzegovina for Fight against Organised Crime and Corruption". This report identified that the most important

crime threats were economic crime and tax evasion, the illegal trade in narcotics, illicit arms trading, human trafficking, illegal migration, car theft and counterfeiting. In addition the report raised concerns about the increase in armed robberies on banks, post offices and other businesses as well as at private homes.

31. The report recognised that laundering of money earned by organised crime and corruption undermined the Bosnian economy. Furthermore it was recognised that money laundering represented an exceptional threat to the integrity of financial institutions in Bosnia and Herzegovina. Identified perpetrators of money laundering in Bosnia and Herzegovina are attempting to "recycle" the money in the simplest and quickest way possible. Significant funds earned through money laundering have generated an unrealistic increase in demand for luxurious goods (cars, yachts etc.), an increase in the price of real estate and certain consumption goods which further encouraged speculative behaviour.

32. Based on the information of entity intelligence and financial investigations units and the central state financial intelligence unit, the Finance and Intelligence Department in SIPA, in the period 2000-2005, the most frequent cases of money laundering in BiH were identified as:

    1. Using false identity, documents, or "imposters", when founding enterprises,
    2. Hiding within business structures controlled by the criminal organisations,
    3. Abuse of a legitimate business,
    4. Abuse of the international matters non-harmonised between national jurisdictions.

    Although no estimate of the amount of money being laundered is available it is estimated that the cost to the economy of various types of crime is:

Table 1: Cost of crime to the economy of Bosnia and Herzegovina

Period	Value of damage (€'ooo)
2005	1,827
2006	9,637
2007	10,734
2008	5,752

33. As stated above corruption is perceived to be a major problem. The report recognised that two forms of corruption with different effects were identified; corruption at the highest level of governance and administrative corruption. The first instance enables individuals to change laws, rules and orders in accordance to their needs and in this way to increase profit on investments. Administrative corruption frequently enables the survival of weak companies, which would be liquidated in conditions of normal market competition, and at the same time increases the expenses of business activities for successful companies

34. With regard to terrorism and terrorist financing, competent institutions and law enforcement agencies in Bosnia and Herzegovina have undertaken numerous activities in the fight against terrorism and financing of terrorist activities. With regards to that, and in cooperation with international institutions, several investigations, planned and conducted within Non-Government Organisations (NGOs), brought into a direct or indirect relation the financing of some terrorist organisations and terrorist activities. The result of these activities was a ban on 11 NGOs and their inclusion on the UN Consolidated List (including six persons who directly or indirectly supported terrorist financing and terrorist activities).

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)

Financial Sector

35. The provision of financial services in Bosnia and Herzegovina is governed by various laws at the Entity/District level. To the extent possible these laws are harmonised to avoid regulatory and/or operational arbitrage. The term 'financial services' is not specifically defined in any law but a definition can be derived from the various laws.

36. At State level the two main institutions are the Central Bank of Bosnia and Herzegovina and the State Insurance Agency. There is no institution at State level that is responsible for the co-ordination of the securities markets at Entity/District level.

Banking sector

37. The Central Bank of Bosnia and Herzegovina was established in 1997. It is governed by the Law on the Central Bank of Bosnia and Herzegovina. The Central Bank is the only monetary authority that is responsible to safeguard monetary stability in accordance with the country's 'currency board arrangement'. The main tasks of the Central Bank are therefore those related to a monetary authority – monetary policy, the management of external reserves, currency issue and payment systems. The Central Bank does not have competencies relating to AML/CFT supervision and compliance for any entities in the financial sector. However, in the field of the prevention of money laundering and the financing of terrorism, the Central Bank by law has certain specific roles;

    1. to open and maintain reserve accounts of banks for blocking of deposits on the basis of terrorism financing and breach of the Peace agreement;
    2. to coordinate AML/CFT activities with the respective Banking Agencies;
    3. to operationally manage the Single Registry of Transaction Accounts of all entities that perform payment transactions;
    4. to maintain and operate the Registry of Accounts of all legal entities and the assignment of the Single Identification Number; and
    5. to participate in the Working Group of Bosnia and Herzegovina Institutions related to the Prevention of Money Laundering and Terrorism Financing.

    Through an MoU signed in 2008 with the two Banking Agencies of the Federation of BiH and Republic of Srpska respectively the Central Bank and the Banking Agencies co-operate and share information related to the prevention of money laundering and terrorist financing.

38. The Banking Agencies of the Federation of BiH and Republic of Srpska are responsible for the regulation and supervision of banks, savings and credit (micro-credit) organisations, financial leasing institutions and money transfer activities. Both Agencies are governed by their respective Law on Banking Agency at Entity level. Both Agencies are independent, non-profit institutions. There is no banking agency in the Brčko District but supervision of branches of banks operating in the District falls within the remit of the Entity agency responsible for the relevant bank's Head Office. The harmonised main tasks of the Banking Agencies as determined by their respective Laws are broadly:

    - to issue and revoke licences to banks and micro-credit organisations;
    - to regulate and supervise banking and micro-credit organisations;
    - to manage or supervise the procedures for the rehabilitation or liquidation of banks, including bankruptcy procedures;

- to perform actions in support of anti-terrorist measures, including in relation to the UN Security Council resolutions;
- to take such actions as may be appropriate to prevent any funding of activities that may threaten the Peace agreement;
- to require the opening of accounts at the Central Bank for the transfer of funds on blocked accounts;
- to cooperate in sharing of related information with the Central Bank.

39. Banks continue to dominate the financial sector with assets representing about 93% of GDP in 2007. There are currently 31 banks in Bosnia and Herzegovina with 20 having their Head Office in the Federation of BiH (with banking assets of KM15.1 bn (US$11.6 bn)). Banks and banking groups from Austria have the highest participation with 36.6%; Germany with 23.8%, and Italy with 17.4%. There are 10 banks with their head office in the Republic of Srpska. No banks have their Head Office in the District of Brčko but there are a number of branches operating in the District. Banks operate under the Law on Banks of the respective Entity. The majority of banks are foreign owned with foreign capital controlling about 83% of the total bank capital. Banks do not need separate licences to operate in the Federation of BiH, the Republic of Srpska or Brcko District BiH but they have to inform the respective Banking Agencies.

40. There are 20 micro-credit organisations and 9 financial leasing companies in the Federation of BiH. In the Republic of Srpska there are 4 Savings and Credit Organisations, 7 micro-credit organisations (of which 4 are non-profit ones) and 1 financial leasing company.

41. All other financial services such as money value transfers, issuing and management of means of payment, financial guarantees and commitments, trading in money markets and foreign exchange, portfolio management are undertaken and provided by banks under the general banking licence.

Insurance sector

42. The State Insurance Agency was established in 2004 through the Law of Insurance Agency of Bosnia and Herzegovina. The State Insurance Agency is an independent institution reporting to the Council of Ministers. The main role of the State Insurance Agency is the harmonisation of Entity level insurance laws and other legislative documents; to act as arbiter in litigations between the Insurance Agencies at Entity level and to coordinate their work. According to the Law, however, unlike the Central Bank, the State Insurance Agency does not appear to have any role in the prevention of money laundering and the financing of terrorism. The Agency is however represented on the Working Group.

43. There are currently 26 insurance and 1 reinsurance companies operating in Bosnia and Herzegovina. The reinsurance company and 15 insurance companies operate in the Federation of BiH, with 9 out of the 15 transacting in life assurance business. In the Federation there are also 25 legal persons and 300 natural persons operating as insurance intermediaries selling both life and non-life insurance. In the Republic of Srpska there are 11 insurance companies, 1 of which also transacts in life business, 2 transact in both life and non-life business whilst the other 8 transact in non-life business only. Five (5) branches of insurance companies registered in the Federation of BiH also operate in the Republic of Srpska. There are 9 legal persons and 207 natural persons operating as insurance intermediaries selling both life and non-life business. Insurance business in Bosnia and Herzegovina is still in its development stage but the evaluators have been informed that there is huge potential for growth. As at 2007 insurance premiums collected overall represented 1.9% of GDP, being a 12% increase over 2006.

44. The insurance business is regulated and supervised by the Insurance Supervisory Agencies at the FBiH and RS level. Both Agencies are established under the Law on Insurance Companies of the respective Entity and have competence over both insurance and reinsurance companies and insurance intermediaries. As the function of the Insurance Supervisory Agencies at both the Federation of BiH and the Republic of Srpska are governed by harmonised Laws, the following comments cover both Agencies. Section 1.2 of the Law(s) on Insurance Companies establishes the Agency as an independent non-profit institution in the form of a legal entity liable for its operations to the Government of the respective Entity. The regulatory objective of the Insurance Agencies, *inter alia*, incorporate responsibilities:

- to supervise the application of the Law and bye-laws in insurance and other regulations;
- to regulate the activities of the insurance/reinsurance companies and insurance intermediaries;
- to promote trust of the market in insurance activities;
- to prevent financial crime, by prohibiting the insurance activities against this Law;
- to inform and advise on the different types of life and non-life insurance;
- to council and protect consumers.

Securities sector

45. There are two Stock Exchanges in Bosnia and Herzegovina – in Sarajevo and Banja Luka. The Stock Exchange is established under the Law on Securities Markets by at least five stock exchange intermediaries authorised to conduct transactions in securities and who need not be the shareholders. The objective of the Stock Exchanges is to provide an organised operational marketplace for transactions in securities.

46. The Laws on Securities Markets of both Entities further provide for the establishment of the Central Registry of Securities. There are currently two Central Registries – in Sarajevo and Banja Luka. The Registries are responsible to keep and maintain shareholder ledgers for issuers whose shares are publicly traded on the organised market of securities. Central Registries can also act as depositories of privatisation and other investment funds and can undertake other activities as may be authorised by the Securities Commission.

47. There are three Securities Commissions in Bosnia and Herzegovina – at FBiH, RS and Brčko District level. As stated earlier, there is however no such Commission at State level to co-ordinate and harmonise their tasks. Since the Laws on Securities Markets are largely harmonised, the comments that follow apply equally to all three Commissions. The Securities Commission is a permanent and independent legal entity established by law to regulate and control the issuance of and trading in securities. The Commission is responsible, *inter alia*, to;

- issue regulations to implement the Law when authorised to do so by the Law itself;
- monitor and safeguard the securities market;
- issue or suspend licences, permits and approvals for legal and natural persons to operate under the Law;
- supervise those institutions/persons it licences;
- suspend issuance and trade of particular securities;
- keep records and registers in accordance with the Law.

48. As to the size of the securities market in Bosnia and Herzegovina total turnover at both Sarajevo and Banja Luka Stock Exchanges increased by more than 90% in 2007 over 2006 but declined in 2008 and continued to decline further during 2009 consequent to the global financial crisis. The bond market started to develop but this was more due to the issuance of government securities, municipal and corporate bonds which has now declined. Consequently

the main activity on both Exchanges is now more in connection with equities, particularly as a result of the privatisation process.

49. The Central Registry of the Federation currently holds in its registers 333,036 account owners for a total of 720 shareholding companies. That for Banja Luka holds information for 880 shareholding companies.

50. The securities market in the Federation consist of 17 brokerage houses, 720 securities issuers, 14 fund management companies, 11 investment funds and 4 mutual funds. Moreover 7 banks are further licensed to perform custody operations in securities trading and another 3 banks are authorised to perform portfolio management.

51. In the Republic of Srpska the securities market is composed of 15 Fund Management companies, 18 investment funds and 17 banks with a brokerage department. Moreover, 6 banks are authorised to act as custodians and 5 as depositary banks. This is complemented by 7 companies authorised for portfolio management and 4 for providing investment advice.

Table 2: Overview of Registered issuers

Federation of Bosnia and Herzegovina

Issuers	**No of issuers**	**%**	**Initial Capital** in KM Million	**%**
Business companies	663	92	10,495	82
Banks and insurance companies	41	6	1,310	10
Investment Funds	11	1	1,032	8
Fund Management companies	5	1	1	
Totals	**720**	**100**	**12,848**	**100**

Republic of Srpska

Issuers	**No of issuers**	**%**	**Initial Capital** in KM Million	**%**
Companies (joint stock companies)	831	93	11,558	83
Banks and insurance companies	20	2	496	3
Investment Funds	18	2	1,911	14
Fund Management companies	15	2	9	
Authorised participants, Stock Exchange and Central Registry of Securities	9	1	2	
Totals	**893**	**100**	**13,976**	**100**

Brčko District

Issuers	**Number of issuers**	**%**	**Volume emission 000**	**%**
Commercial companies *	24	92	111,244	73
Banks and insurance	1	4	5,000	3
Investment companies (DUF)				

Financial intermediaries **				
Bonds ***	1	4	36,965	24
Total		**100**	**153.209**	**100**

* All companies listed on the stock market of the Sarajevo market (9 companies) and the Banja Luka Stock Exchange (16 companies).
** In the area of Brcko District of operating branches or offices of most banks whose headquarters and RS and FBiH, within which business and brokerage departments of banks, most insurance companies also have offices in the district, but these usually deal with forms of compulsory insurance.
*** Brcko District BiH, 30.06.2009. show performed seven series of bonds in the above scale verified on the basis of old foreign currency savings, and the same are quoted on the official quotations of the respective Sarajevo Banja Luka Stock Exchange

Designated Non-Financial Businesses and Professions (DNFBPs)

52. As indicated in Section 4 of this Report, the scope of coverage under the AML Law not only covers DNFBPs as defined in the FATF Methodology but is extended to other businesses or professions that, in the opinion of the authorities of Bosnia and Herzegovina, could be vulnerable to money laundering or the financing of terrorism. There are however some exceptions. For example in the case of the accountancy profession when accountants undertake activities as defined in the FATF Methodology for the accountancy and the legal profession, according to the Law they would be excluded from the preventive obligations under the Law.

53. The range of DNFBPs is broad and efforts by the evaluators to try to assess the size of the sector were not always satisfied. Indeed the evaluators found difficulty even in identifying and establishing who is supervising whom for the purposes of compliance with the AML Law. Unfortunately the evaluators have often been informed that supervisory responsibilities lie with the Tax Administration for a number of DNFBPs. It however transpired that such supervision/monitoring is only for tax purposes. Although in some cases, such as in the legal and the accountancy professions, there are bodies governing the profession, such as the Chamber of Lawyers and the Union of Accountants and Auditors, these appear to have no supervisory powers.

54. According to information as given to the evaluators, in Bosnia and Herzegovina there are 163 Public Notaries, 1,261 Attorneys (Advocates), 606 independent auditors and auditing firms, 1 casino (it is understood that another casino will be opened in Brčko District in the near future), and 2 Privatisation Agencies. No information has been made available to the evaluators regarding other DNFBPs under the Law: gaming houses; organisers of games of chance and special lottery games; pawnbrokers offices; travel agencies; real estate agencies; and legal and natural persons when receiving and/or distributing money for charitable or other related purposes; when organising and executing auctions; trading in precious metal and stones; or trading with works of art, boats, vehicles and aircraft.

55. The evaluators express serious concerns on this gap in understanding the DNFBPs sector and size as it leaves a huge vacuum on compliance and monitoring whilst definitely negatively impacting on the efficiency of the system.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

Commercial entities

56. There is no law on business companies or enterprises at the state level. The establishment, business activities, management and closure of business companies are regulated by Entity and BD laws: the Law of FBiH on Business Companies which was adopted in 1999; Law of RS on Enterprises of 1998 and the Law of BD on Enterprises of 2001, which were amended several times. Thus, a higher degree of harmonisation of these laws needs to be achieved. There is no single definition of the business enterprises. The FBiH Law defines the business entity as a legal entity that independently performs business activities – production and sale of products and provision of services – on the market, with the aim of earning profit. The RS Law states that an enterprise is a legal entity conducting activities in order to make profit, while an entrepreneur is a natural person conducting activities in order to make profit. A natural person conducting activities of free profession determined by specific regulations is also considered an entrepreneur, but an individual farmer is not considered an entrepreneur.

57. The laws enumerate four types of business companies:

- Partnership;
- Limited partnership;
- Shareholders company;
- Limited liability company.

58. An enterprise may be founded by domestic and foreign natural persons or by legal entities. Natural persons may form a partnership company, limited partnership company, shareholders company and company with limited liability, while legal entities may form a shareholders company, company with limited liability and limited partnership with the status of limited partner. The state may found public enterprises.

A Partnership is a company founded by an agreement of two or more natural persons who bind themselves to conduct, with personal unlimited joint liability of the company, a specific activity under a mutual firm.

A Limited partnership is a company founded upon the agreement between two or more persons for the purpose of conducting activity under a mutual firm, in which at least one person has unlimited solidary liability for the company's liability (the general partner) and the risk of at least one person is limited to the amount of the deposit agreed upon (the limited partner).

A Shareholder company is a company established by one or more domestic or foreign natural or legal persons for the purpose of carrying on a business with initial capital divided into shares of certain nominal value. The FBiH Law mentions two types of shareholder companies: open shareholder company – whose shares may be publicly listed and closed shareholder company – whose shares are distributed among a limited number of shareholders.

A Limited liability company is a company founded for the purpose of conducting business activity, by legal entities or natural persons, who are not responsible for company's liabilities, but share the risk of conducting business activity up to the amount of their deposits. The company's share capital is composed of company member's deposits. The limited liability company is the most widely used type of company in BiH.

59. In addition, for the purpose of making profits and improving the business and coordinating activities, by two or more enterprises or entrepreneurs, it is possible to establish a business association, which is a legal entity. The rights of the members of a business association may not be expressed in securities. For liabilities overtaken in legal matters, a business association is liable with its property, while its members are liable in a way determined by its Foundation Act or by a contract with a third party.

60. Business enterprises and entrepreneurs may get linked by contracts and other forms of merging for the purpose of establishing consortium, franchise, association of companies, business union, business system, etc.

61. Unlike the company law, the registration of business entities is regulated at the state level by the Framework Law on Registration of Business Entities in BiH, adopted in 2004. Three other pieces of Laws on Registration of Business Entities were adopted in 2005 at the Entity and District level. All entities/district laws are harmonised under the Framework Law.

62. The laws regulate the following issues:
    - the principle of registration of business companies;
    - the owners and subject of registration;
    - the keeping and content of the Register;
    - time of registration;
    - mandatory data on owners;
    - registration of shares of owners;
    - subsidiary companies;
    - change of legally important data;
    - status-related changes;
    - forms and application procedure;
    - decision on registration and other issues;
    - access to the register by third parties.

63. The registration of legal entities is mandatory and constitutes a pre-condition for acquiring legal capacity. The registration is carried out by registration courts within the territorial jurisdiction where the legal entity will be located. There are a total of 16 courts of registration: 10 in FBiH, 5 in RS and 1 in BD. The application for registration can be submitted to any registration court, regardless of the location of the seat of the entity and if the application is submitted to a non-competent registration court, the last shall without delay, *ex officio*, forward the application to the competent registration court.

64. The Decision on the business registration must be issued within five working days from the day of submission of the complete application. It is valid on the whole territory of BiH, regardless of the location of registration and should be published in the relevant Official Gazette. If the responsible registration court establishes that the application is incomplete, it is obliged to invite the applicants to rectify the shortcomings within a certain deadline. The decision on registration contains the identification number and tax ID number of the company (and the customs number, if necessary) which are unique for the territory of BiH. The Laws provide the principle of transparency under which anyone, without proving a legal interest, may have access to the data from the Main Book of Registry.

65. The laws provide for a new electronic registration system which has to function on three servers – one in Sarajevo, one in Baja Luka and one in BD – that will be connected. The filed information into these servers is supposed to be replicated at the end of every working day, thus every court in the country will be able to see information about the registered companies

from any other part of the country. Due to some technical preconditions for the efficient implementation of the mentioned provisions, the electronic registration system and the inter-linked data base was not fully operational at the time of the on-site visit, but according to the assessment made by the European Commission[3], there has been progress towards establishment of a simplified and more efficient registration system and the court registration time has been shortened.

66. If one or more founders are foreign legal entities, according to the Law on policy for direct foreign investments (1998), the Ministry of Foreign Trade and Economic Relations of BiH has to give its approval for the foundation and registration of the foreign legal entity in the Register of Foreign Investments.

67. The Registry of Securities also keeps a register of shareholders companies (joint stock companies), of investments funds and brokerage companies.

68. The following data on the business entities registered in FBiH is extracted according to the data of the Federal Office of statistics[4] of FBiH:

Table 3: Business entities

Business entities registered in FBiH

	2002	2003	2004	2005	2006	2007
Registered legal entities	29,710	27,491	30,618	33,290	36,206	38,913

Registered legal entities classified by type					
TOTAL	**Public companies**	**Joint stock companies**	**Limited liability companies**	**General partnerships**	**Other formation**
38,913	128	734	25,969	8	12,074

Registered legal entities classified by origin of capital					
TOTAL	**Domestic**	**Foreign**	**Mixed**	**Investment***	**No capital**
38,913	27,812	1,842	993	856	7,410

*****From the former Republic of SFRY

Business entities registered in Republic of Srpska

	2002	2003	2004	2005	2006	2007
Registered legal entities	14412	15461	16503	17634	18880	20453

TOTAL	Public companies	Joint stock companies	Limited liability companies	Other formation
21835	194	2217	13295	6129

TOTAL	Domestic	Foreign	Mixed	No capital
21835	15122	1280	699	4734

[3] EC Progress Report on Bosnia and Herzegovina, SEC (2008) 2693 final, Brussels, 05.11.2008.
[4] http://www.fzs.ba

69. No equivalent statistics were provided to the evaluators with regard to Brčko District.

Non-profit organisations

70. The establishment and the activity of non-profit organisations are regulated at the State, Entity and BD level by various laws on associations and foundations[5]. The Laws are mainly harmonised. An association may be established by at least three domestic or foreign natural or legal persons, while a foundation qualified for registration may be established by one or more. Associations may establish their unions or other forms of association where their interests are associated at a higher level (higher level associations). The registration of the associations and foundations is voluntary, but they can acquire the status of a legal person from the date they are entered into the registry. There is no single Register of NPOs. At each level, State, Entity and BD, separate authorities are appointed by laws as responsible bodies for registering and/or keeping the registry of associations and foundations: Ministry of Justice of BiH, Ministry of Justice of FBiH, Ministry of Administration and Local Self-Governance of the RS, district courts (RS) and the Basic Court of BD. Each NPO has to be registered as well at the Tax Administration authorities. According to the statistics provided on the number of active non-profit organisations in Bosnia and Herzegovina, 12,454 non-profit organisations are registered of which 1,006 of them are registered at the state level. The religious communities are registered pursuant to the Law on religious freedom and the legal status of churches and religious communities in BiH of 2004. There is a single Register of all churches and religious communities in BiH, which is kept only by the BiH Ministry of Justice (825 churches and communities are registered).

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

71. Following the first round evaluation of Bosnia and Herzegovina the anti-money laundering laws in FBiH, RS and Brčko District were repealed and replaced by the Law on the Prevention of Money Laundering (LPML) which was enacted on 4 May 2004 and applied across the whole of Bosnia and Herzegovina (it should be noted that this law was replaced by the Law on the Prevention of Money Laundering and Financing of Terrorist Activities (hereafter called "the New AML Law") which was enacted and came into effect on 15June 2009).[6]

72. As of 28 December 2004 Bosnia and Herzegovina established a Financial Intelligence Department (FID) within the State Information and Protection Agency (SIPA). FID also became operational on 28 December 2004. FID is responsible for receiving, registering,

[5] Law on associations and foundations of BiH (2001), of FBiH (2002), RS (2001) and BD (2002)

[6] At the time of the on-site visit the AML/CFT law in place was the Law on the Prevention of Money Laundering which was enacted on 4 May 2004. The evaluators based their questions for the on-site visit and the initial drafts of their report on this law. On 15 June 2009 a new AML/CFT law, the Law on the Prevention of Money Laundering and Financing of Terrorist Activities, was enacted. In accordance with MONEYVAL's Rules of Procedure, as this new law came into force and effect within two months of the conclusion of the on-site visit, this new law has also been taken into account in drafting the mutual evaluation report. Although the old law has been superseded by the new law the evaluators have taken the old law into account as this was in effect during the on-site visit and it was the effectiveness of implementation of this law that was assessed. The new law has, however, also been taken into account as this law has addressed a number of deficiencies in the old law. To avoid confusion between the two laws the law that was in effect at the time of the on-site visit is described as either the "LPML" or the "old AML Law" and the new law has been described as the "new AML Law". Where both the LPML and the new AML Law are being discussed generically these are merely described as "the AML Law".

analysing, investigating, and forwarding to the prosecutor all information, data and documentation received in line with the AML Law and other regulations on the prevention of money laundering and financing of terrorist activities.

73. The Financial Intelligence Department is responsible for international cooperation in accordance with the accepted principles of the Egmont Group and has been a member of the Egmont Group since 2005.

74. In 2006, the Ministry of Security published a "Strategy of Bosnia and Herzegovina for Fight against Organised Crime and Corruption". This document set out a number of objectives as part of the strategy of Bosnia and Herzegovina to counter the threat of organised crime. This strategy included:-

    1. Harmonisation of the legislation of Bosnia and Herzegovina with international conventions, agreements, recommendations and standards governing the fight against organised crime and confiscation of illegally obtained assets.

    2. Developing and strengthening those institutions within Bosnia and Herzegovina which were involved in the fight against organised crime, identification, freezing and seizure of illegally obtained assets, and the efficient and rational management of confiscated assets and different gains.

    3. Education, professionalisation, modernisation and specialisation of the human resources within those institutions within Bosnia and Herzegovina which are involved in the fight against organised crime and corruption.

    4. Straightening and development of inter-institutional cooperation within Bosnia and Herzegovina.

    5. Development of international support in the fight against all forms of organised crime and corruption, along with intensifying the presence in international organisations, initiatives, working groups and clubs with efficient and timely implementation of decisions and conclusions that emerged from their activities.

    6. Development of independent investigations of organised crime and corruption, and provision of support to institutions that deal with multidisciplinary investigations of organised crime and corruption, along with the upgrading of cooperation with scientific and academic organisations.

    7. Raising of awareness within the community of the risks and consequences brought upon the whole of society of organised crime and corruption.

    8. Creation of awareness of judicial institutions and law enforcement agencies of the necessity for cooperation with electronic and written media in order to fully inform the public in a timely manner about the factors, which generate organised crime and corruption, and about important cases of organised crime and corruption and examples of confiscation of property and benefits acquired by organised crime.

75. This strategy is still in the process of being implemented and a revised strategy document is currently under consideration. The evaluators were concerned that relatively little progress had been made in implementing this strategy and this will be elaborated on in the body of the report.

b. The institutional framework for combating money laundering and terrorist financing

76. The following are the main bodies and authorities involved in combating money laundering or financing of terrorism on the financial side:

Working Group of Institutions of Bosnia and Herzegovina for the Prevention of Money Laundering and Financing of Terrorist Activities

77. The Working Group of Institutions of Bosnia and Herzegovina for the Prevention of Money Laundering and Financing of Terrorist Activities (Working Group) has been established to ensure that there is a coordinated approach to tackling money laundering and terrorist financing across the whole of Bosnia and Herzegovina. The Working Group draws together representatives from a number of agencies and ministries which are involved in the detection, prosecution and prevention of money laundering and terrorist financing. The Working Group is involved in developing a strategy to combat money laundering and financing of terrorism and advises on the development of the AML Laws.

Ministry of Security

78. The Ministry of Security is established at the level of the State of Bosnia and Herzegovina. The principal aim of the Ministry is to harmonise activities combating organised crime and terrorism and personal protection.

79. The Ministry of Security is the ministry with primary responsibility for forwarding the draft AML/CFT legislation to the Council of Miniusters and for implementing the provisions of the LPML and the New AML Law. Following the passing of the LPML, the Ministry published a Book of Rules on data, information, documents, identification methods and minimum other indicators required for the efficient implementation of certain provisions of the Law on the Prevention of Money Laundering. The Financial Intelligence Department of State Investigation and Protection Agency, which is an administrative organisation within the Ministry of Security of Bosnia and Herzegovina has executive responsibility for implementing the AML Law.

State Protection and Investigation Agency

80. Within the Ministry of Security the State Investigation and Protection Agency (SIPA) deals with prevention, detection and investigations of organised and serious crime across the whole of Bosnia and Herzegovina. In particular SIPA has responsibility for investigating organised crime, terrorism, war crimes and acts punishable according to the international war and humanitarian law, people trafficking, as well as all other crimes within the jurisdiction of the Court of BiH. SIPA provides support for the Court and the Office of the Prosecutor of BiH, it deals with physical and technical protection of people, of buildings and other property; it also deals with witness protection, prevention of money laundering as well as other tasks determined by law and by other regulations.

81. The Law on the State Investigation and Protection Agency (SIPA Law) sets out the scope of SIPA's activities and defines its powers. In particular, the SIPA Law sets out the competencies of the various divisions within SIPA. In particular, the Financial Intelligence Division (FID) has been established within SIPA as the FIU for Bosnia and Herzegovina and joined the Egmont Group in 2005. Article 13 of the SIPA Law stipulates that the duties of the FID are to:

    a) *Receive, collect, record, analyse, investigate and forward to the Prosecutor information, data and documentation received in accordance with the law and other*

regulations of BiH on prevention of money laundering and funding of terrorist activities;

b) Carry out international co-operation in the field of prevention and investigation of money laundering and funding of terrorist activities;

c) Provide to the Prosecutor an expert support in the financial field.

82. In addition to the work of the FID, a Criminal Investigation Department (CID) has been established within SIPA. Article 12 of the SIPA Law stipulates that the duties of the FID are to:

a) Work on detection and investigation of criminal offences falling within the jurisdiction of the Court, locating and capturing of the perpetrators of these criminal offences and bringing them before the Prosecutor, under the supervision of and pursuant to the guidelines and directives issued by the Prosecutor in accordance with the criminal procedure code;

b) Work on prevention of criminal offences;

c) Provide operational assistance to the Financial Intelligence Department;

d) Collect information and data on criminal offences, observe and analyse security situation and phenomena conducive to the emergence and development of crime;

e) Organise and conduct criminal expertise.

Ministries of the Interior and Police Forces

83. The other law enforcement agencies working at state level in BiH are:

- Border Police of Bosnia and Herzegovina (former BiH State Border Service) which has been established on the basis of the BiH Law on State Border. The BiH Border Police commenced its operational work on 6 June 2000. The BiH Border Police has responsibility for border surveillance and control of state border crossings.

- Intelligence and Security Agency of Bosnia and Herzegovina.

84. The Ministries of the Interior of both FBiH and RS are responsible for operating the police forces in the entities and there is a separate Brčko District Police Force. Within FBiH, the police forces are organised at cantonal level rather than at Federation level.

85. The police forces are responsible for preventing and disclosing criminal acts of the international crime and terrorism, unauthorised narcotics trafficking and organised crime and other criminal acts, tracing and capture of those who committed such criminal acts and their handing over to the relevant authorities, providing criminological-technical expert opinions; issuing and publishing Interpol's international, Federal and inter-cantonal pursuits and cooperating with relevant prosecutor's offices related to processing criminal cases. These warrants are also issued and published on the territory of Brcko District of BiH as well as on the territory of Republic of Srpska.

86. At the level of the Federation of Bosnia and Herzegovina, within the Administration of Police of the Ministry of Interior of the Federation of BiH, there is a Department for Economic Crime, Corruption, Money Laundering and Cyber Crime within the Sector of Criminal Police. Within the Sector of Criminal Police of the Administration of Police of FBiH, there is also a Department for Fight against Terrorism.

87. The Ministry of Internal Affairs of the Republic of Srpska performs administrative and other professional activities that refer to: protection from violation of constitutionally-set order and from endangering the security of the Republic; protection of citizens' life and personal security; preventing and uncovering criminal offences; identifying and detecting perpetrators of criminal offences; maintaining public law and order; guarding certain individuals and facilities; criminal - technical expertise; establishing cooperation with other police agencies from Bosnia and Herzegovina in accordance with current regulations of the Republic of Srpska and Bosnia and Herzegovina; using media and other forms of informing to provide information on its activities; as well as a range of other responsibilities.

European Union Police Mission

88. In addition to SIPA and the police forces operating in FBiH, RS and Brčko District, there is also a European Union Police Mission (EUPM) operating within Bosnia and Herzegovina. The EUPM is part of a broad effort undertaken by the EU and other actors, to address the whole range of rule of law aspects and seeks to establish sustainable policing arrangements under BiH ownership in accordance with best European and international practice. The EUPM monitors, advises and inspects BiH police forces according to three main pillars; support to the police reform process, strengthening of police accountability and support in the fight against organised crime. There is a particular emphasis on support in the fight against organised crime. The EUPM also devotes particular attention to reinforcing cooperation between police and prosecutors.

Ministry of Justice

89. The Ministry of Justice of Bosnia and Herzegovina is responsible for administrative functions pertaining to Judicial institutions at the state level, International and inter-entity judicial cooperation (mutual legal assistance and contacts with international tribunals), ensuring that legislation and implementation by BiH at all levels is in compliance with the obligations of BiH deriving from international agreements, cooperating both with Ministry of Foreign Affairs and with the Entities in the drafting of International Bilateral and Multilateral Agreements, providing guidelines and monitoring legal education to ensure inter-Entity harmonisation and compliance with best practice and extradition.

90. The Ministry of Justice of Bosnia and Herzegovina is the central authority for communication with other countries regarding the providing of international legal assistance in criminal and civil matters. International legal assistance includes the complete communication of the judicial bodies of Bosnia and Herzegovina with judicial bodies abroad. International legal assistance in criminal matters includes all actions of the authorised body of the foreign country undertaken upon the request of the domestic authorised body and vice versa, procedures of extradition, transfer of the convicted persons, transfer of the criminal procedure from one country to another and other procedures established by special International Conventions and Agreements.

91. Both FBiH and RS have their own Ministry of Justice. These bodies are responsible for executing administrative, professional and other tasks as set out by the laws, in the areas of judicial institutions and administration, administrative supervision of the judicial administration and state administration bodies and implementation of the penal sanctions. With regard to Brčko District the Judicial Commission of Brčko District is independent from other authorities of Brčko District. It is the independent body which performs its powers within the scope established by the Statute of the Brcko District of BiH as well as by the laws of the District, and it provides an independent and impartial judiciary, the District Attorney general and legal aid.

The Public Prosecution Service

92. The Prosecutor's Office of Bosnia and Herzegovina has been established as an institution with special jurisdiction for proceedings before the Court of Bosnia and Herzegovina against certain crimes stipulated by state level laws. The Prosecutor's Office of BiH is a *sui generis* institution and it is not superior to the entity Prosecutor's Offices but its jurisdiction is limited to prosecution of crimes stipulated under certain state level laws. The jurisdiction of all Prosecutor's Offices is stipulated by respective Laws on Prosecutor's Offices. For example, in the case of BiH this is set out in Article 12 of the Law on the Prosecutor's Office of Bosnia and Herzegovina and Article 28 of the Constitution of Republic of Srpska stipulates jurisdiction of the Prosecutor's Office of Republic of Srpska. FBiH and BD have similar provisions.

93. Other prosecutor's offices in Bosnia and Herzegovina were established pursuant to the current political and administrative structure of Bosnia and Herzegovina whereby the Federal Prosecutor's Office of FBiH is the "supreme" Prosecutor's Office for ten Cantonal Prosecutor's Offices from the area of FBiH. The Republic Prosecutor's Office of RS is the "supreme" Prosecutor's Office for the District Prosecutor's Offices from the area of RS. The Public Prosecutor's Office of the Brčko District is competent for the area of the District.

Judiciary

94. The Court of Bosnia and Herzegovina tries major cases relating to the crimes laid down by the laws of BiH, which include terrorism, war crimes, organised crime, economic crime and corruption cases. However, the Court of Bosnia and Herzegovina does not act on appeals from decisions issued by Entity courts.

95. There are three Divisions within the Court of Bosnia and Herzegovina: Criminal, Administrative and Appellate. The Criminal Division contains: Section I – War Crimes Chamber; Section II – Organised Crime, Economic Crime and Corruption and Section III – General Crime. The Appellate Division rules on appeals against decisions made within the Criminal and Administrative Divisions, decides on complaints related to the breaches of the Election Law, as well in other cases as provided by the laws of BiH.

96. There are also Supreme Courts and lower courts within FBiH, RS and Brčko District which are competent to handle cases within the relevant jurisdictions.

Ministry of Finance

97. The Ministry appears to have no clear mandate in AML/CFT, apart from drafting of State preventive legislation. Its main responsibilities included co-ordination of efforts to unify fiscal and financial policies and the establishment of a single economic space.

Indirect Taxation Authority

98. The state borders for Bosnia and Herzegovina are approximately 1,600 kilometres long. 85 percent of these borders are natural boundaries in the geographic sense. There are three neighbouring states for Bosnia and Herzegovina with the longest border being that of the Republic of Croatia at 952 kilometres. There are over 400 locations where it is possible to cross the borders of BiH legally or otherwise, including road border entry points, airports or railway crossings.

99. The Indirect Taxation Authority is an independent administrative organisation that conducts legal and other regulations in the field of indirect taxation. Indirect taxation through the organs of control from the Sector for the Sector for taxes and customs control carried out the

calculation and payment of tax liabilities on the basis of indirect taxes, and by sector for the implementation of and compliance with customs and tax legislation, the Board has undertaken activities on prevention, detection and prosecution of criminal works in the field of indirect taxation in this regard is the most common crimes: smuggling, customs fraud, tax evasion, Non-payment of taxes, Counterfeit characters for value and protection of industrial property. Execution of these crimes, creating a property that may be the subject of money.

100. The Customs Sector of the Indirect Taxation Authority provides the customs service of Bosnia and Herzegovina. In terms of staff, it is the biggest organisational unit within the Indirect Taxation Authority. The sector officials are responsible for the implementation of the provisions related to customs, foreign trade, currency and other provisions referring to the customs policy of the State. The sector officials apply the import and export procedures at 40 road border crossings, 30 customs branch offices, 4 border crossings at the airports, three postal depots and eight railway border crossings, as well as customs procedures in four free zones. The field activities are coordinated by the Headquarters of the Indirect Taxation Authority and four regional centres.

101. The Customs Sector officials and inspection services have responsibility for ensuring the quality and authenticity of goods, fighting against trafficking in prohibited goods and substances, as well as for the prevention of illegal movement of goods and people.

The Central Bank of Bosnia and Herzegovina and entity Banking Agencies

102. The Central Bank of Bosnia and Herzegovina maintains monetary stability and defines and controls the implementation of monetary policy of Bosnia and Herzegovina. The Central Bank supports and maintains appropriate payment and settlement systems. It also co-ordinates the activities of the Banking Agencies of FBiH and RS. At the time of the on-site visit, the Central Bank was not itself directly involved in AML / CFT on-site supervision, receiving monthly reports from the entities Banking Agencies on these matters.

103. The Banking Agencies are in charge of licensing and supervision of banks and microcredit organisations. The Banking Agencies monitor the AML and CFT controls and generally support counter terrorist acts concerning banks.

c. The approach concerning risk

104. It is difficult to conclude that Bosnia and Herzegovina has in place or that it has considered an overarching strategy to prevent money laundering and terrorist financing even though this is one of the tasks of the Working Group of Institutions of Bosnia and Herzegovina for the Prevention of Money Laundering and Financing of Terrorist Activities (Working Group). That said, some of the measures taken in a fragmented or *ad hoc* way, could, if put together, provide some insight to the approach concerning risk.[7]

105. The old LPML itself, which was in force during the on-site visit, does not recognise a risk based approach. Hence all possible entities have been included under the scope of coverage with no possible assessments for low-risk cases. The only risk-based exceptions provided by the law are those related to the insurance sector as provided for under the FATF Recommendations for identification purposes. On the other hand it could be argued that the inclusion of other entities and persons under the scope of coverage is the result of a risk assessment where these have been identified as placing a higher risk for use by money launderers. The old LPML also provides for some exceptions in the identification process for certain entities and institutions as indicated under Article 7(8). This has been retained under

[7] The Strategy and Action Plan for the prevention of ML and FT activities at the state level have been adopted on 30 September 2009.

the new AML Law under Article 24 which now applies a "simplified Customer Due Diligence" process as opposed to a total exclusion under the old law.

106. Both the old and the new AML Law further provide for a cash transaction reporting system for transactions that are settled in cash for amounts of 30,000 KM and over. However the evaluators were not presented with any convincing information that this system was introduced as a risk preventive measure. On the contrary, it may in itself have created a higher risk in that there appears to be a misinterpretation or misunderstanding in separating this system from the obligation to report suspicious transactions as is indicated by the very low figures of STRs filed with the FID. Moreover, the reporting of non-cash transactions to the FID itself, as apparently required by the FID and as required under the respective Laws on Banks of the FBiH and RS, may have also created another risk in overburdening the FID with further unnecessary reporting thus affecting its efficiency in handling the more important reports.

107. The Banking Agencies of the Federation of BiH and the Republic of Srpska have taken an initiative to introduce a risk-based approach to the AML/CFT system for the banking sector. The requirement for banks to develop a risk-sensitive approach to customer acceptance through the development of programmes and customer acceptance policies, for example, is a welcome initiative. But the evaluators were of the opinion that this requirement should be in the AML Law at State level to be applied consistently throughout the whole of Bosnia and Herzegovina to all obliged persons and entities. Moreover the Guidance (Manual) for Banks' Compliance with AML Minimum Standard of the Banking Agency of the Federation requires a risk management assessment before each on-site examination. Indeed, under Article 5 of the new AML Law "persons under obligation'" are obliged to make a risk assessment of all their clients in order to determine the risk level and category. In doing so "persons under obligation'" are to follow the risk assessment guidance of the FID – which guidance has not yet been issued.

d. Progress since the last mutual evaluation

108. This is the second mutual evaluation of Bosnia and Herzegovina. The on-site visit for the first evaluation took place between 23 and 29 November 2003 with the report being adopted by MONEYVAL at its 17th plenary meeting Strasbourg on 30 May-3 June 2005. Some of the most notable developments, which are detailed in the relevant sections of the evaluation report, are:-

- Enactment of the Law on Prevention of Money Laundering (LPML) on 4 May 2004 at State level. The LPML replaced separate laws for FBiH, RS and Brčko District with one unified AML Law for the whole country. This law has itself been subsequently replaced by the Law on the Prevention of Money Laundering and Financing of Terrorist Activities (the new AML Law) which was gazetted on 7 July 2009 and came into force on 15 July 2009.
- Publication of a Book of Rules on Data, Information, Documents, Identification Methods and Minimum Other Indicators Required for Efficient Implementation of Certain Provisions of the Law on the Prevention of Money Laundering which clarifes the requirements for obligors.
- Enactment of the Law on the State Investigation and Protection Agency which provided for the formation of SIPA as the FIU for Bosnia and Herzegovina.
- Formation in 2003 of SIPA and in 2004 within SIPA the Financial Intelligence Department as the FIU for Bosnia and Herzegovina and their subsequent membership of the Egmont Group in 2005.

- Adoption of a Strategy of Bosnia and Herzegovina for Fight against Organised Crime and Corruption in 2006.
- The financing of terrorism has now been criminalised in all four Criminal Codes within Bosnia and Herzegovina although incrimination has not yet been extended beyond the mere financing of carrying out a terrorist act, that is, to cover the financing of terrorist organisations or individual terrorists.
- In accordance with Article 10 of the Criminal Code of Bosnia and Herzegovina (CC BiH), the criminal legislation of Bosnia and Herzegovina can now be applied to legal persons in accordance with Chapter XIV of the same Code, which prescribes liability of legal persons for criminal offences perpetrated by the perpetrator in the name of, for account of or in favour of the legal person.
- Record keeping obligations are now governed by Article 7 of the old LPML and elaborated in the Book of Rules on data and information. However the timing for initiation of the period for the retention of records remains unclear. The position remains the same under the new AML Law.
- No clear obligation has been introduced to review identification or take other reasonable measures when doubts arise after business relations have been established, although Article 12 of the Decisions on Minimum Standards requires banks to ask for an explanation from the client when noticing unusual behaviour of clients that might present grounds for suspicion.
- Although the old LPML requires the identification of shareholders of legal entities with 20% or more shareholding, yet the concept of 'beneficial owner' is neither defined in law nor applied in practice. The new AML Law now provides a definition of 'real owner' which the evaluators interpret to be a reference to beneficial owner. However in practice the concept of beneficial owner remains a problem.
- The reporting of transactions that are suspected to be related to money laundering or the financing of terrorism has been covered by law since the old LPML at State level.
- Article 27 of the old LPML required all bodies competent for regulating and supervising obliged entities and persons to cooperate with obliged entities and persons to develop lists of indicators for recognising suspicious transactions. The indicators for recognising suspicious transactions in specific sectors are provided in the old Book of Rules under Chapter V- Guidelines. The new AML Law, under Article 37 now obliges 'persons under obligation'' directly to develop such indicators 'in cooperation with the FID and other supervising bodies'.
- Article 30 of the old LPML – now transposed into Article 63 of the new AML Law - provides protection to financial institutions and their employees from liability arising from disclosures made in good faith to the FID as this Article disapplies the obligation to protect bank, business and official secrecy in these circumstances.
- The registration regime for legal persons or business entities is now governed by three relevant and apparently harmonised pieces of legislation at the level of the Federation of BiH, the Republic of Srpska and Brcko District of BiH with an interlinked electronic system that is updated continuously, although some concerns on effectiveness remain.
- The Central Bank maintains a register of Bank Accounts with details of account holders and which is available to the respective relevant other authorities.
- The Banking Agency of FBiH has developed a methodology for the supervision of entities falling within its competence of regulation and supervision. The RS Banking Agency has also developed a manual which closely follows the above methodology.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1

109. Money laundering is a criminal offence under both the state-level Criminal Code of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina" No. 3/03 etc. hereinafter: CC-BiH) and the respective Criminal Codes of the two Entities and Brčko District – that is, it is one of the offences that are criminalised at all levels of criminal legislation. All the four offences show significant similarities especially as regards the range of physical (material) elements which appears to be a sign of prior harmonisation during the legislative process – taking also into account that all four Criminal Codes came into force roughly in the same time period around summer 2003.

110. In the state-level legislation, money laundering is criminalised by Article 209 of CC-BiH which reads as follows:

Money Laundering
Article 209

(1) Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other activity, otherwise conceals or tries to conceal money or property he knows was acquired through perpetration of criminal offence, when such a money or property is of larger value or when such an act endangers the common economic space of Bosnia and Herzegovina or has detrimental consequences to the operations or financing of institutions of Bosnia and Herzegovina, shall be punished by imprisonment for a term between six months and five years.

(2) If the money or property gain referred to in paragraphs 1 of this Article exceeds the amount of 50.000 KM, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(3) If the perpetrator, during the perpetration of the criminal offences referred to in paragraphs 1 and 2 of this Article, acted negligently with respect to the fact that the money or property gain has been acquired through perpetration of criminal offence, he shall be punished by a fine or imprisonment for a term not exceeding three years.

(4) The money and property gain referred to in paragraph 1 through 3 shall be forfeited.

111. The Criminal Codes of the two Entities of Bosnia and Herzegovina and that of Brčko District contain quite similar offences when it comes to the criminalisation of money laundering. The respective offences can be found under Article 272 of the Criminal Code of the Federation of Bosnia and Herzegovina ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 36/03 etc. hereinafter: CC-FBiH) Article 280 of the Criminal Code of Republic Srpska ("Official Gazette of Republic Srpska" No. 49/03 etc. hereinafter: CC-RS) and Article 265 of the Criminal Code of Brčko District ("Official Gazette of the Brčko District of Bosnia and Herzegovina" No. 10/03 etc. hereinafter: CC-BD).

112. The physical (material) elements of the offence have not changed at all since the four Criminal Codes came into force back in 2003. Even if only the English versions of the respective laws are taken into account, the similarities between the provisions listed above make it noticeable already at first sight that all these three offences are harmonised with the provisions of CC-BiH. Furthermore, a thorough analysis of the original legal texts (in Bosnian, Croatian and Serbian language) proves beyond doubt that the wording of the offences is completely identical, in other words, there is no difference in the legal terminology of the respective provisions[8].

113. In order to best illustrate these similarities, this report chooses not to quote the three non-state level offences in the form they can respectively be found in the different English translations the evaluation team was given (as they are actually quoted in Annex II). What is provided instead is a common, revised, hypothetical English version closely following the terminology of the most accurate translation of all (that of the CC-BiH).

114. The core offence of money laundering in all the three non-state level Criminal Codes (Article 272[1] CC-FBiH, Article 280[1] CC-RS and Article 265[1] CC-BD) would read thus as follows:

> *Whoever accepts, exchanges, keeps, disposes of, uses in commercial **or other** activity, otherwise conceals or tries to conceal money or property he knows was acquired through perpetration of criminal offence,shall be punished by imprisonment for a term between six months and five years.*

where underlined words signify the only minor difference between the three versions, that is, CC-FBiH and CC-BD (following the wording of CC-BiH) criminalises use "in commercial or other activity" (*"u privrednom/gospodarskom ili drugom poslovanju"*) while CC-RS only refers to use "in commercial activity" (*"u privrednom poslovanju"*).

115. As a consequence, it is obvious that the range of physical (material) elements of the money laundering offence is identical at all levels of criminal legislation in Bosnia and Herzegovina and the only difference is that CC-BiH offence is further limited in its scope by certain additional factors such as a value threshold and other conditions that will be discussed later.

116. Both the definition given in CC-BiH 209(1) and that in the three non-state level Criminal Codes are largely in accordance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention yet their scopes still do not cover all the physical (material) elements as required.

117. *Conversion* of property is addressed by the term "exchange" and indeed, this sort of activity has already occurred in case practice (host authorities drew attention to an ongoing investigation, conducted by the authorities of Brčko District, in which the offence of money laundering was established on the base of large-scale illegal exchange of Croatian currency in cash, derived from a robbery in Croatia, into Euros on a local marketplace). As for the *transfer* of property, it appears doubtful, at least from a dogmatic point of view, whether it is fully covered by the definition above. In fact, the notion of "transfer of property" appears to go far beyond what can be covered by the conduct described as "disposing of". On the other hand, most of the money laundering cases, either at state level or at that of the Entities and Brčko District, regardless of whether these ended up with a conviction or are still under prosecution, are based on concealing of proceeds of tax evasion by channelling it through bank accounts of fictitious companies, that is, the actual laundering activity is transferring in

[8] All four Criminal Codes and Criminal Procedure Codes being in force in he country as well as further pieces of criminal legislation are available, for example, on the website of the Prosecutor's Office of Bosnia and Herzegovina (www.tuzilastvobih.gov.ba) both in English and in all the three official languages of Bosnia and Herzegovina.

every such case. In other words, this potential loophole in the wording of the money laundering offence was adequately addressed and remedied by case practice.

118. *Concealment* of property is covered but only in general terms ("otherwise conceals") and not according to the enumerative approach followed by the Vienna and Palermo G234

119. Nevertheless, the evaluators see no reason not to accept the explanation given by host authorities that the notion of "concealment", without any further limitation to its scope, necessarily covers the concealing of any characteristics of the proceeds as set out in the said Conventions (source, location, disposition, movement etc.) It needs to be noted, and it will be further discussed later[9], that all four Criminal Codes criminalise not only concealment but also the attempt to conceal the proceeds of crime as a *sui generis* money laundering offence.

120. All four Criminal Codes equally provide for the *acquisition* (acceptance) *possession* (keeping) as well as the *use* of proceeds, though the latter term is somewhat restricted in CC-RS which only criminalises it when committed in commercial activity (while the others refer to commercial "and other" activities in this respect).

121. Another common characteristic of the four money laundering offences is that no particular purpose or motive is defined as a prerequisite element thereof. As a result, the notion of conversion (or transfer) and concealment (or disguise) of property appears to cover laundering activities committed for the purpose of either concealing or disguising the illicit origin of the proceeds, or assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his action.

122. Money laundering offences in all four Criminal Codes equally extend to "money" and "property". It needs to be noted that in the CC-BiH, CC-FBiH and the CC-BD offences "property" (*imovina*) is, at certain points and on an apparently random base, replaced by the term "property gain" (*imovinska korist*) like in Article 209(2) CC-BiH or Article 272(2) CC-FBiH. In this context, however, these two terms appear to be fully interchangeable as both refer to property beyond the notion of "money" which, on the other hand, is identically defined by all four Criminal Codes as *"coins and paper bank notes, which are legal tender in Bosnia and Herzegovina or in a foreign country*" (CC-BiH Article 1[24] CC-FBiH Article 2[27] CC-RS Article 147[21] and CC-BD Article 2[26]). Evaluators also learnt during the on-site visit that even though the offences in the different Criminal Codes do not contain any clear statement in this respect, the notion of "property" does include any type of property that directly or indirectly represents the proceeds of the predicate crime, and therefore it is flexible enough to encompass an adequately wide range of proceeds, including immovable property as well (for example, evaluators are aware of a criminal case adjudicated by the Court of Bosnia and Herzegovina[10] in which two of the defendants were indicted with, among other charges, money laundering on the base of purchasing real estate from money they obtained from organised crime including trafficking in persons and procuring in prostitution).

123. The evaluators however detected some problems that arose in relation to the language of the money laundering offence in CC-BiH Article 209(1) as noted already in the first round report. That is, evaluators of the previous round found that the offence did not reflect the Vienna and Strasbourg Conventions with regard to the physical elements of the offence, as the "*actus reus*" was subject to a financial threshold as well as further qualification. All these distinctive characteristics are still part of the core offence as they are underlined in the text below:

[9] See Paragraph 151 below.

[10] In the first instance verdict, both defendants were acquitted of the charge of money laundering because of lack of evidence. See first instance verdict on the website of the court:
http://sudbih.gov.ba/files/docs/presude/2007/Tasim_Kucevic_and_Others_-_Verdict_-_ENG.pdf

Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other activity, otherwise conceals or tries to conceal money or property he knows was acquired through perpetration of criminal offence,

- *when such a money or property is of larger value*
- *or when such an act endangers the common economic space of Bosnia and Herzegovina*
- *or has detrimental consequences to the operations or financing of institutions of Bosnia and Herzegovina,*

shall be punished by imprisonment for a term between six months and five years.

124. Examiners of the first round understood that the provision has been drafted in this way for jurisdictional purposes, that is, to ensure that only serious cases are dealt with at state level. Nevertheless, they had the opinion that even if this was a deliberate departure from the language of the international texts in the domestic context of Bosnia and Herzegovina, it could cause great problems evidentially, if these elements have to be proved in each case.

125. As for the value threshold, its application certainly restricts the scope of the offence in CC-BiH Article 209(1) as the laundering activities listed therein would establish the offence of money laundering only if committed in relation to money or property of "larger value". Equally, the two alternative conditions that need to be proven, that is, whether the offence endangered the common economic space of Bosnia and Herzegovina or had it detrimental consequences to the operations or financing of its institutions may add to this restrictive character.

126. Nonetheless, from a dogmatic point of view, all these features of the state-level money laundering offence cannot be considered as an actual deficiency in compliance with Criterion 1.2 that requires the offence of money laundering extended to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. Considering the multiple layers of criminal legislation and jurisdiction in Bosnia and Herzegovina, it appears quite a defendable argument that the coverage of state-level money laundering offence can only be examined together with the scope of the money laundering offences provided in the Criminal Codes of the two Entities and Brčko District, respectively. That is, when it comes to the assessment of the scope in which money laundering is actually criminalised, for example, in the Federation of Bosnia and Herzegovina, both offences in CC-BiH Article 209 and CC-FBiH Article 272 need to be taken into account so as to determine the full coverage of criminal legislation. Certainly, it is a further question as to which court will have jurisdiction over a certain money laundering offence and on what conditions, nevertheless Criterion 1.2 can be considered as met until money laundering offences that fall outside the scope of state-level criminal law can be subsumed under the scope of the respective non-state level Criminal Code. Taking into account that neither of the core (unaggravated) money laundering offences in the Criminal Codes of the Entities and Brčko District contain any value threshold or similar restrictive conditions, the evaluators see no reason why not to accept Criterion 1.2 as met in every part of Bosnia and Herzegovina.

127. On the other hand, the evaluators need to note that, from a more practical point of view, the picture is not as clear as it appears at first sight. Such a combinative or rather complementary application of state and non-state level criminal legislation would normally require a clear distinction between the scopes of each, which is not the case in Bosnia and Herzegovina. Instead, these scopes overlap each other to the extent that causes confusion among the relevant authorities as regards the limits of their competence which also may have a negative impact on their involvement in money laundering investigations and prosecutions. Overlaps between the scopes of money laundering offences are mainly caused by the way

value thresholds like “large value” or “larger value” (in other translations “greater value” etc.) are applied in the respective state-level and non-state level criminal legislation.

128. While in other jurisdictions such value limits are clearly defined by criminal legislation, most likely in the Criminal Code itself and expressed in a sum of money or any similar way, in Bosnia and Herzegovina they are the courts of the highest level, both in terms of the State and the two Entities and Brčko District, which are competent to define the exact amount of money that corresponds to such limits. Court decisions like this determine and, if necessary, update all these value thresholds in accordance with the current economic circumstances (inflation rate, stability of the market and economy etc.) Although such decisions are brought at all four levels of jurisdiction separately and without requiring any prior, formal harmonisation, all the four respective courts equally set the threshold of “larger value” (*veća vrijednost*) at 10.000 KM and that of “large value” (*velika vrijednost*) at 50.000 KM in both state-level and non-state level relations.

129. What confuses the situation is, on the one hand, CC-BiH Article 209(2) which provides that laundering offences, where the amount of the proceeds exceed 50.000 KM should automatically fall under the exclusive competence of state-level jurisdiction and, on the other hand, those provisions in all three non-state level Criminal Codes that render it an aggravated offence of money laundering if the respective money or property is of large value – considering, that the 50.000 KM value limit is applied, as described above, as “large value” in the legislation of the Entities and Brčko District and thus also establishes the competence of their authorities in this matter.

130. The main problem is that while criminal offences of money laundering appear to have been perfectly harmonised with each other in most respects, it cannot be said about the issue of value limitation as well as determination of state and non-state level competence based on such value limits.

131. As regards the money laundering offence in CC-BiH it covers

- “larger value” money laundering (above 10.000 KM but not exceeding 50.000 KM) regardless of any further condition (as this is one of the two main options in paragraph 1)
- laundering offence meeting the conditions provided therein i.e. the act endangers the common economic space of Bosnia and Herzegovina or has detrimental consequences to the operations or financing of its institutions, regardless to the value of the proceeds laundered (theoretically, even if this value is below 10.000 KM)
- either of the above offences if the value of proceeds exceeds 50.000 KM (aggravated)

in other words, state-level jurisdiction should deal with any money laundering offences above the limit of 10.000 KM (“larger value”) as well as those below this limitation but meet the conditions described above.

132. The jurisdictions of the Entities and Brčko District have, however, explicit competence over all money laundering offences without any regard to the value of the proceeds laundered. Laundering of money or property below “large value” (that is, 50.000 KM) will therefore be dealt with as unaggravated money laundering offence (paragraphs 1 of the respective articles) while such acts committed above this threshold will constitute the aggravated form of large-scale money laundering.

133. As a result, there is a well-defined subset of money laundering offences that can equally fall under the competence of either the state-level authorities or those at the level of the Entities and Brčko District. This subset comprises money laundering offences in which the

value of the proceeds exceeds 10.000 KM (as there would not be state-level competence below this threshold) provided that neither of the specific conditions mentioned in CC-BiH Article 209(1) is met. Considering that neither of the non-state level Criminal Codes defines any maximum threshold above which a money laundering offence should necessarily be dealt with at state level, there is a clearly visible conflict of competence between state and non-state level authorities over this common subset of laundering offences, particularly that, as it was regularly mentioned by domestic authorities during the on-site visit, the state-level jurisdiction has no hierarchy over those at the level of the two Entities and Brčko District.

134. It is a further practical problem whether and how the prosecution is supposed to prove that any money laundering activity (and especially those not even meeting the state level "larger value" threshold of 10.000 KM) endangered the common economic space of Bosnia and Herzegovina or had "detrimental consequences" to the operations or financing of its institutions. Examination of the verdicts the Court of Bosnia and Herzegovina brought in money laundering cases (which are available in English on the Internet) shows that practitioners tend to interpret these conditions not separately, as they should be according to the language of the law, but together with, or on the base of, paragraph (2) that threatens large scale money laundering with a more severe punishment. Case examples show that merely the fact that the volume of laundered proceeds exceeded 50.000 KM was sufficient to satisfy the state-level prosecutors and judges so as to accept one (or both) of the specific conditions in paragraph 1 as being fulfilled. In this context, the Court ruled[11] that the single economic space of Bosnia and Herzegovina is endangered where the amount of concealed money exceeds 50.000 KM. In another case[12] the verdict referred to the money that was derived from tax evasion and *"was legalised and inserted in regular turnover of the money and business operations of (X Company) thus endangering the single economic space of BiH"*. In a third case, however, the same Court ruled[13] that the perpetrators *"by taking part in the commission of the criminal offence, they received a larger value of money for which they knew was acquired through the commission of a criminal offence, after which they used it in commercial activities to cover it up, and such money endangers the common economic space of Bosnia and Herzegovina and has detrimental consequences to the operations and financing of the institutions of Bosnia and Herzegovina"*. Representatives of state-level authorities added that the fact that the laundering activities were committed on the territory of more than one non-state level jurisdiction usually gives rise to establishing the endangerment of the "common economic space".

135. Because of phenomena like these, it was already recommended by evaluators of the first round that clear guidelines need, in any event, to be drawn up as to which cases should go to the state-level court. Unfortunately, nothing appears to have since been done in this respect. Domestic authorities admitted in their replies to the MEQ that "the difference between the competence of the entities and competence of the state has not been clarified yet" adding that it must mainly be the issue of interpretation of seriousness of the case and economic damage.

136. In addition to that, representatives of state-level authorities of Bosnia and Herzegovina made it clear during the pre-meeting that, according to the actual practice of the Prosecutor's Office and the Court of BiH, only those money laundering offences are considered to be subsumable under CC-BiH Article 209(1) that involve money or property above the 10.000 KM ("larger value") threshold and, in addition to that, also meet at least one of the two conditions provided therein (endangering the common economic space of BiH etc.). That is, the value threshold is considered as a conjunctive condition (as if there was "and" instead of "or" in the respective provision) and the same goes for paragraph (2) which is equally considered to be only applicable if the laundering offence meets at least one of the additional

[11] http://sudbih.gov.ba/files/docs/presude/2006/Sabanovic_ENG_KPV_06_06.pdf
[12] http://sudbih.gov.ba/files/docs/presude/2006/Vasic_ENG_KPV_05_06.pdf
[13] http://sudbih.gov.ba/files/docs/presude/2008/Vujadin_Savanovic_and_Another_VERDICT.pdf

conditions in paragraph (1). While the examiners understand that this approach is commonly accepted in domestic judicial practice and indeed, it arguably serves the practical application of the law by overcoming the deficiencies of the existing legal text, it cannot be considered but a clear *contra legem* interpretation of the Criminal Code which does not seem to be acceptable as a proper solution for such shortcomings of the legislation.

137. The criminalisation of money laundering is based at both levels on a very extensive "all crimes approach" as the scopes of predicate offences explicitly cover all criminal offences. Under the Methodology, predicate offences have to cover at a minimum the range of offences in each of the designated categories of offence annexed to the FATF Recommendations. The evaluation team found that all the designated categories of offences under the Glossary to the FATF Recommendations are, with one exception mentioned later, covered in the way that certain offences, particularly those related to legal matters that pertain state-level issues like counterfeiting of currency or smuggling are provided for only by the CC-BiH, other offences, particularly those not requiring the involvement of state-level jurisdiction like murder, robbery or theft are only dealt with by the Criminal Codes of the two Entities and Brčko District, but most of the categories are to some extent covered by all four Codes. (See Annex 2) The only exception is the offence of market manipulation which appears not to be criminalised under the law of Brčko District. (Although market manipulation is prohibited by Art. 76 of the BD Law on Securities, the examiners could not find any provision in the said law or elsewhere that would render the violation of Art. 76 a criminal offence.)

138. Evaluators of the previous round had already found that, according to the common opinion of legal practitioners from different levels of criminal jurisdiction, no conviction for the predicate offence was necessary to establish that the laundered assets were proceeds of the predicate offence and to convict a person for the criminal offence of money laundering. This opinion was confirmed beyond doubt in the present round of evaluation.

139. State-level Prosecutor's Office expressed already in the MEQ that "*It is not necessary that a person is convicted of a predicate crime offence. It is considered that it is sufficient that legal origin of property is not clear and that the proofs on the basis of indications of predicate crime offence are satisfactory*". In fact, the case practice of the Court of Bosnia and Herzegovina being available on the Internet in English language supported this interpretation. In one of the most important verdicts in this respect[14] the Court ruled that *"In order for a new criminal offence to exist it is not necessary that it be established in a court verdict that property and money originate from a criminal offence and criminal proceedings do not have to be indicated for a so called basic criminal offence, it is sufficient that the perpetrator knows that the criminal offence has been perpetrated, or more precisely that the money and the property acquired from a criminal offence..."* In the same criminal case, the second instance verdict[15] went even beyond this as the Court made direct reference to the 1990 Strasbourg Convention (ETS No. 141) to which Bosnia and Herzegovina became a member state one week before this verdict was issued, arguing that in the absence of explanations of the lawmaker to CC-BiH Article 209 the Convention is the instrument in interpreting this provision, then explained on this base that "*the predicate offence under national legislation is not only the criminal offence detected, prosecuted or adjudicated, but any form of criminal behaviour punishable under the national law, with elements of the criminal offence (...) under the precondition (...) that the criminal activity in whatever stage this activity may be generates or is directly aimed to generate illegal benefit"* whereby *"it is the duty of the Court to correctly qualify the activity from which the money derives as a concrete criminal offence, provided for in the law, and to establish the existence of elements of criminal offence of money laundering."*

[14] http://www.sudbih.gov.ba/files/docs/presude/2006/Ibrahimovic_ENG_KPV-17-05.pdf
[15] http://www.sudbih.gov.ba/files/docs/presude/2006/Ibrahimovic_ENG_KPZ_12_06.pdf

140. Though state-level court verdicts necessarily refer to the offence as set out in CC-BiH Article 209(1) the identical wording of all four money laundering offences allows to conclude that this issue is likely to be understood similarly at all levels of criminal jurisdiction in Bosnia and Herzegovina. In any case, evaluators came across the same interpretation at the level of the Entities and Brčko District in course of the on-site visit which strongly implied that prosecutors and law enforcement also have the common understanding that courts may be satisfied that the laundered proceeds come from a general type of predicate offence, like drug trafficking generally, and not necessarily from a particularised offence on a specific date.

141. None of the four money laundering offences cover explicitly the case where the proceeds laundered on the territory of Bosnia and Herzegovina stem from a predicate offence committed abroad. The first evaluation team had the opinion that the ratification of the Strasbourg Convention, under which this is a mandatory element, would render this question an academic issue[16] nevertheless they recommended that this sort of laundering activities should clearly be covered by criminal legislation, especially if this issue became a problem in court practice.

142. The evaluators were assured by representatives of host authorities, at both state level and that of the Entities and Brčko District that, according to the common understanding of the respective provisions, the laundering of foreign proceeds is unquestionably considered as being covered by criminal jurisdiction over all the country. In fact, this opinion appears to be supported by some case practice as well: as it was mentioned above, there has already been at least one investigation (in Brčko District) initiated for laundering of proceeds directly derived from a robbery committed in Croatia. No verdict has been brought, however, in money laundering cases involving foreign proceeds and neither is it clarified whether money laundering cases can be brought where the proceeds of crime derive from conduct that occurred in another state (which is not an offence there) but which would have constituted a predicate offence had it occurred domestically.

143. In three of the four different Criminal Codes, it is not covered explicitly whether the offence of money laundering applies to persons who commit the predicate offence. The only exception is the CC-RS which contains a specific paragraph for the criminalisation of the laundering of own proceeds in Article 280(2)

> *(2) If the perpetrator referred to in Paragraph 1 of this Article is at the same time an accessory or accomplice in the criminal offence that resulted in obtaining money or property gain referred to in the preceding Paragraph, he shall be punished by imprisonment for a term between one and eight years.*

144. It needs to be noted at this point that the criminal legislation of the Republic Srpska is, and has been, unique in this respect and therefore the previous MONEYVAL evaluation team was probably wrong when stating that this issue was equally covered by CC-BD as well. The evaluators were assured by the authorities of Brčko District that the current Criminal Code of Brčko District has never provided explicitly for the sui generis criminalisation of self-laundering.

145. Money laundering offences in CC-BiH, CC-FBiH and CC-BD thus do not explicitly include or exclude those who have committed both the laundering and the predicate offence. Certainly, the lack of clear provisions as regards the punishment of laundering of own proceeds does not necessarily mean that this sort of laundering activities is not covered by criminal legislation. The only piece of related information the evaluators found in the MEQ implied, nonetheless, that self-laundering fell, at least in state-level relations, outside the scope of the money laundering offence: the Ministry of Justice of Bosnia and Herzegovina stated that *"It is a*

[16] Ratification took place on 30th March 2004.

position of BiH judicial practice that crime offence of money laundering cannot be transferred to a perpetrator of a predicate crime offence".

146. Evaluators of the previous round were advised by state-level prosecutors and those from the Federation that prosecution of "own proceeds" laundering was then considered possible though there had been no judicial confirmation on this – nonetheless, at the time the report was adopted, judgments of the Court of Bosnia and Herzegovina had already confirmed this possibility at state level (which judgments must have since been forgotten or repealed as no reference was made to such cases in this round). This is why it was unexpected in the present round of evaluation to hear extraordinarily diverse opinions in this respect nevertheless this is what actually happened in course of the on-site visit.

147. Representatives of the Ministry of Justice of Bosnia and Herzegovina confirmed their statement quoted above adding that the same approach is supported by the judicial practice in the Federation of Bosnia and Herzegovina where courts would convict the perpetrator exclusively for the predicate offence while his subsequent laundering activities would only be taken into account as an aggravating circumstance and not as a second count. That is, self-laundering could not constitute a crime on its own even if the predicate offence would no longer be punishable. The same opinion (i.e. the self-launderer cannot be punished for both crimes) was supported by some representatives of the state-level Prosecutor's Office too. Others from the same office, as well as judges from the Court of Bosnia and Herzegovina, however, could see no reason for not charging the launderer of his own proceeds both with the predicate offence and money laundering. The same opinion was expressed by prosecutors from the Federation – even if no concrete case practice at Entity level could, as yet, support such an argumentation.

148. In spite of the opposite interpretation of other state-level bodies such as the Ministry of Justice and, to some extent, the state-level Prosecutor's Office, the recent judicial practice of the Court of Bosnia and Herzegovina appears to recognise the notion of self-laundering, that is, the authors of the predicate offence could also be convicted for the money laundering offence. Among the verdicts brought by Section II of the said Court (that deals with Organised Crime, Economic Crime and Corruption) a part of which is available also in English on the website of the Court (www.sudbih.gov.ba) the evaluators found some case examples, where the Court ruled that laundering of own proceeds is also considered a criminal offence (it needs to note that all these verdicts were brought after the adoption of the first round report). In one of these cases (where the defendant was not charged with self-laundering) the final verdict[17] states that the money launderer "*does not have to commit the basic criminal offence, it could be committed by anyone"* which obviously implies that that the basic (predicate) offence can also be committed by the launderer himself. In another case, to which reference was already made in this report, two defendants were indicted with predicate crimes such as trafficking in persons and procuring in prostitution together with money laundering they committed in order to conceal the proceeds derived from those crimes – and even if they were acquitted of the charge of money laundering, this decision was based on the lack of evidence and not on the inadmissibility of the charges. As for the Federation and Brčko District, the evaluators have no information about any local judicial practice on cases involving self-laundering.

149. Surprisingly, there has not been much judicial practice even in the Republic Srpska where, as mentioned above, self-laundering is explicitly addressed by criminal legislation though neither the MEQ nor the interlocutors the evaluators met on-site could mention any case examples based on the specific offence in CC-RS Art. 280(2). The evaluators note at this point that, according to the said provision, the author of the predicate offence is threatened with a significantly more severe penalty for the basic offence of money laundering than a third party laundering on behalf of others (up to 10 years instead of 5) which sanction appears overly

[17] http://www.sudbih.gov.ba/files/docs/presude/2006/Ibrahimovic_ENG_KPZ_12_06.pdf

rigorous, especially because it would still be cumulated with the punishment imposed for the predicate offence.

150. Criterion 1.7 requires that there should be appropriate ancillary offences, unless this is not permitted by fundamental principles of domestic law. In all levels of the criminal legislation of Bosnia and Herzegovina, most ancillary offences are provided by the General Part of the respective Criminal Codes with a potential applicability to any criminal offence defined in the Special Part, including money laundering.

151. As for attempt, it needs first to be noted that attempted money laundering is at least partially covered in the money laundering offence itself in respect of concealment (*"otherwise conceals or tries to conceal")*. Considering the similarities between the money laundering offences, it is obvious that all four Criminal Codes provide for *sui generis* criminalisation of such an attempted act which may therefore establish a completed offence on its own.

152. Apart from this, general criminal principles on attempt apply to all the other ways money laundering can be committed. According to Article 26(1) of the CC-BiH, punishment of attempt applies, as a general rule, only in case of criminal offences for which *"the punishment of imprisonment for a term of three years or a more severe punishment may be imposed"* while the attempt of a less serious offence is not punishable unless it is expressly provided by law. Money laundering is, as quoted above, threatened with imprisonment of six months to five years therefore the attempt of this offence is evidently subject to criminal liability. Pursuant to Article 26(2) the attempt shall be punished within the limits of the punishment prescribed for the same criminal offence as if it had been completed. An "attempt" as defined by Article 26(1) is necessarily a deliberate act (*"whoever intentionally commences execution of a criminal offence…"*) so it is not applicable to the negligent form of money laundering. Criminal Codes of the two Entities and Brčko District contain similar provisions (CC-FBiH and CC-BD Article 28 CC-RS Article 20).

153. Further ancillary offences are similarly sanctioned on the base of intention. Article 30(1) provides that *"whoever intentionally incites another to perpetrate a criminal offence shall be punished as if he has perpetrated such offence"* while in case of criminal offences threatened with imprisonment of three years or more, the inciter "*shall be punished as for the attempt of the criminal offence*" even if the offence has never been attempted (Article 31[2]). The same sanction applies, according to Article 31(1), for anybody who "*intentionally helps another to perpetrate a criminal offence"*. At this point, Article 31(2) provides a list of conducts that are particularly to be deemed acts of helping the perpetrator, where one can find, among others, *"to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence"* which appears to be in some overlap with the money laundering offence itself as defined in Article 209(1) for as much as the latter also includes, in fact, concealing the traces of or goods (proceeds) acquired from the predicate offence.[18] Nevertheless, the examiners were assured by practitioners from all levels of jurisdiction during the pre-meeting that these provisions would not actually collide as the application of Article 209(1) as a sui generis criminal offence would prevail. Identical provisions can be found in CC-FBiH and CC-BD (Article 32-33 in both) and almost the same rules apply in the Republic Srpska, with a minor difference as regards the minimum level of imprisonment (not three but five years or more) related to the punishment of ineffectual incitement (CC-RS Article 24-25).

154. Domestic criminal legislation also covers stages of crime which are in advance of the other ancillary offences discussed above. Conspiracy to commit as well as preparation for a serious criminal offence constitutes two separate offences in all four Criminal Codes of Bosnia and

[18] In the original version, the same terms are applied both in Article 31(2) for "hide" and in Article 209(1) for "conceal" (*prikrivanje*/*prikrije* for concealment).

Herzegovina. In the state-level Criminal Code they can be found under Article 247-248 as follows:

Conspiracy to Perpetrate a Criminal Offence
Article 247

Whoever agrees with another to perpetrate a criminal offence prescribed by the law of Bosnia and Herzegovina, for which a punishment of imprisonment of three years or a more severe punishment may be imposed, unless a heavier punishment is foreseen for conspiracy of a particular criminal offence, shall be punished by a fine or imprisonment for a term not exceeding one year.

Preparation of a Criminal Offence
Article 248

Whoever procures or prepares means or removes obstacles or engages in any other activity that creates conditions for a direct perpetration, but is not a substantive part of the act of perpetration, of a criminal offence prescribed by the law of Bosnia and Herzegovina, for which a punishment of imprisonment of three years or a more severe punishment may be imposed, unless a heavier punishment is foreseen for preparation of a particular criminal offence, shall be punished by a fine or imprisonment for a term not exceeding three years.

155. Considering the range of punishment that can be imposed for money laundering, there is no doubt that the latter offence must also be deemed "serious" so it falls within the scope of the above provisions. Conspiracy to commit as well as preparation for committing money laundering are therefore punishable under CC-BiH. The same is true for CC-FBiH and CC-BD as both of these Codes contain provisions similar to those quoted above (Article 338-339 and 332-333, respectively) while CC-RS only covers conspiracy, also roughly in line with the state-level legislation (Article 384).

156. As it was discussed above, all four Criminal Codes provide for aggravated forms of the money laundering offence. What is equally covered by all Codes is large-scale money laundering, that is, cases where the money or property subject to laundering exceeds a certain amount which is, as discussed above, 50.000 KM as regards CC-BiH while defined as "large value" in the other three Criminal Codes. Offences like this can be found in CC-BiH Article 209(2) CC-FBiH Article 272(2) CC-RS Article 280(3) and CC-BD Article 265(2) and are equally threatened with imprisonment for a term between one and ten years.

157. The Criminal Code of Republic Srpska is unique as it is the only one that contains further aggravated forms of money laundering. One of them is Article 280(2) to which reference was already made in relation to the criminalisation of self-laundering and which requires no further comments here. Another one can be found in paragraph (4) according to which:

> *(4) If the criminal offences referred to in preceding Paragraphs are committed by a group of people who joined with the intention of committing such criminal offences, the perpetrator shall be punished by imprisonment for a term between two and twelve years.*

Recommendation 2

158. It is expressly set out in all four Criminal Codes that the respective criminal offences provide for the actual knowledge standard in respect of those who engage in money laundering activity, as required by Criterion 2.1. The mental element of the money laundering offence

thus requires knowledge of acquisition through perpetration of criminal offences, and indeed, this standard was already mentioned as "established jurisprudence" of the Court of Bosnia and Herzegovina in a verdict (2006) in which the said Court ruled that *"it is necessary to establish that the perpetrator knew that the money or property, subject of laundering,, derives from the criminal offence (…) It is important to establish from the established facts and circumstances that the accused knew that the money he received derived from an action which could be qualified as a specific criminal offence. His intent does not need the (sic) include the knowledge of all elements of the predicate offence, and in particular it does necessarily have to be established that the perpetrator correctly or properly characterised the predicate offence legally. It suffices that from all factual circumstances the perpetrator concludes that the money received was 'dirty' because of the illegal process of its production."*

159. Considering that neither level of Bosnia and Herzegovinian criminal legislation contains any explicit provision whether the intentional element of a criminal offence, including money laundering, may be inferred from objective factual circumstances, it was already recommended by evaluators of the previous round that clarifications be made, at least in guidance, that this knowledge element is capable of being determined by a court on the basis of objective factual circumstances.

160. The evaluators of the present round were assured by magistrates (prosecutors and/or judges) from various levels of jurisdiction that circumstantial evidence is admissible in this respect, that is, drawing inference from facts in order to prove *mens rea* standards might be sufficient in criminal proceedings.

161. Evaluators found even more important that another final verdict the Court of Bosnia and Herzegovina achieved in a money laundering case (2005) provided for excellent guidance in this respect. The state-level court defined that knowledge standard is actually capable of being inferred from objective factual circumstances: *"Knowledge is often not subject to proof by direct evidence, but instead must be inferred from all the facts and circumstances in the case, through free evaluation, in the sense of Article 115 CPC-BiH."* In this concrete case, for example, such circumstances led to conclusion that the defendant had been aware that cash taken by his accomplice and later transferred back to the alleged tax evaders, had been acquired through criminal offence, taking into account the legal position of the accused in the fictitious company they used for laundering purposes, his professional experience in this respect, the characteristics of the actual connection and cooperation between him and his accomplice as well as the lack of legal business of their company.

162. At this point, the evaluators note that, as far as they can have an overview of the case practice of the Court of Bosnia and Herzegovina on the basis of the verdicts available on the respective website in English, the state-level prosecutors appeared to seek plea agreements with a significant frequency, that is, in 10 out of 16 money laundering cases in which these verdicts were issued the court decision had been based on a plea guilty agreement as a result of which evidentiary issues such as inference from factual circumstances became irrelevant. (In fact, some representatives of the prosecution expressed certain criticism regarding the excessive application of this instrument in criminal cases.)

163. As far as the mental element is concerned, definitions in all four Criminal Codes go beyond the international standards with regard to their coverage of negligent money laundering, pursuant to Article 209(3) CC-BiH, Article 272(3) CC-FBiH, Article 280(5) CC-RS and Article 265(3) CC-BD. These provisions are practically identical and read as follows:

> *If the perpetrator, during the perpetration of the criminal offences referred to in paragraphs 1 and 2 of this Article, acted negligently with respect to the fact that the money*

or property gain has been acquired through perpetration of criminal offence, he shall be punished by ***a fine or*** *imprisonment for a term not exceeding three years.*

164. Where the paragraphs to which reference is made are the core offences and aggravated cases in each Criminal Codes respectively (and this is why the CC-RS provision refers to paragraphs 1, 2 and 3). As for the phrase in bold underlined letters, it can be found in all versions except for that in the CC-RS – that is, the criminal legislation of Republic Srpska is more rigorous towards negligent launderers as it allows for no alternative punishment in this respect. Negligent money laundering is thus a crime throughout the country, however, the evaluators have no information whether this provision has ever been applied in practice.

165. Corporate criminal liability had already been introduced in the laws of Bosnia and Herzegovina by the time of the last evaluation, having incorporated it into the respective Criminal Codes (the relevant sets of rules can be found in all four Codes under Chapter XIV).

166. According to CC-BiH Article 124 a legal person shall be criminally liable *"(a) when the purpose of the criminal offence is arising from the conclusion, order or permission of its managerial or supervisory bodies; or (b) when its managerial or supervisory bodies have influenced the perpetrator or enabled him to perpetrate the criminal offence; or (c) when a legal person disposes of illegally obtained property gain or uses objects acquired in the criminal offence; or (d) when its managerial or supervisory bodies failed to carry out due supervision over the legality of work of the employees"*.

167. All legal persons (with the exception of Bosnia and Herzegovina, its two Entities and Brčko District, cantons, cities, municipalities and local communities) have criminal responsibility. This rule similarly applies to domestic and foreign legal persons for criminal offences perpetrated within the territory of Bosnia and Herzegovina. Both can also be liable for criminal offences committed abroad, if a legal person has its seat or if it carries out its activities in the territory of Bosnia and Herzegovina, if the offence was perpetrated against the State of Bosnia and Herzegovina, its citizens or domestic legal persons. Special procedural rules applicable in case of legal entities can be found in Chapter XXVII of the Criminal Procedure Code of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina" 3/03 etc. hereinafter: CPC-BiH).

168. Liability of legal persons does not exclude criminal liability of physical persons responsible for the criminal offence. Legal persons may be held liable for all criminal offences under the CC-BiH (and respectively in the other Criminal Codes as non-state level legislation is concerned) and other criminal offences defined by law, unless the criminal offence specifically excludes or limits punishments for legal persons (CC-BiH Article 125) and therefore money laundering and financing of terrorism are offences which apply to legal persons.

169. According to CC-BiH Article 131, legal entities may be punished with a fine, seizure of property and dissolution of the legal person. Fines shall not be less than 5,000 KM nor exceed 5 million KM but if by perpetrating the criminal offence, the legal person has caused material damage to another party or the legal person has come into possession of an unlawful material gain a fine can be imposed up to the doubled amount of the maximum (Article 132 with further specification as regards meting out fines in Article 144). The seizure of property of a legal person – that is, seizing either the half of its property, or its major part, or the entire property – may be imposed for criminal offences threatened with imprisonment for a term of five years or more (Article 133). The court may pronounce the dissolution of the legal person in case its activities were entirely or partly being used for the purpose of perpetrating criminal offences (Article 134). Apart from these, there are further security measures available for sanctioning legal persons under CC-BiH Article 137 such as the publication of the judgement as well as the ban on performing certain economic activities.

170. As for non-state level criminal jurisdiction, the Criminal Codes of the Entities and Brčko District define the legal basis for the criminal liability of legal persons likewise and provide for the same sanctions as discussed above.

171. That is, there is a sound legal basis available and indeed, as far as verdicts brought by the Court of Bosnia and Herzegovina are concerned, there have already been prosecutions and convictions against legal persons also in money laundering cases. Among the verdicts the English version of which can be downloaded from the website of the said Court (www.sudbih.gov.ba), the evaluators found at least one money laundering case from 2004 in which a legal entity (a company serving as vehicle for laundering the proceeds of tax evasion) was found guilty of money laundering in a final verdict[19] and its dissolution was ordered. In another case, the court imposed a fine on three similar companies finding them responsible for money laundering, but all three were subsequently acquitted upon appellation because at the time of the perpetration the criminal liability of legal persons had not yet been introduced in the respective Entity. In any case, the evaluators need to note that the number of prosecutions and convictions against legal persons in money laundering cases could and should be higher, taking into consideration that the vast majority of such cases are related to laundering of proceeds derived from tax evasion that is committed through legal persons i.e. companies set up for this purpose. Even among the verdicts that are available in English, the provisions of Chapter XIV CC-BiH could obviously have been applied against such legal entities but there had been no indictment in this respect (the only measure regularly applied was the confiscation of proceeds from bank accounts of the companies).

172. Natural and legal persons, once convicted of money laundering, are subject to effective and dissuasive sanctions under all of the respective Criminal Codes, taking into account the sanctions for other crimes and according to the economical situation. As for criminal sanctions against natural persons, any form of money laundering is equally threatened with imprisonment as principal punishment, without alternative. The range of punishment is 6 months to 5 years of imprisonment in respect of the unaggravated form of the offence (CC-BiH Article 209[1] and similar provisions in the other Codes) while it is 1 to 10 years in respect of the aggravated offences of large-scale money laundering, as it was discussed above (Article 209(2) and similar provisions in other Codes). Specific aggravated forms that can only be found in the legislation of the Republic Srpska are threatened with imprisonment ranging from 1 to 8 years in case of self-laundering (CC-RS Article 280[2]) while 2 to 12 years when the offence is committed by a group of people joint with the intention to commit such offences (Article 280[4]). Moreover, as discussed above, even the negligent forms of money laundering (CC-BiH Article 209[3] and similar provisions in other Codes) is subject to serious terms of imprisonment.

173. Apart from being effective and dissuasive, these sanctions are also proportionate, with a potential exception as regards self laundering in CC-RS where it seemed quite unusual to the examiners (as it did to the previous team, too) that the otherwise favourable incrimination of "own proceeds" laundering attracted a higher penalty than laundering by third parties. Evaluators of the previous round suggested reviewing the policy reasons for this which, on the other hand have since remained unclear.

174. Imprisonment is thus the primary (and in the Republic Srpska, the exclusive) form of principal punishment that is applicable in respect of money laundering. The court has the right however to impose fines, even in money laundering cases, as a supplementary punishment in addition to the imprisonment. All four Criminal Codes provide that "*for criminal offences motivated by greed, a fine may be imposed as an accessory punishment even when that is not*

[19] http://www.sudbih.gov.ba/files/docs/presude/2005/Pilic_ENG_KPZ-22-04.pdf

specifically prescribed by the law" (CC-BiH Article 41[4] CC-FBiH and CC-BD Article 41[5] CC-RS Article 31[2]) which may obviously increase the effectiveness of the sanction. Fines are imposed in daily amounts or, when it is not possible, in a fixed amount. As for the former, the court first takes into account the daily income of the person against whom the fine is going to be imposed, then determines how many multiples of that are proportionate to the gravity of the offence within the range of 5 to 360 daily incomes, while up to 1500 daily incomes for offences motivated by greed (and even beyond this limit if the value of proceeds derived from such an offence exceeds 1 million KM). Fines imposed in a fixed amount range between 150 (only 50 in CC-RS) and 50.000 KM, while up to 1 million KM in case of offences motivated by greed. The fine cannot be collected by force, so in case of non-payment it would be substituted by imprisonment. (CC-BiH Article 46-47 CC-FBiH and CC-BD Article 47-48 CC-RS Article 35-36).

175. To the extent the convictions so far achieved are known to the evaluators, all of the some 17 persons involved in those cases and convicted for money laundering were sentenced to imprisonment (either enforceable or suspended) ranging up to 3 years in cases where charges comprised exclusively money laundering while up to 6 years 6 months in case of compound punishment (where money laundering was only one of the charges). In two of these cases, the court imposed fines (20,000-80,000 KM) on two defendants, in addition to the imprisonment they were otherwise sentenced to.

176. Turning to legal persons, the applicable criminal sanctions have already been discussed as well as the few examples on their actual application. It is worth adding, however, that the amount of fine that can be imposed on a legal person for criminal offences threatened with a fine or imprisonment for a term not exceeding three years can be, according to the rules set out in CC-BiH Article 144, maximum 850,000 KM but not exceeding 10 times of the amount of the damage caused or material gain acquired (dissolution may be applied instead of the fine). For offences threatened with imprisonment up to three years at least, the maximum fine is 2,500,000 KM (not exceeding 20 times of the above mentioned amounts) however for offences for which imprisonment for a term of five years or more is prescribed (like any forms of intentional money laundering) a property seizure punishment may be imposed instead of a fine.

Statistics

177. Criterion 32.2 (b)(i) requires that competent authorities maintain comprehensive statistics, among others, on money laundering investigations, prosecutions and convictions, and the authorities of Bosnia and Herzegovina actually provided certain statistical information on these issues. Nevertheless, the evaluators are still not convinced about the completeness and comprehensiveness of these statistics and whether and to what extent such statistics are in fact kept and maintained on a regular base. In fact, the evaluation team was given visibly incomplete statistics in the MEQ to which hardly any adequate completion could have been achieved during of the on-site visit while some of the relevant additional data were only submitted to the team weeks after. All these imply that no statistics specifically related to AML-CFT issues are kept in any part of the country and the relevant data are, to the extent possible, gathered merely for the purposes of the evaluation.

Table 4: Investigation, prosecutions and conviction in ML and FT

Year	Received Reports		Order for Conducting an Investigation		Indictments		Verdicts	
	reports	persons	reports	persons	reports	persons	reports	persons

2005	**20**	**50**	**13**	**31**	**4**	**8**	**6**	**11**
2006	**17**	**42**	**17**	**39**	**9**	**59**	**8**	**17**
2007	**13**	**40**	**8**	**18**	**4**	**7**	**4**	**16**
2008	**9**	**19**	**4**	**20**	**2**	**3**	**5**	**7**
Total	**59**	**151**	**42**	**108**	**19**	**77**	**23**	**51**

178. According to the latest statistical data received, however, some general conclusions can obviously be drawn which are, on the other hand, fully in line with the observations of the team during and subsequent to the on-site visit and therefore are not likely to be affected by possible minor changes in the respective statistical figures.

179. The most important development is that the money laundering offence is no longer without case practice in Bosnia and Herzegovina. The Court of Bosnia and Herzegovina tries a number of money laundering cases every year and the respective verdicts of first and second instance are available on the website of the Court (also in English language in cases adjudicated with the involvement of international judges and prosecutors) providing a priceless database of Bosnia-Herzegovinian judicial practice in such matters.

180. On the other hand, it was also noticed that money laundering as a criminal offence is almost exclusively dealt with at the level of the State, that is, the respective investigations are led by state-level prosecutors (even if not all of these investigations are actually conducted by state-level SIPA) and indictments are tried by the Court of Bosnia and Herzegovina. Accordingly, the evaluators were informed about a relatively low number of money laundering cases prosecuted and adjudicated at the level of the Entities and Brčko District.

181. The evaluation team therefore attempted to clarify the reasons why money laundering cases were distributed so unevenly among the different but, at least theoretically, equally competent jurisdictions in the country. They found that while appropriate criminal provisions were at place at every level, they overlap significantly and there is no clear demarcation between the respective provisions. Even if the four money laundering offences appear to use similar language as regards the physical (material) elements, the overall money laundering criminalisation suffers from the lack of harmonisation when it comes to the mutual applicability of the respective rules. The competing Criminal Codes are unable to specify which money laundering cases should definitely be dealt with by state-level jurisdiction. The specific conditions provided in CC-BiH Article 209(1) are too vague to be applicable in practice, and indeed, practitioners seem to mix them up with the issue of value thresholds which is, on the other hand, equally confusing. Ambiguity can also be noticed in the following statement of the Progress Report: *"if a major case of money laundering is at stake, which involves interests of state (...) such cases <u>can be</u> transferred from entity to the state level. The financial threshold is 50.000 KM"*. Taking also into account that there is no hierarchy in criminal law, that is, the criminal legislation of the Entities and Brčko District is definitely and constitutionally at the same level as that of the State of Bosnia and Herzegovina, the overlap between the competing provisions is just tangible.

182. In such a situation, it is crucial what approach is followed by non-state level authorities as regards the distribution of money laundering cases potentially subsumable under both CC-BiH Article 209 and the respective provisions of the entity-level Criminal Code, that is, whether they would struggle for keeping a case, which could also be prosecuted under state-level legislation, in their competence or they would take this opportunity to pass the case to state-level authorities. The evaluators found that while state-level authorities as well as those from FBiH considered that all money laundering offences where the volume of laundered proceeds exceeds 50.000 KM would automatically fall under the scope of CC-BiH and thus forwarded to the state-level authorities, those of the Republic Srpska emphasised that according to the CC-RS they could and would prosecute any money laundering offences regardless of the

volume of the proceeds. (It needs to be noted, however, that the evaluators were not informed about any concrete cases in RS relations to support this principle.)

183. As a result, the uneven distribution of money laundering cases cannot be deduced from differences in criminal substantive laws. Instead, the evaluators have the impression that with state-level competence over money laundering offences introduced and specific state-level law enforcement authority set up for this purpose, money laundering is generally considered by non-state level authorities as a phenomenon belonging to the responsibility of the state and thus being subject to state-level prosecution. Non-state level authorities thus forward all money laundering cases detected or proceedings initiated, to the extent they involve proceeds of "larger value" according to CC-BiH Article 209(1) to the competent state-level bodies (let alone laundering cases with proceeds exceeding the 50,000 KM limit as described above) a possible outcome of which is that the authorities of the Entities and Brčko District, not being motivated by the existing legal background to further money laundering cases in their jurisdiction, will focus on other aspects of criminality instead. As it was expressed by one of the interlocutors the team met in the country, money laundering seems to be "a victim of constitutional problems" in Bosnia and Herzegovina.

184. As for the typical character of the money laundering cases generally in Bosnia and Herzegovina, nothing seems to have changed since the previous round of evaluation. Almost all cases are still related to a specific sort of laundering activities, that is, the concealing of cash proceeds derived from evasion of sales taxes, legalised by involvement of fictitious companies the managers of which usually take and return the cash providing false invoices or other fictitious documents as regards its origin. Such laundering activity is still said to be widespread in the entire country and sometimes committed on significantly large scale.

185. The evaluators were not made aware of any final conviction for money laundering in relation to other predicate offences, especially those related to organised criminality, even if domestic authorities otherwise conduct investigations and prosecutions for the typical proceeds-generating crimes (like drug trafficking) quite regularly. Most practitioners the evaluators met could not recall a single money laundering case they had come across in their practice, let they be prosecutors or judges from either level of jurisdiction, with predicate offences other than tax evasion. Subsequent to the on-site visit, the BiH authorities reported that there had already been two money laundering cases tried by the Court of BiH where the predicate offence was trafficking in human beings (one of them ended up with an acquittal while the other was still pending) as well as a drugs money laundering case being still in the investigative phase. All in all, considering that organised and other proceeds generating crimes, particularly drug crimes, trafficking in human beings and others are actually virulent in Bosnia and Herzegovina, the overrepresentation of tax evasion crimes among predicate offences to money laundering evidently lead to the question why the laundering of non-tax related crimes is hardly if at all prosecuted either at state level or that of the Entities and Brčko District.

186. It appears that in most of the cases, the prosecution of non-tax related offences is mainly targeted at proving the predicate crime and thus no further investigation takes place to follow the trail of the proceeds and to discover their laundering. As investigations are led by the prosecutor, the main responsibility lies in their hand and indeed, among the possible systemic reasons, reference was made first to the understaffing and under-equipping of the prosecution service and to the extent they are overburdened with other cases. Representatives of law enforcement authorities from various levels of the jurisdiction told the evaluators that, when investigating predicate offences, they would also investigate into laundering activities as well but this approach is usually not supported by the prosecutors. All the relevant authorities admitted that there should be more financial investigations conducted and called for the

introduction of the reversal of the burden of proof in order to effectively overcome this deficiency.

187. As far as money laundering cases tried by the Court of Bosnia and Herzegovina are concerned, delays in court proceedings were referred to as a deficiency as the judges are struggling with significant backlogs in their cases. Among the possible reasons reference was made to the excessive workload of practitioners, the lack of the specific expertise that is needed to efficiently deal with economic crime cases as well as to evidentiary problems in prosecutions as regards proving, for example, that property items of a defendant were actually purchased for the proceeds he had previously obtained from crime. Furthermore, as in case of the prosecution service, the judiciary suffers from serious understaffing. At the level of the State, the proper functioning of the Prosecutor's Office and the Court still depends on the contribution from the international prosecutors and judges working for these bodies.

188. Another obstacle to effectively prosecuting money laundering is that neither of the Criminal Procedure Codes provides for prosecuting or convicting any defendant in absentia so whenever the perpetrator successfully evades being involved into the proceedings he cannot be indicted or convicted even if the evidence against him has already been gathered by authorities. As it was explained during the pre-meeting, trying in absentia had been possible under the previous Criminal Procedure Codes being in force until 2003 but was abandoned in the new Codes, partly because of practical reasons (a large number of such cases needed to be retried after the defendant reappeared and in many cases the previous verdicts that had been delivered in absentia proved to be unfounded). The examiners nevertheless share the concerns of some practitioners they met onsite and are thus convinced that this feature of domestic procedural law can particularly be abused by criminals possessing double citizenship who, being investigated for criminal offences, can easily leave for neighbouring Serbia or Croatia which refuse to extradite their own citizens and their Courts may be not prosecute as an alternative. This concern was already raised in the previous round of evaluation as one that may need resolution on a regional basis if it seriously undermines the effectiveness of money laundering criminalisation, even if such an issue is not capable of recommendation by the evaluators.

2.1.2 Recommendations and comments

189. The most serious deficiency of the anti money laundering regime is the lack of clear demarcation between the scope of the money laundering offences in the different Criminal Codes that may consequently result in conflict of competences. Certainly, a possible solution the evaluators could recommend is the harmonisation of these offences to achieve clear limitations to define, at all levels, as to which cases should definitely go to the State Court and which cases should be dealt with at the level of the Entities and Brčko District, with the less overlaps the better. Instead of this, however, the evaluators of the present round advise that consideration should be given, as soon as possible, as to whether it would be more effective to restrict all money laundering cases to the State Court, and abolish the Entity and Brčko District jurisdictions. The team was informed during the on-site visit that new criminal legislation, being in drafting phase at the moment, would criminalise money laundering only by the state level legislation which approach is highly welcomed by the evaluators, especially as it would also be in line with actual practice where, as far as the evaluation team was informed, money laundering investigations, prosecutions and convictions take place primarily at state level.

190. If domestic authorities finally choose not to criminalise money laundering exclusively at state level, they urgently need to review the conditions in CC-BiH Article 209(1) and especially those not related to value thresholds. The existing conditions, as provided by law,

are overly ambiguous and thus very unlikely to be adequately proven in a criminal procedure (and this is why practitioners mix this up with value limitations) so they should either be replaced by more precise criteria (like the involvement of organised criminality in the predicates, the fact that the offence was committed on the territory of more than one non-state level jurisdiction etc.) or substituted merely by the application of value limitations.

191. Although the value thresholds, applied to some extent by all four money laundering offences, cannot be considered as being explicitly contrary to Criterion 1.2 and they can actually be an appropriate means in defining competences of state and non-state level authorities in this field, the evaluators consider that these thresholds in their present form and, in case of state-level legislation, also their relation to the further conditions discussed above, are overly confusing and cause much legal uncertainty. As a minimum requirement, definitions of these thresholds should be publicly known (according to the experiences of the team, this is not the fact at present time) and should ideally be provided for by the legislation (such as the Criminal Code). At the State level, the evaluators urge to fill the gap between positive criminal law and actual judicial practice in this respect by finding an adequate legislative solution instead of the current *contra legem* interpretation of the law.

192. As for the coverage of the money laundering offences, neither of the definitions is in full accordance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention as far as material elements of the offence are concerned. The transfer of property is not clearly covered by either of the respective provisions and even if it seems to be clearly considered by judicial practice, throughout Bosnia and Herzegovina, as being part of the money laundering offence, this loophole would better be covered by appropriate legislative steps to be taken.

193. In order to fully comply with Recommendation 1 the authorities of Brčko District should also criminalise market manipulation in their respective legislation (either in the Law on Securities or elsewhere) to ensure that the range of offences which are predicates to money laudnering include all required categories of offences in all the relevant forms.

194. With regard to practical issues, evaluators of the present round reiterate the recommendation given by the previous team according to which investigators and prosecutors need to have a clear understanding of the importance of money laundering beyond the tax evasion and fiscal predicates if money laundering criminalisation is to be meaningful. Effective implementation of money laundering incrimination should urgently be achieved beyond the tax predicate.

195. In this context, it also needs emphasising that financial investigation into proceeds, which occurs very rarely if at all in practice, needs to become an integral part of investigation of various proceeds generating offences which will obviously generate more money laundering investigations in a wider range of predicates. For this to be achieved, more resources and trainings are clearly needed especially by the prosecution service.

196. The notion of own-proceeds laundering is still not commonly understood and thus is not addressed adequately at some levels of jurisdiction. Although self-laundering was explicitly criminalised as a separate offence only in Republic Srpska, neither of the other three Criminal Codes exclude its punishment (they do not specify that predicates be committed by someone else etc.) nevertheless the practitioners have totally divergent opinions as to whether and how launderers of own proceeds can be prosecuted. The examiners therefore advise that for consistency purposes the state-level incrimination as well as those in the Federation and Brčko District should expressly include " own proceeds" laundering or, at least, appropriate guidance should be given to practitioners in this respect in all the three jurisdictions where self-laundering is not explicitly covered by law (especially in the Federation and Brčko District where there is no relevant judicial practice either).

197. The evaluators, on the other hand, suggest that authorities of the Republic Srpska review the policy reasons whether and why it was considered expedient and proportionate to threaten self-laundering with higher penalty than money laundering by third parties. At this point, it needs to reiterate from the previous report that the inconsistencies in legislative provision on penalties generally in Bosnia and Herzegovina for money laundering do not make for a cohesive response to the problem, and it is still recommended that, if possible, given the constitutional arrangements, the language of money laundering incrimination and penalties be harmonised across the State level, the Entities, and Brčko District.

198. Although such case law exists, there is uncertainty whether the intentional element of ML may be inferred from objective factual circumstances. This may well compromise the effectiveness of the AML regime and should therefore be addressed by appropriate guidance from the judiciary also at the level of the Entities and Brčko District.

199. Neither of the Criminal Procedure Codes provide for prosecuting or convicting any defendant in absentia which proved to be an actual obstacle to effectively prosecuting money laundering and therefore should be addressed by criminal legislation at all levels.

200. The evaluators appreciate that the anti money laundering criminalisation, while providing for negligent money laundering, actually exceeds the international standards. On the other hand, and as far as the evaluators are informed, this potential of the regime has not yet been made use of, as there have been no investigations or prosecutions involving negligent money laundering and therefore domestic authorities should, at all levels of jurisdiction, consider whether the benefits of negligent money laundering in the statute are being maximised.

201. As far as practical issues are concerned, the backlog in money laundering cases pending before the Court of Bosnia and Herzegovina is a problem that must be addressed by state-level authorities. Overloading of courts together with the lack of expertise, both issues referred to as possible reasons behind long delays in money laundering cases, appear to be remediable by appropriate training of the judiciary and prosecutors which had already been mentioned among priorities in the previous round of MONEYVAL evaluation.

202. Considering the inconsistency in the different statistics the evaluators were so far provided, it is also advised that either of the authorities involved maintain comprehensive and more detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts (and whether confiscation has also been ordered) that would provide, among others, statistical information on the underlying predicate crimes and possibly on further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.). It is noted as a positive development in this field that Article 60 of the new AML Law requires that competent prosecutors' offices and courts forward statistical data to the FID on a regular base (twice a year) on indictments and valid court cases related to the offences of money laundering and terrorist financing, including detailed information on the persons indicted and also on the respective criminal acts and the amount of assets temporarily seized in the criminal procedure.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**PC**	• Neither of the money laundering offences, as defined in all four Criminal Codes, is in full accordance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention as far as material elements of the offence are concerned. • One of the designated categories of offences (market manipulation) is

		not covered by criminal legislation of Brčko District.
		• The scope of competing money laundering offences are not completely demarcated partly because of the failure to harmonise the respective thresholds in the state-level and non-state level offences and the overly ambiguous conditions in CC-BiH Article 209(1)
		• Serious deficiencies in the effective application of the criminal legislation such as:
		  • The general perception of money laundering, at all levels of jurisdiction, did not appear to go beyond the laundering of proceeds of tax evasion. There is hardly any final conviction for money laundering related to predicates other than tax crimes (particularly organised criminality such as drug crimes, trafficking etc. which are prevalent in the country). Usually, prosecution of predicate offences other than tax crimes only targets the predicates while no further investigation takes place to follow the money trail and to discover laundering activities. As a result, proceeds of organised and other proceeds-generating crimes remain uncovered.
		  • Very few money laundering cases are prosecuted at the level of the Entities and Brčko District which means that any cases below "larger value" as defined by CC-BiH 209(1) remain uncovered at the other levels as well.
		  • Significant backlog at state-level courts and also at prosecutors' offices due to excessive workload, understaffing, lack of specific expertise as well as evidentiary problems in prosecutions.

R.2	**LC**	• Although such case law exists at state level, there is still uncertainty among practitioners whether the intentional element of ML may be inferred from objective factual circumstances which may well compromise the effectiveness of the AML regime. • Despite the adequate legal framework, the prosecution only rarely targets the legal persons (shell companies etc.) involved in ML cases.

2.2 Criminalisation of terrorist financing (SR.II)

2.2.1 Description and analysis

203. Bosnia and Herzegovina ratified the International Convention for the Suppression of the Financing of Terrorism (hereafter "Terrorist Financing Convention") on 10th June 2003 and it has since been binding on the country. At the state level, the CC-BiH defines the criminal offence of Funding of Terrorist Activities in Article 202 as follows.

Funding of Terrorist Activities
Article 202

Whoever by any means, directly or indirectly, provides or collects funds with the aim that they should be used or knowing that they are to be used, in full or in part, in order to perpetrate:

a) A criminal offence referred to in Article 191 (Taking of Hostages), 192 (Endangering Internationally Protected Persons), 194 (Illicit Procurement and Disposal of Nuclear Material), 196 (Piracy), 197 (Hijacking an Aircraft or a Ship), 198 (Endangering the Safety of Air Traffic and Maritime Navigation), 199 (Destruction and Removal of Signal Devices Utilised for Safety of the Air Traffic), 200 (Misuse of Telecommunication Signals) and 201 (Terrorism) of this Code;

b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel the authorities of Bosnia and Herzegovina or any other government or an international organisation to perform or to abstain from performing any act, shall be punished by imprisonment for a term between one and ten years.

204. At the level of the two Entities and Brčko District, a similar offence can be found in all three Criminal Codes, respectively. Considering the identical wording of these three offences and in order to demonstrate these similarities, they are quoted below in one single piece of text which reads:

Funding of Terrorist Activities
CC-FBiH Article 202 * CC-RS Article 301 * CC-BD Article 199

Whoever by any means, directly or indirectly, provides or collects funds with the aim that they should be used or knowing that they are to be used, in full or in part, in order to perpetrate:

a) The criminal offence referred to in
*Article **200** (Taking of Hostages) and **201** (Terrorism)*
***or:** Article **299** (Terrorism) and **300** (Taking of Hostages)*
***or:** Article **197** (Taking of Hostages) and **198** (Terrorism)*
of this Code;

b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel the authorities
in the Federation / of the Republic Srpska / of** Brčko **District
to perform or to abstain from performing any act, shall be punished by imprisonment for a term between one and ten years.

205. It needs to be noted at this point that both CC-RS Article 301 and CC-BD Article 199 had already been included in the respective Codes and were actually in force at the time of the first round evaluation[20] and this is why it might have been a mistake of the previous evaluation team to state and discuss in their report that there was no separate criminal offence of financing of terrorist acts in the Criminal Codes of Republic Srpska and Brčko District and that the perpetrators of financing of terrorist acts could only be prosecuted under the general provisions on aiding and abetting.

206. As neither of the respective provisions has changed since the previous evaluation round, the recommendations and comments the previous evaluation team expressed as regards the criminalisation of terrorist financing in CC-BiH and CC-FBiH are thus valid for all four jurisdictions within Bosnia and Herzegovina.

[20] See these provisions in the gazetted versions of the two Criminal Codes at http://tuzilastvobih.gov.ba/files/docs/zakoni/RS_Criminal_Code_49_03,108_04_web.pdf and http://tuzilastvobih.gov.ba/files/docs/zakoni/BD_Criminal_Code_10_03_45_04_eng_web.pdf respectively.

207. It can be seen clearly that all four terrorist financing offences follow the language and concept of Article 2 of the 1999 UN International Convention for the Suppression of the Financing of Terrorism yet they fall short of providing full compliance with its requirements. That is, there is no provision that would, in accordance with Article 2(3) of the said Convention make the collecting of funds with the aim of being used for terrorist acts punishable even when a terrorist act is not committed. Furthermore, the host authorities deemed it necessary to note in their replies to the MEQ that *"the perpetrator of crime offence of funding terrorist acts may be prosecuted pursuant to provisions on aiding and abetting in cases where terrorist act for which funds were being gathered has not been committed"* which statement, apart from the serious doubts concerning its actual applicability, would lead to non-compliance with SR.II considering what is required by Footnote 48 to Criterion II.1 (the criminalisation of terrorist financing solely on the basis of aiding and abetting, attempt, or conspiracy does not comply with SR.II).

208. On the other hand, the evaluators do not consider it a deficiency that the element of the offence where the purpose is to compel an international organisation is only covered by CC-BiH Article 202 but not in the other Codes: as it had also been explained to the previous evaluation team, it is fully understandable that terrorist financing offences involving such international characteristics should only be dealt with by state-level jurisdiction and therefore they were deliberately omitted from the legislation of the Entities and Brčko District.

209. Apart from the mere compliance with the Terrorist Financing Convention, SR.II requires the criminalising of the financing of terrorism, terrorist acts and terrorist organisations as well as that such offences be money laundering predicate offences. The Methodology notes that financing of terrorism should extend to any person who wilfully provides or collects funds by any means, directly or indirectly with the unlawful intention that they should be used in or in the knowledge that they are to be used, in full or in part (i) to carry out a terrorist act/s (ii) by a terrorist organisation or (iii) by an individual terrorist. In this regard, the criminalisation achieved in Bosnia and Herzegovina is clearly deficient as it does not cover the funding of terrorist organisations or individual terrorists.

210. In the absence of jurisprudence, it is also unclear whether the above offence(s) would cover the full definition of "funds" according to Criterion II.1b. As the money laundering offence follows an all crimes approach, the respective terrorist financing offences, as far as they extend in coverage, are predicate crimes for money laundering (Criterion II.2).

211. As was already noted in the previous report, CC-BiH Article 12 (Applicability of the Criminal Legislation of Bosnia and Herzegovina to Offences Perpetrated outside the Territory of Bosnia and Herzegovina) provides for the possibility to prosecute the offence of terrorist financing irrespective of whether the terrorist offence for which the funds were gathered was committed abroad or domestically. Criminal Codes of the Entities and Brčko District contain similar provisions "one level lower" that is, on the applicability of the respective Criminal Code to offences perpetrated outside of the given part of the country but still within the territory of Bosnia and Herzegovina – that is, terrorist financing offences related to any international dimension covered only in CCBiH, such as the above mentioned example concerning compelling of international organisations, would necessarily fall under the exclusive competence of state-level jurisdiction.

212. Criminalisation of terrorist financing at both major level of criminal legislation was likely intended to achieve full coverage of the issue, somewhat similarly to the approach followed in case of money laundering criminalisation as discussed above. However, it is still rather unclear when the state-level Court, rather than the Entities and Brčko District would have jurisdiction in financing of terrorism cases as far as financing related to similar terrorist

activities is concerned. In any case, the evaluators have no information about guidelines issued on this matter.

213. Though neither level of Bosnia-Herzegovinian criminal legislation contains any explicit provision whether the intentional element of a criminal offence, including terrorist financing, may be inferred from objective factual circumstances, the evaluators learnt that this issue has been put beyond doubt by relevant judicial practice examples of which were, at least from the state-level court practice, available to the examiners as well as discussed in relation to R.2 above. As for the issue of corporate criminal liability, the analysis given under Section 2.1 applies also for terrorist financing respectively.

214. Funding of terrorist activities is not among the criminal offences frequently being investigated and prosecuted in Bosnia and Herzegovina. In fact, there was only one case mentioned as having occurred in the time period under examination: according to the statistics provided by the Prosecutor's Office of Bosnia and Herzegovina, a report was filed regarding such an offence with the involvement of 4 persons against whom a formal investigation was initiated by the prosecutor although eventually, no indictment was issued. Nevertheless the lack of concrete cases in itself cannot be considered as a concern though the evaluators were made aware of existing FT related suspicion regarding some of the post war NGO activity in the BIH..

215. Apart from the coverage of terrorist financing in the Criminal Code, the evaluators noticed that state-level legislators deemed it useful to insert a different definition of terrorist financing into the recently enacted new AML Law) that was adopted shortly after the on-site visit took place in Bosnia and Herzegovina) which provides in its Article 2(2) that:

> *"Financing of terrorist activities" means:*
> *a. Providing or collecting funds, directly or indirectly, with the aim that they should be used or knowing that they are to be used, in full or in part, for perpetration of terrorist acts by individual terrorists and/or terrorist organisations.*
> *b. Financing of terrorist activities also means the incitement and assistance in providing and collecting of property, regardless the fact whether the terrorist act was committed and whether the property was used for perpetration of the terrorist act."*

216. The evaluators noted with surprise that this definition is significantly more in line with the language of the Methodology in terms that it expressly addresses situations where the terrorist act was not committed and/or the property was not used for perpetration of such an act – that is, where practitioners of criminal law would, according to what they wrote in their answers to the MEQ, erroneously resort to the application of aiding-and-abetting rules.

217. Certainly, not even this definition is broad enough to encompass the notion of all the three activities (financing of a terrorist act, a terrorist organisation and an individual terrorist) prescribed by Criterion II.1a nevertheless it appears evident that it is far more in line with the said Criterion. Unfortunately, this definition is not applicable in criminal cases – there is no connecting clause that would allow for such an application instead of what is provided in the Criminal Codes themselves and therefore this "double definition" approach is rather misleading and should be abandoned (which would bring back the solution applied in the previous AML Law in which "terrorist financing" (funding of terrorist activities) was simply defined by a short reference to acts so defined by criminal legislation

2.2.2 Recommendations and comments

218. As it is described above, the criminal offence of funding of terrorist activities is quite comprehensive in its coverage at all levels of the jurisdiction, taking into account the scope of

the respective criminal offences of terrorism in all the respective Criminal Codes, except for the fact that it is, as its designation implies, targeted almost exclusively at the financing of "activities". Consequently, the present incrimination of terrorist financing in all four Criminal Codes does not appear wide enough to clearly provide for criminal sanctions concerning the collection and provision of funds with the unlawful intention that they are to be used, in full or in part, by a terrorist organisation or by an individual terrorist as required by SR.II.

219. Evaluators thus need to reiterate the recommendation given by the previous team according to which the respective criminal laws should be amended clearly to incorporate the funding of terrorist organisations and individual terrorists, both at State level and that of the Entities and Brčko District.

220. Domestic authorities at all competent level may also wish to satisfy themselves that the full definition of "funds" according to Criterion II.1b is properly covered by the current terrorist financing offences.

221. It is a further and more systemic question, also involving political considerations, whether financing of terrorism should remain criminalised at all levels of legislation in Bosnia and Herzegovina or be qualified among those exclusively dealt with at state level. Evaluators of the previous round found that the criminalisation of financing of terrorism appeared to be incapable of effective implementation at entity (and Brčko District) level, where the possibilities for political interference and delays in investigations of such cases were said to be greater and therefore strongly advised that the investigation and prosecution of financing of terrorism become primarily a State level responsibility as a matter of urgency, and that a coordinated approach to these investigations is pursued. The present evaluation team shares this opinion, especially as terrorist financing offences posing a higher level of threat, like those with specific international characteristics are already dealt with only by state-level jurisdiction, and considering that no legislative steps seem to have been taken in this respect they reiterates the above recommendation.

222. Finally, the authorities of Bosnia and Herzegovina should consider abandoning the use of "double definitions" of legal terms pertaining to criminal substantive law in multiple legal sources, such as the term "terrorist financing" re-defined in the recently adopted new AML-CFT law and bring back the solution applied in the previous law, where such a term was simply defined by a short reference to the Criminal Code provision.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• The present incrimination of terrorist financing ("funding of terrorist activities") in all four Criminal Codes appears not wide enough to clearly provide for criminal sanctions concerning the collection and provision of funds with the unlawful intention that they are to be used, in full or in part, by a terrorist organisation or by an individual terrorist as required by SR.II. • Further clarification is requires as to the coverage of "funds" as provided for by CC-BiH Article 202 and similar offences in the other three Criminal Codes respectively.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and analysis

223. The confiscation and provisional measures regimes being in force and effect at the time of the third on-site visit were practically the same at all levels of jurisdiction as in the first round of evaluation. Some conclusions the first round evaluators had drawn needed to be nevertheless corrected and therefore the present findings are not necessarily similar to those in the previous report.

224. First of all, it needs to be underlined that the confiscation and provisional measures regimes are practically identical at all levels of jurisdiction. Because of this, the system will be described and analysed as a whole, on the basis of the legal provisions as they are set out in the state-level Criminal and Criminal Procedure Codes, with appropriate references to the corresponding articles in the Codes of the two Entities and Brčko District and paying special attention to the very few cases of difference occurring between the respective Codes.

225. In most of the English versions of the different Criminal Codes and Criminal Procedure Codes of Bosnia and Herzegovina which the examiners were provided with during and subsequent to the onsite visit, including the equally official English versions that can be downloaded from various governmental websites,[21] there appears some confusion about the use of terms such as "forfeiture" "seizure" or "confiscation". Normally, the term "seizure" typically means a provisional measure consisting of temporary deprivation of property, while the terms "confiscation" and "forfeiture" rather imply definite measures. The English versions of Bosnian-Herzegovinian laws, however, use these terms quite randomly (e.g. "seizure of property" is actually one of the punishments applicable to legal persons under CC-BiH) while, in most of the cases, it is the very same word that stands for all these legal terms in the original language versions.

226. As a solution, the report will consistently apply the term "seizure" for temporary measures and "confiscation" for definite ones. Certainly, in the legal texts inserted into the report as quotations, the original (though sometimes inaccurate) wording will be used, but in such instances the report will provide adequate guidance to avoid any misunderstanding.

227. As a general rule, the confiscation regime is conviction based as is expressed by Article 285(1) subpara e) of the CPC-BiH: *"In a guilty verdict, the Court shall pronounce (…) a decision on security measures and forfeiture of property gain"* which provision clearly covers both the confiscation of the instrumentalities of a criminal offence (which is one of the "security measures") and that of the proceeds of crime ("*property gain*"). Identical provisions can be found in all Criminal Procedure Codes of the Entities and Brčko District (CPC-FBiH Article 300(1)e, CPC-RS Article 291(1)e and CPC-BD Article 285(1)e). As far as confiscation of proceeds of crime is concerned, the legislators deemed it necessary to reiterate the above rule by inserting a parallel provision in all four Criminal Codes according to which proceeds *"shall be confiscated by the court decision, which established the perpetration of a criminal offence"* (see paragraphs (2) of CC-BiH Article 110, CC-FBiH and CC-BD Article 114 and CC-RS Article 94). There are, however, certain exceptions from this general rule which will be discussed later.

228. The confiscation of proceeds of crime ("property gain acquired by the perpetration of a criminal offence") is catered for under Article 110 of the state-level Criminal Code, which

[21] Like the website of the Court of B&H (http://sudbih.gov.ba/?opcija=sadrzaj&kat=6&id=20&jezik=e) or that of the B&H Prosecutor's Office (http://tuzilastvobih.gov.ba/?jezik=e#)

declares that *„nobody shall be allowed to retain material gain acquired by the perpetration of a criminal offence"* and requires that this gain, as mentioned above, be confiscated by the court (similar provisions can be found in CC-FBiH and CC-BD Article 114 and CC-RS Article 94).

229. CC-BiH Article 110 is a general provision thus related to money laundering as well as any other types of crime. Its strict language, apparently leaving no doubt that confiscation of proceeds is compulsory ("nobody shall be allowed to retain material gain...") makes it the most robust part of the confiscation regime. As for the related procedural rules, it is CPC-BiH Article 392(1) which requires the *ex officio* ascertainment in criminal proceedings whether there has been any property gain obtained as a result of the commission of the respective criminal offence, laying this duty on the public prosecutor who *"shall be obligated to collect evidence during the proceedings and examine the circumstances that are important for the establishment of the property gain"* (Para 2). Nevertheless, *"the Court shall establish the value of property gain by a free estimate if the establishment would be linked to disproportional difficulties or a significant delay of the procedure"* (Article 394) which, as it was explained in the MEQ, most commonly occurs in cases when material gain consists of objects that are not confiscatable because of their destruction or disappearance and it is difficult to determine their equivalent value. (CPC-BiH Article 392/394 corresponds to the same articles in CPC-BD while to Article 413/415 in CPC-FBiH and Article 403/405 in CPC-RS).

230. Turning to the object of confiscation of material gain, the language of the respective Criminal and Criminal Procedure Codes appear to be wide enough to cover any sorts of property. As it was explained by host authorities in the MEQ, material gain acquired through perpetration of a criminal offence is every increase of property or prevention of "a normally required" decrease of property which is, directly or indirectly, in a causal relation to a perpetrated criminal offence. In other words, all property acquired through or resulting from the perpetration of a criminal offence, including objects or rights, moveable or immoveable assets as well as acts or documents proving a title or right to such property.

231. This part of the confiscation regime has elements of both property and value based systems. Pursuant to CC-BiH Article 111(1) value confiscation applies if it is impossible to confiscate the property constituting proceeds of crime:

> *All the money, valuable objects and every other material gain acquired by the perpetration of a criminal offence shall be confiscated from the perpetrator, and in case the confiscation is not feasible - the perpetrator shall be obliged to pay an amount of money which corresponds to the acquired material gain.*

232. That is, in case the confiscation of material gain is not possible in the form in which it was originally acquired (typically when a valuable object can no longer be found because it is hidden, sold or destroyed), the court is allowed to make a corresponding value order. Identical provisions can be found in CC-FBiH and CC-BD Article 115(1) and CC-RS Article 95(1).

233. The confiscation regime also covers substitute assets and other indirect proceeds of crime. The state-level Criminal Code as well as those of the Federation and Brčko District also provide for confiscation of commingled proceeds as well as income or other benefits. The respective provisions that can be found in CC-BiH Article 111(2)-(3) as well as CC-FBiH and CC-BD Article 115(2)-(3) all read as follows:

> *(2) If proceeds of a criminal offence have been intermingled with property acquired from legitimate sources, such property may be liable to confiscation not exceeding the assessed value of the intermingled proceeds.*

(3) Income or other benefits derived from the proceeds of a criminal offence, from property into which proceeds of criminal offence have been converted, or from property with which proceeds of criminal offence have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and extent as the proceeds of the criminal offence.

234. Paragraph (2) above refers to proceeds of crime being commingled with legally acquired property which, pursuant to the general rule, are subject to confiscation but to a degree that does not surpass the estimated value of the proceeds. In such cases, the court may either confiscate a specific part of the entire property that is equivalent to the value of the proceeds (as far as the property can be so divided) or oblige the defendant to pay the value equivalent. The regime remains mandatory, which is not affected by the use of the verb "may" as it only refers to the limit to which such kind of confiscation is applicable. Income and benefits are also subject, to a significantly large extent, to compulsory confiscation pursuant to para (3).

235. Surprisingly, the Criminal Code of Republic of Srpska is silent on all these issues as it contains no provision specifically dealing with confiscation of proceeds commingled with legitimate assets or that of income or benefits derived from proceeds of crime. Due to the lack of any judicial practice in this field, it could not be clarified whether and to what extent RS criminal law allows for these specific sorts of confiscation.

236. Confiscation of proceeds of crime committed by a legal entity is dealt with by CC-BiH Article 140 (similarly to CC-FBiH and CC-BD Article 144 and CC-RS Article 143) as follows:

If a legal person acquires material gain by the perpetration of a criminal offence, the material gain acquired by the perpetration of a criminal offence shall be confiscated from the legal person.

Apparently, there is no difference between the regimes applicable to natural and to legal persons: confiscation of proceeds is mandatory in both cases and procedural rules are equally the same. Nonetheless, confiscation of property gain is not the only way by which legal entities involved in laundering activities can be deprived of their illicit assets .

237. As it was explained by Bosnian-Herzegovinian authorities in their replies to the MEQ, the confiscation of property gain (both in CC-BiH Article 110-111 and Article 140) is not considered a criminal justice sanction or punishment but a special criminal justice measure to be applied as a consequence of a perpetration of a criminal offence through which a material gain has been acquired. As far as corporate criminal liability is concerned, however, the CC-BiH provides for the "seizure of property" as a specific punishment that can only be imposed on legal persons pursuant to Article 131(b) and, more in details, to Article 133 as follows:

Seizure of Property
Article 133

(1) The seizure of property may be imposed for criminal offences for which a punishment of imprisonment for a term of five years or more severe punishment is prescribed.

(2) From a legal person at least half of the property or the major part of the property or the entire property may be seized.

238. The term "seizure of property" that is used in the English version of the law is somewhat misleading as "seizure" usually denotes a measure consisting of temporary deprivation of property. The literal translation of the original term would however be "punishment of seizure

of property" (*kazna oduzimanja imovine*) thus there is actually a more precise language in the law that would prevent confusion.

239. The punishment of seizure of property (hereinafter "seizure of property") is one of the applicable punishments for legal entities thus its application is necessarily optional (as opposed to the confiscation of property gain under CC-BiH Article 140 above). Taking into account the range of punishment for the offences of money laundering (core offence: 6 months to 5 years) and the funding of terrorist activities (1 to 10 years) the "seizure of property" is applicable to both offences.

240. Identical provisions can be found in CC-FBiH Article 136 and CC-BD Article 137. The Criminal Code of Republic Srpska also contains a similar provision in Article 136 with minor differences in its paragraph (2) which, in the view of the domestic authorities, make no difference in the actual application of the law.

241. Following on with the issue of instrumentalities, the essential criterion 3.1 requires that laws provide for the confiscation of property that constitutes instrumentalities either used in or intended for use in the commission of any money laundering, terrorist financing or other predicate offences. At the State level, it is Article 74 of CC-BiH that provides for the confiscation ("forfeiture") of instrumentalities as well as objects resulting from the commission of a criminal offence:

Forfeiture
Article 74

(1) Forfeiture shall be ordered with regard to objects used or destined for use in the perpetration of a criminal offence, or to those that resulted from the perpetration of a criminal offence, when there is a danger that those objects will be used again for the perpetration of a criminal offence or when the purpose of protecting the public safety or moral reasons make the forfeiture seem absolutely necessary, if those objects are owned by the perpetrator.

(2) Objects referred to in paragraph 1 of this Article may be forfeited even if not owned by the perpetrator when consideration of public safety or moral reasons so require, but such forfeiture does not affect the rights of third parties to obtain damage compensation from the perpetrator.

(3) The law may provide for mandatory forfeiture in the case of paragraph 2 of this Article.

242. This "security measure" is directly applicable also against legal persons. It comes from CPC-BiH Article 137 which, while defining specific security measures[22] applicable only to legal entities, provides that these measures may be imposed *"in addition to the security measure of forfeiture referred to in Article 74 (Forfeiture) of this Code"* which leaves no doubt about the applicability of the latter to legal entities. (All non-state level Criminal Codes provide similarly, CC-FBiH and CC-BD in their Article 141 and CC-RS in Article 140).

243. In the definition given by CC-BiH Article 74(1) above, the phrase *"objects used or destined for use in the perpetration of a criminal offence"* adequately corresponds to the requirements of Criterion 3.1 and also appears to provide for obligatory confiscation of assets intended to finance terrorism, to the extent this offence is criminalised under Bosnian-Herzegovinian law. The power to order measures under this provision is thus mandatory, though subject to further conditions which, in the evaluators' view, may unnecessarily restrict its applicability by requiring, for example, that the prosecution prove it is "absolutely

[22] publication of judgement and ban on performing a certain activity

necessary". Such an evidential standard might to some extent prejudice an effective prosecution bringing a discretionary element into the otherwise mandatory regime.

244. Mandatory confiscation of instrumentalities, as a general rule, is thus applicable to objects owned (though not necessarily possessed) by the perpetrator while those being the property of third persons can be confiscated on a discretionary base under paragraph (2) above. Nevertheless, the legislator provided for an exemption from this rule in paragraph (3) allowing that in these cases *"the law may prescribe mandatory forfeiture"* of instrumentalities and other objects even if they are not owned by the perpetrator.

245. The regime for confiscation of instrumentalities is the same under CC-FBiH and CC-BD (see Article 78 in both Codes) while it is significantly different in the Criminal Code of Republic Srpska where Article 62(1) provides that

> *(1) Items used or destined for use in the perpetration of a criminal offence, or those items resulted from the perpetration of a criminal offence may be forfeited, if those items are owned by the perpetrator.*

246. The substantial difference is that confiscation of instrumentalities and objects resulting from the perpetration of a criminal offence is not mandatory but left to the discretion of the court, as the text expressly refers to "may be forfeited" ("*mogu se oduzeti"*) instead of "shall be forfeited" ("*oduzet će se*") as prescribed in the other three Criminal Codes. On the other hand, the application of this measure is not subject to any other condition than the respective objects be owned by the perpetrator, which significantly reduces the evidentiary task of the prosecution compared to the regime in the other three Codes where, as mentioned above, rather vague conditions must be proven.

247. Turning back to the exemption in CC-BiH Article 74(3) it applies to a number of serious criminal offences. In case of illicit trafficking in narcotic drugs, for example, CC-BiH Article 195(4) prescribes mandatory confiscation of both the drugs (since they "resulted from the perpetration of a criminal offence") and means for their production, regardless of their ownership. Accordingly, in Chapter XVIII of the CC-BiH ("Criminal Offences against the Economy, Market Integrity and in the Area of Customs") where the offence of money laundering can also be found, such "mandatory forfeiture" clauses are attached to a number of criminal offences, especially to those related to counterfeiting activities (Article 205-208). It needs to be noted that, in such cases, confiscation of instrumentalities and other objects seems not only mandatory but also unbound by the conditions set out in Article 74(1)-(2) as these specific rules prescribe the confiscation of such objects without any apparent restriction or condition. (Similar provisions can be found in all three non-state level Criminal Codes related to, for example, the offences of unauthorised production and sale of narcotic drugs, counterfeiting of securities or credit cards etc.)

248. On the face of it, all this is quite similar to the specific confiscation rule that is attached to the offence of money laundering in CC-BiH Article 209(4) (similarly to CC-FBiH Article 272[4] CC-RS Article 280[6] and CC-BD Article 265[4]) as follows:

> *(4) The money and property gain referred to in paragraph 1 through 3 shall be forfeited.*

249. In this context, the evaluators note that Article 209(4) is actually considered by the Bosnian authorities as *lex specialis* regarding Article 74. Nevertheless, money and property referred to in paragraphs (1) to (3) of Article 209 however, cannot be classified under Article 74 as they neither are instrumentalities of a criminal offence nor came into being by the perpetration of such an act (not even in the context of the predicate offence, since the money

to be laundered is not a product but proceeds of the underlying criminal activity). Instead of that, Article 209(4) refers to the illicit money and property which, pursuant to the preceding paragraphs, represent the object of the money laundering offence, that is, the property to be or having been laundered. Such a mandatory confiscation rule is therefore in line with Criterion 3.1 that requires the confiscation of "property that has been laundered".

250. While the laundered property is clearly covered by Article 209(4) there seems to be no provision available that would prescribe, according to Article 74(3), mandatory and unconditional confiscation of instrumentalities used in or intended for use in the commission of a money laundering offence. It is therefore assumed that such items may only be confiscated pursuant to the general rules set out in Article 74.

251. On the other hand, it also needs to be examined whether Article 209(4) can be interpreted so as to encompass not only the money or property the perpetrator has laundered but also the proceeds he gained from the commission of the money laundering offence. Evaluators of the first round were informed that mandatory confiscation of the "money or property gain" in Article 209(4) meant "both the objects/instrumentalities and the proceeds of a money laundering offence, though this has not been tested in any decided cases". In the meantime, the Court of Bosnia and Herzegovina also expressed in one of its verdicts[23] available to the evaluators: *"In fact, crime shall not pay and the most effective way to fight against these kinds of crimes is to take away the proceeds. On the other hand, it is clear that the Article 209 Paragraph 4 of the CC of BiH is a command in order to the confiscation of the money and the property gained by this criminal offence"* (that is, the money laundering offence for which the defendant had been convicted).

252. Nevertheless, the examiners of the present round have doubts about the direct applicability of CC-BiH Article 209(4) to the confiscation of proceeds derived from the money laundering offence. The wording of paragraph (4) makes it quite evident that this provision refers to "money and property gain" only to the extent these terms are covered by paragraphs (1) to (3) that is, proceeds derived from other, predicate criminal offences ("*money or property …acquired through perpetration of criminal offence"*) and definitely not to the material gain the laundering activity itself yielded for the money launderer which could therefore be confiscated only under the general rules in CC-BiH Article 110 and 111. (Certainly, such a distinction only applies in cases of classic (third person) money laundering while in case of own-proceeds laundering the entirety of the laundered assets can be considered as proceeds of money laundering.)

253. Because of the specific characteristics of the money laundering cases adjudged by the Court of Bosnia and Herzegovina, the evaluators could not form a clear picture of how the applicability of Article 209(4) is actually reflected by the judicial practice. Whenever the court confiscates from persons convicted for money laundering any money or property that has been laundered, the verdict typically makes reference to Article 209(4) always together with Article 110-111 (i.e. the general provisions dealing with confiscation of proceeds of crime). In a typical case, for example, the court ruled that "*pursuant to Articles 110 and 111, in conjunction with Article 209(4) of the CC BiH the property gain that was acquired through the perpetration of the criminal offense and transferred by the accused to the company referenced above (...)is hereby forfeited.* In this case (and in numerous others) the defendant committed money laundering by "*receiving cash from various legal entities and immediately transferring it to the accounts of those legal entities, simultaneously issuing fictitious order forms and declarations of exemption from payment of turnover tax"* thus the money he received for being laundered cannot be considered as property gain that he acquired through the perpetration of his criminal offence – and from a legal dogmatic point of view, this sum of

[23] http://sudbih.gov.ba/files/docs/presude/2005/Karic_ENG_KPV_15_04.pdf

money could not have been confiscated from him upon the base of Article 110-111 solely under Article 209(4). Having said that, however, the evaluators will not insist on legal preciseness in this field until domestic authorities and especially the (state-level) judiciary can see no apparent problem in interpreting the law this way which, on the other hand, actually proved to be applicable for seizure of laundered proceeds.

254. Value confiscation is not applicable in case of instrumentalities and other objects confiscatable pursuant to CC-BiH Article 74. It was also confirmed by domestic authorities at the pre-meeting that value confiscation would not apply to the property confiscated under Article 209(4).

255. *In rem* confiscation is provided by Article 391(1) of the state-level Criminal Procedure Code according to which the objects that need to be confiscated under the Criminal Code of Bosnia and Herzegovina "*shall be forfeited* (i.e. confiscated) *also when the criminal proceedings were not completed by a verdict finding the accused guilty, if so required by the interests of general security and ethics, on which a separate decision shall be issued."* This provision refers to cases where the criminal proceedings have in fact terminated but conviction of the perpetrator had not been possible, like in cases where the offender could not be identified or the criminal proceedings had to be discontinued, where the court (the judge or the panel, respectively) issues the ruling on confiscation "*at the moment when the proceedings are completed or when dismissed*".

256. Paragraph (3) of the same article provides for a further opportunity for *in rem* confiscation of objects:

> *The ruling on forfeiture of items referred to in Paragraph 1 of this Article shall be issued by the judge or Panel when the verdict, which declares the accused guilty, fails to issue such a decision.*

which case is obviously different from that one described in paragraphs (1)-(2) where there is no guilty verdict issued. Paragraph (3) must therefore refer to cases where there are items that actually have to be confiscated (because they were used as instrumentalities etc.) nevertheless the court, while pronouncing a guilty verdict on the accused, inadvertently omits to rule on the confiscation of items. (Similar provisions can be found in CPC-FBiH Article 412, CPC-RS Article 402 and CPC-BD Article 391.)

257. Nevertheless, the conditions under which *in rem* confiscation can be applied are, in the view of the evaluators, unusually insubstantial ("interests of general security" etc.) so there is too much room left for judicial discretion.

258. Considering that Article 391 appears to cover only objects (items) that must be confiscated according the CC-BiH, it should evidently cover instrumentalities and other objects that are to be confiscated under CC-BiH Article 74. As the latter provision is interpreted as *lex generalis* regarding Article 209(4) the Bosnian authorities are confident that CPC-BiH Article 391 would automatically cover money and objects confiscatable pursuant to Article 209(4).

259. As for the confiscation of proceeds of crime, that is, material gain acquired through perpetration of a criminal offence, the regime is different. The principle that apparently governs this issue is, as it was expressed in the MEQ, that *"without the court decision determining that the criminal offence has been perpetrated, there is no forfeiture of material gain"* which makes it quite obvious that a system of confiscation without conviction (the so-called civil forfeiture) does not exist in the laws of Bosnia and Herzegovina. This feature of the confiscation regime had already been detected by the first round evaluators who however came across "ambitious proposals for civil forfeiture" strongly supported by the OHR and other members of the international community. The first round team did not discourage these

initiatives yet proposed to give priority to establishing a clearer understanding and an effective implementation of the criminal confiscation legislation before embarking on more sophisticated systems like that. In this context, the evaluators of the present round notice that apparently nothing has since changed. Furthermore, no domestic interlocutors mentioned any current development in criminal legislation in this direction.

260. Confiscation of proceeds thus always requires a verdict or a similar definitive decision as it is clearly defined by CPC-BiH Article 396(1) as follows

> *The forfeiture of property gain obtained by commission of criminal offense may be pronounced by Court in a verdict by which the accused is declared guilty, in a ruling on application of a correctional measure and in a proceeding referred to in Article 389 of this Code.*

261. The rule is the same under the other three Codes (CPC-BiH Article 417 CPC-RS Article 407 and CPC-BD Article 396) with the only exception that the Criminal Procedure Code of Republic Srpska contains an additional sort of court decisions ("a decision on judicial admonition") in this respect. In the last two (in CPC-RS: three) cases the accused is not declared guilty but these procedures still "*determine the perpetration of the criminal offence in an objective sense, i.e. that the criminal offence was perpetrated and that it caused harmful consequences"* as it was expressed in the MEQ. (Reference to Article 389 denotes the procedure followed in case of mental incompetence of the accused.)

262. It was recommended by the previous evaluation team that consideration be given to provisions in the criminal procedure which would enable the confiscation of proceeds where the criminal procedure cannot be concluded, because the offender, for example, dies or absconds, or for some other reason, on condition that there is a proof that the assets derive from criminal offences. Indeed, neither of these situations appear to be covered by the articles quoted above. Although the Bosnian authorities explained that confiscation in such circumstances is not expressly prohibited by the respective Criminal Procedure Codes and therefore it could (and actually can) be carried out through practical analogical application of the provisions that regulate confiscation from third parties (considering, for example, heirs of the deceased as "third parties") the evaluators are not convinced about the soundness of such an interpretation and urge legislative development in this respect.

263. Criminal procedural rules in Bosnia and Herzegovina primarily oblige the public prosecutor to collect evidence during the procedure and investigate relevant circumstances for determining proceeds acquired through the perpetration of the criminal offence. It means that neither of the respective Codes had so far introduced a general reversal of the burden of proof in the framework of measures targeting the proceeds of crime, by which suspects would be required to demonstrate the legitimate origin of their assets, in order to avoid being deprived of them. Lack of a provision allowing for such a reversal of evidentiary burden was recurrently brought up by domestic interlocutors, from all levels of jurisdiction, as a major shortcoming of the confiscation regime.

264. This is why the evaluators found CC-BiH Article 110(3) quite interesting. This paragraph provides that

> *(3) The court may also confiscate the gain referred to in paragraph 1 of this Article in a separate proceeding if there is a probable cause*[24] *to believe that the gain derives from a criminal offence and the owner or possessor is not able to give evidence that the gain was acquired legally.*

[24] In a more accurate English version it is "justifiable reason".

265. On the face of it, Article 110(3) appears to provide for a separate and, supposedly, post-conviction procedure for assessing what proceeds can be confiscated, with the owner or possessor of proceeds (most likely the defendant) being able to give evidence that property in his possession was acquired legally. Evaluators of the first round found that although it was generally unclear how this provision was intended to work in practice, it appeared to provide courts, at least in theory, with the opportunity of confiscating a wide range of indirect proceeds. No judicial practice has since brought into the attention of the evaluation team regarding the application of this specific paragraph and indeed, Bosnian-Herzegovinian authorities confirmed at the pre-meeting that this provision had not yet been applied in judicial practice. On the other hand, they advised that in the above context, the term "separate proceedings" would refer to a separate non-criminal i.e. civil court procedure. On the face of it, this interpretation appears to introduce the notion of some civil confiscation into the legislation of Bosnia and Herzegovina nonetheless the evaluators remain doubtful as to whether Article 110(3) in itself could actually serve as a legal base for initiating such a civil procedure. In any case, it is still unclear how this provision would work and particularly whether the onus would actually be on the defendant in such a proceeding, either criminal or civil, to prove that assets were lawfully acquired, and if so, to what evidential standard

266. Non-state level Criminal Codes regulate this issue accordingly, except for that of the Republic Srpska, from the respective article of which (CC-RS Article 114) such a provision is entirely missing. Due to a lack of appropriate statistics and information on case practice, the evaluators could not assess the actual impacts of the absence of paragraph (3) in CC-RS. Nevertheless, it necessarily reduces the ways by which authorities may confiscate proceeds derived from crime and therefore it must be considered a deficiency. Moreover, the authorities of RS were of the opinion that the CC-RS should, in this respect, be harmonised with other Criminal Codes in Bosnia and Herzegovina.

267. Confiscation from third parties is possible under Bosnia-Herzegovinian law. In the state-level Criminal Code, it is expressly provided as regards confiscation of both proceeds of crime in Article 111(1) and instrumentalities and other objects in Article 74(2) and (3). The protection for the rights of *bona fide* third parties is likewise provided, though not to the same extent, in both regimes.

268. According to the second sentence of CC-BiH Article 111(1) and to the respective, identical provisions in the other three Codes (CC-FBiH and CC-BD Article 115[1] and CC-RS Article 95[2]) the confiscation of proceeds from third parties is subject to two separate conditions

> *(...)Material gain acquired by perpetration of a criminal offence may be confiscated from a person to whom it has been transferred without compensation or with a compensation which does not correspond to the real value, if the person knew or could have known*[25] *that the material gain had been acquired by the perpetration of a criminal offence.*

269. First is the question of counter-value: proceeds transferred to a third person cannot be confiscated unless he/she had acquired them without compensation or with compensation not corresponding to the real value. Then comes the issue of knowledge: even in such circumstances, confiscation from the third person can only take place if the property has not been acquired in good faith. There are therefore two factors that need to be taken into account and thus the prosecutor needs to prove not only the mental element of the third person who acquired the proceeds (whether or not he/she acted in good faith) but also that the proceeds were purchased below the real value. However, all these high standards of evidence only serve to protect the *bona fide* purchaser for value, yet do not hamper the State's interest in taking away all illicit proceeds, which is properly secured by the value confiscation regime.

[25] Translated in certain English versions as "should have known" nevertheless the more accurate is "could have known" ("*mogla znati*" in original).

270. Rights of *bona fide* third parties are also protected by criminal procedural law. Among the rules of proceedings for the confiscation of property gain obtained by commission of criminal offence, Article 393 of the state-level Criminal Procedure Code provides that the person to whom the property gain was transferred, as well as the representative of the legal entity, shall be summoned for interrogation in pre-trial proceedings and at the main trial, where they are entitled to present evidence in relation to the establishment of property gain and to pose questions to the accused, witnesses and expert witnesses. (Identical rules are CPC-FBiH Article 414 CPC-RS Article 404 and CPC-BD Article 393.)

271. As far as instrumentalities and other objects not owned by the perpetrator are concerned, their confiscation also requires respect to third party rights as it is provided by CC-BiH Article 74(2). Contrary to the general regime, objects of this kind need not to be confiscated mandatorily but upon the discretion of the court ("may be forfeited") except in specific cases so prescribed in the Specific Part of the Code. Another difference is that out of the two optional conditions provided in paragraph (1) only one can be applied in the context of paragraph (2). As a result, the danger that the object "will be used again for the perpetration of a criminal offence" can only justify its confiscation if it is actually owned by the perpetrator. It is also for the protection of third party rights that such confiscation "does not affect the rights of third parties to obtain damage compensation".

272. Criterion 3.6 requires that there should be authority to take steps to prevent or void contractual or other actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. This issue was already noted by first round examiners as a "gap" that should be clarified or filled in practice by decided cases, nevertheless the legislation of Bosnia and Herzegovina still appears to contain no explicit provision at any level that would, in a general sense and with a view to all the criminal offences, fulfil this requirement and neither were the evaluators made aware of any practical solution in this field.

Provisional measures

273. The regime of provisional measures has not been amended at either level of jurisdiction in Bosnia and Herzegovina since the first evaluation round.

274. In the Criminal Procedure Code of Bosnia and Herzegovina it is Article 65(1) that provides for the "seizure of objects" as follows:

> *Objects that are the subject of seizure* [confiscation] *pursuant to the Criminal Code or that may be used as evidence in the criminal proceedings shall be seized and their custody shall be secured pursuant to a court decision*[26].

275. As a consequence, CPC-BiH Article 65(1) appears, on the face of it, to apply for any objects that can be confiscated pursuant to the CC-BiH including proceeds from crime as well as instrumentalities of or objects resulting from a criminal act and, obviously, money and objects having been laundered thus being confiscatable according to CC-BiH Article 209(4). On the other hand, the fact that Article 65(1) covers only "objects" and not "proceeds" in a broader sense (or "property/material gain" as it is generally used) implies that it must have been intended to cover only instrumentalities and objects resulting from the perpetration of a

[26] Corrections in the wording of the above provision were made necessary by inaccurate translation in the official English version. In the first line "seizure" evidently stands for "confiscation" ("*oduzeti*" – "to confiscate") thus not a temporary measure. In the second line, however, the term "seized" actually refers to what one would normally call "seizure" i.e. a temporary measure as it is obvious in the original version which literally means "temporarily confiscated" ("*privremeno će se oduzeti*" – "shall be confiscated temporarily").

criminal offence that can be confiscated under Article 74 of the Criminal Code as well as those falling under the scope of offence-specific provisions like Article 209(4) but not the proceeds of crime in a general sense. This opinion is supported by the fact that, in the Criminal Procedure Code, Article 65 can be found in the section dealing with "Seizure of Objects and Property" and considering that the temporary seizure of property is a separate measure in the same section under Article 73 one can assume that Article 65 is not intended to cover property gain acquired from the commission of criminal offences.

276. Pursuant to Article 65 (and, at non-state level, the identical provisions in CPC-FBiH Article 79, CPC-RS Article 129 and CPC-BD Article 65) the general rule is that objects are seized on the basis of a seizure warrant issued by the court (the preliminary proceedings judge) on the motion of the prosecutor or on the motion of "authorised officials" (that is, police officers) upon the approval of the prosecutor. Possessors of objects subject to seizure must turn them over at the warrant of the court or else they may be sanctioned by a fine or an imprisonment up to 90 days (or the surrender of the object). Nevertheless, if there is danger in delay, the seizure may take place even without the court order according to CPC-BiH Article 66 (and equally in CPC-FBiH Article 80, CPC-RS Article 130 and CPC-BD Article 66) where, if the person affected by the measure explicitly opposes the seizure of his items, the prosecutor shall put forward a motion to the preliminary proceedings judge for a subsequent approval of the seizure of items in 72 hours (that is, no judicial approval is required as far as the affected person does not contest the seizure). If the judge denies the prosecutor's motion, the items cannot be used as evidence in the criminal proceedings and they must be returned immediately.

277. Turning to the temporary seizure of illicitly gained property, it is regulated by CPC-BiH Article 73(1). In the text below, the underlined phrase was mistranslated in the official English version so it needed to be retranslated[27]

> *At any time during the proceedings, the Court may, upon the motion of the Prosecutor, issue a temporary measure* ***for seizure of property that has to be confiscated*** *under the Criminal Code of Bosnia and Herzegovina, arrest in property or shall take other necessary temporary measures to prevent any use, transfer or disposal of such property.*

278. CPC-BiH Article 73(1) thus provides for temporary seizure of any sort of property that is confiscatable pursuant to the CC-BiH in order to secure its confiscation. Another option is the "arrest in property" which, on the face of it, appears somewhat unclear as it is not defined anywhere else in the Criminal Procedure Code. As it was subsequently explained by domestic authorities, this term refers to cases where property is formally seized but, for some reasons, is left in the custody of its possessor while in cases of "ordinary" seizure the items are actually taken away to be taken in custody of state organs. Non-state level Criminal Procedure Codes regulate this matter in full accordance with the CPC-BiH (CPC-FBiH Article 87 CPC-RS Article 137 CPC-BD Article 73).

279. Similarly to the solution applied in CPC-BiH Article 66 (as discussed above) the Code allows for an exemption from the general rule that requires a court order for temporary measures also in case of Article 73 in its paragraphs (2) and (3) as follows:

> *(2) If there is a risk of delay, an authorised official may temporarily seize property referred to in Paragraph 1 of this Article, may carry out an arrest in property or take*

27 "The official English translation was "temporary measure seizing the illicitly gained property under the CC-BiH" which was wrong for more reasons. The term "illicitly gained" does not occur in the original language version at all which, on the other hand, contains a clear reference to the seizure ("*privremena mjera oduzimanja*" = "temporary measure of seizure/confiscation") of property that is to be confiscated ("*se ima oduzeti*") under the Criminal Code.

other necessary temporary measures to prevent any use, transfer or disposal of such property. An authorised official shall immediately inform the Prosecutor about the measures taken and the preliminary proceedings judge shall decide about the measures within 72 hours following the undertaking of the measures.

(3) If the approval is denied the measures taken shall be terminated and the objects or property seized returned immediately to the person from whom they have been seized.

280. Again, non-state level Criminal Procedure Codes follow the same regime. Any difference that can be detected between the different legal texts is that while in the CPC-BiH and CPC-RS the preliminary proceedings judge "decides" ("*odlučuje*") on/about the measures taken, the CPC-FBiH and CPC-BD requires that the measures be "confirmed" (or rather "authorised" i.e. "*odobrene*") by the same judge which difference is, in the evaluators' view, far from being significant.

281. Although the language of paragraphs (2)-(3) above appear to cover any sort of "property" that is, even intangible property items or real estate, the legislator deemed it useful to introduce a special regime for the appropriation of assets in the form of bank account money which are subject to freezing according to CPC-BiH Article 72(4)-(5) as follows:

(4) The court may issue a decision ordering a legal or physical person to temporarily suspend a financial transaction that is suspected to be a criminal offense or intended for the commission of the criminal offense, or suspected to serve as a disguise for a criminal offense or disguise of a gain obtained by a criminal offense.

(5) The decision referred to in the previous Paragraph shall order that the financial resources designated for the transaction referred to in Paragraph 4 of this Article and cash amounts of domestic or foreign currency be temporarily seized pursuant to Article 65 Paragraph 1 of this Code and be deposited in a special account and kept until the end of the proceedings or until the conditions for their return are met.

282. In the evaluators' view, the language of the latter provisions may be too restrictive as the law focuses on the suspension of financial transactions and the securing of "*financial resources designated for the transaction"* that is, assets that either have been or are intended to be transacted. While the term "financial resources" appear to embrace any sorts of immaterial assets, it is not self-evident what a "transaction" means in this context, in particularly, whether money or other assets simply deposited and kept on a bank account can be frozen pursuant to the above provision. Nevertheless, examination of verdicts brought by the Court of Bosnia and Herzegovina in money laundering cases, as far as they are available in English language on the internet, shows that judicial practice does accept the measure under Article 72(4) applicable to the seizure of bank account money in a general sense.

283. Freezing is regulated identically in all the other Criminal Procedure Codes (CPC-FBiH Article 86 CPC-RS Article 136 and CPC-BD Article 72 while reference is made to Articles 79/125/65 respectively.)

284. The FID i.e. the Bosnian-Herzegovinian FIU can also request that financial transactions be suspended for five working days, by virtue of Article 18 of the AML Law being in force at the time of the on-site visit:

(1) In order to perform its duties according to the provisions of this law, the FID may issue a written order temporarily suspending a transaction or transactions for 5 working days at most, if the FID suspects money laundering or funding of terrorist activities in connection with a transaction, an account or a person. The FID may issue

additional instructions to the person under obligation concerning the transaction, the suspension of the transaction, executing the transaction and communicating with the person or persons related to the transaction.

(2) In urgent cases the order may be issued verbally, but the FID shall be obliged to submit a written order to the person under obligation the following working day at the latest.

285. The situation and circumstances under which the latter measure can be applied are, of course, different from what may establish the application of CPC-BiH Article 72(4)-(5) as above. According to Article 18, the suspension of a financial transaction is merely an administrative measure the application of which does not even require a well-grounded suspicion of money laundering. As such, the law does not expressly say that it is to be applied necessarily with an aim to secure the assets involved in the suspicious transaction. The significantly long deadline of five working days appears sufficient to verify any information and, what is even more important, to provide enough time to notify the prosecutor pursuant to Article 22 of the AML Law so that the prosecution may prepare for further measures e.g. to apply for a freezing order according to Article 72(4)-(5).

286. In the new Law on the Prevention of Money Laundering and Financing of Terrorist Activities (Official Gazette of BiH 53/09) that entered into force on 15th July 2009, shortly after the onsite visit took place, suspension of transactions is regulated more in details though the regime remained roughly the same:

Article 48
Temporary Suspension of Transactions

(1) If the FID suspects money laundering or funding of terrorist activities in reference to a certain transaction, account or person, it may issue a written order for a temporary suspension of transaction or transactions lasting 5 working day at most, and the deadline of temporary suspended transaction starts to run after the order for suspension is issued by the FID. The FID may give additional instructions to an obliged person as regards that transaction, suspension of transaction, execution of transaction as well as communication with the person or persons who are connected with transaction or transactions.

(2) During the execution of duties in accordance with the provisions of this Law, in urgent cases, if the FID suspects a money laundering or funding of terrorist activities in relation to a certain transaction, account or person, it may issue a verbal order for temporary suspension of transaction or transactions, however, the FID is due to forward a written order to an obliged person the following working day latest.

287. Paragraph (3) of the same article stipulates that suspension of suspicious transactions may also take place, among others, at request of the state-level law enforcement agencies "*as well as other bodies and institutions in the BiH mentioned in Article 51 paragraph 1"*. The latter refers to "*the bodies of Bosnia and Herzegovina, Federation of BiH, Republic of Srpska, Brčko District and other obligatory party with public authorisations to provide information, data and documentation needed to execute the duties of FID in accordance with Provisions of this Law"* which implies, as it was confirmed by domestic authorities, that authorities of the two Entities and Brčko District may also request for suspension.

288. It is also specified that whenever the FID determines, within the 5 working days' deadline, that there is no further suspicion of money laundering or terrorist financing, it shall notify the

obliged parties without delay so that the transaction can be performed immediately. If, however, the suspicion remains or develops, the suspension has to be maintained but no longer in the framework of the administrative-type rules set out in the new AML Law but by the application of the proper temporary measures available under the criminal procedural law. The link to the ordinary criminal procedural rules can be found in Article 48(5) of the AML Law according to which

> *(5) After the deadline referred to in paragraph 1 of this Article expires, financial transaction may be temporarily suspended only by a decision of a court pursuant to the BiH Law on criminal proceedings.*

289. In the paragraph above, the last phrase obviously refers to the Criminal Procedure Code of Bosnia and Herzegovina and thus to its Article 72(4)-(5). State-level criminal procedural law can only be applied by the state-level Court of Bosnia and Herzegovina. Consequently, once the FID suspends a transaction, even if upon the request of a non-state level authority, the subsequent criminal procedural measures can only be taken by the state-level court (presumably upon the request of the state-level prosecutor) and therefore any criminal procedure will necessarily be conducted at State level.

290. As far as the securing of assets that constitute proceeds of crime is concerned, CPC-BiH Article 395 provides for a further, separate measure that can exclusively be applied by the court in order to secure the confiscation of property gain:

> *When the forfeiture of property gain obtained by commission of criminal offense is a possibility, the court shall* ex officio *and under the provisions applicable to the judicial enforcement procedure order temporary security measures. In that case, the provisions of Article 202 of this Code shall apply.*

291. Similarly, Article 386(1) prescribes security measures for legal persons:

> *In order to ensure enforcement of a punishment, forfeiture of property or forfeiture of property gain, the Court may order temporary security against a legal person, at the proposal of the Prosecutor. In this case, the provisions of Article 202 of this Code shall apply.*

where "forfeiture of property" is the specific punishment in CC-BiH Article 133 mentioned above as "seizure of property" (the wording is only different in the English versions).

292. Article 202 deals with temporary measures that secure property claims accrued because of the commission of a criminal offence. Measures like this may also be ordered according to the provisions that apply to judicial enforcement procedure. The ruling on the application of temporary security measures under either Article 202 or Article 395 may be rendered "in criminal proceedings" thus, as it was confirmed by domestic authorities, already in the course of the investigation. As it was explained in the MEQ the same appears to refer to the measures under Article 386. (Identical provisions can be found in CPC-FBiH Article 216/416/407 CPC-RS Article 112/406/392 and CPC-BD 202/395/386 respectively).

293. Examiners learnt that the term "judicial enforcement procedure" refers to the provisions of the Law on Enforcement Procedure before the Court of Bosnia and Herzegovina (Official Gazette of BiH 18/03). This piece of legislation was also made available to the evaluators in English translation and examination proved it to be a set of administrative measures and procedure that provides for an ordinary regime of judicial enforcement:

according to Article 1 "*this Law shall govern the procedure pursuant to which the Court of Bosnia and Herzegovina shall enforce on claims based on enforceable and authentic documents and the procedure of posting security, unless otherwise provided by a separate law*".

Consequently, CPC-BiH Article 395 does not refer to the application of any provisional measure (seizure, freezing) which is provided and regulated by the Criminal Procedure Code but to the additional application of further administrative measures in order to secure assets that constitute proceeds of crime. It has to be emphasised that, as far as the confiscation of proceeds is a possibility (that is, "when conditions exist for forfeiture of material gain" as explained in the MEQ) Article 395 has to be applied mandatorily (ex officio).

294. The state-level Law on Enforcement Procedure, similarly to those adopted at the level of the Entities and Brčko District[28], provides for comprehensive sets of temporary security measures ("provisional measures" in the official English version of the law but there is no different wording in the original language) depending on whether they are applied to secure monetary or non-monetary claims, set out in Article 246 and Article 248 of the said Law, respectively. For example, types of provisional measures for the purpose of securing monetary claims comprise

- a ban against the person opposing the claims to appropriate or burden movable assets, forfeiture of those assets and placing them under the management of the person making the claims or a third person
- forfeiture and depositing of cash, securities etc. with the Court
- a ban against the person opposing the claims security motion to appropriate or burden real property or proprietary rights on real property
- a ban against the debtor of the person opposing the claims to voluntarily fulfil his obligation towards that person, as well as against the person opposing the claims to accept the fulfilment of that obligation or disposal of his own claims
- an order to the bank to deny the person opposing the claims or a third person, based on an order of that person, the payment of cash from the debtor's bank account which is subject to a provisional measure.

Powers to identify and trace property

295. Law enforcement agencies appear to have sufficient powers to trace and identify property as required by Criterion 3.4. In this context, and apart from the measures already discussed, reference needs to be made to Chapter VIII of CPC-BiH – Actions Aimed at Obtaining Evidence (and similar parts of the non-state level Codes respectively).

296. When it comes to seizure of objects, a search warrant must be issued by the preliminary proceedings judge upon the request of the prosecutor or an authorised official approved by the prosecutor (CPC-BiH Article 53). In urgent cases, it is sufficient to communicate an oral request for a search warrant by telephone, radio or other means of electronic communication (Article 54). Seizure of objects thus takes place under a search warrant and any objects seized must immediately be forwarded to the court where they will be kept in custody of the court pending further disposition except if the court orders that they be held by the applicant for the warrant or of the authorised official (law enforcement agency) who executed it (Article 63). In cases of extreme urgency, a search can be carried out without a search warrant or witnesses (e.g. when this is required to apprehend a suspect of a criminal offense who has been caught

[28] Federation: Official Gazette of FBiH 33/03; Republika Srpska: Official Gazette of RS 59/03 and Brčko District: Official Gazette of BD 8/00)

in the act, or for the sake of the safety of a person or property, also if there is suspicion that the person will conceal or destroy objects that are to be taken from him and used as evidence in criminal proceedings etc.) after which the authorised official must immediately submit a report to the prosecutor, who shall inform the preliminary proceedings judge thereof (Article 64). All these are similarly regulated in the other three Criminal Procedure Codes, with minor differences in the CPC-RS (like that seized objects can exclusively be held in custody of the court Article 127[4]).

297. Furthermore, important powers are given to the court (replacing the previous reference to the preliminary proceedings judge) in CPC-BiH Article 72(1) as follows:

> *If there are grounds for suspicion that a person has committed a criminal offense related to acquisition of material gain, the court may at the motion of the Prosecutor issue an order to a bank or another legal person performing financial operations to turn over information concerning the* ***bank deposits, financial transactions and affairs*** *of* ***that person*** *or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.*

298. Again, some minor corrections needed to be carried out in the text above as the official English version was incomplete, covering only the disclosure of information concerning "the bank accounts of the suspect" but the original text is far more detailed than this[29]. Some parts of the above paragraphs thus needed to be retranslated and these are now in bold underlined type. The same provision can be found in all the other Criminal Procedure Codes (sometimes with a better English translation – see CPC-FBiH Article 86 CPC-RS Article 136 and CPC-BD Article 72) out of which the provision in CC-RS Article 136(1) is slightly different from the others as it refers not only to information concerning "bank deposits, financial transactions and affairs of that person" like the other three Codes but also to "information relating to that person" though this is not a significant difference in coverage[30].

299. In urgent cases[31], any of these measures may be ordered by the prosecutor. The prosecutor must immediately inform the preliminary proceedings judge who may[32] issue a court warrant within 72 hours. In such cases, the prosecutor seals the obtained data/information until the issuance of the court order and if the judge fails to issue that order, the prosecutor has to return those data without having access to them.

300. Prosecutors the evaluators met onsite reported having difficulties in effective application of the above measures. Problems occurred when trying to obtain information on the existence and further details of a bank account according to Article 72(1) or similar provisions at non-state levels, together with freezing, under Article 72(4) or identical non-state provisions, all the assets that can actually be found on that specific bank account. In most of the cases, the prosecutor, at the beginning, only knows the name of the person (most likely the perpetrator of the crime) whose bank account details are sought for but not the exact bank account numbers – this is why an application under Article 72(1) is necessary. Banks, however, would

[29] The original text clearly refers to information *"o bankovnim depozitima i drugim finansijskim transakcijama i poslovima te osobe"* which can be translated literally as quoted above in underlined bold type. "Bank accounts" however are not mentioned in the original version. Another reference ("that person" instead of "suspect") was corrected according to the original language version.

[30] As it can be followed in the original Serbian text: data *"o bankovnim depozitima i drugim finansijskim transakcijama i poslovima tog lica podacima koji se odnose na to lice"* etc. as above where the underlined part means "information relating to that person" (this phrase is unique in CC-RS).

[31] Most English versions of the respective laws wrongly refer to "emergency" but the original language version uses "*u hitnim slučajevima*" that is literally "in urgent cases".

[32] In the previous report, the verb was "must" which is based on wrong translation. The accurate term is, in all four Criminal Procedure Codes, "may" thus issuance of a court warrant is up to the discretion of the court.

not accept a court decision ordering (i) to disclose bank account data of that person and (ii) to freeze the assets deposited on that account at the same time because the banks insist that a court decision issued pursuant to 72(4) must already contain all the details of the respective bank accounts. To that end, prosecutors must turn to the preliminary proceedings judge twice that is, once for a decision pursuant to Article 72(1) and once again for another decision on freezing pursuant to Article 72(4). Apparently, the prosecutors are left alone with this frustrating problem as no legislative steps are foreseen to simplify this procedure at any levels.

301. In addition, the court may, on the motion of the prosecutor, order that other necessary investigative measures be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence pursuant to CPC-BiH Article 72(2) and identical provisions in all three non-state level Criminal Procedure Codes as referred above. "Necessary measures" are defined by a reference to CPC-BiH Article 116 which caters for special investigative measures such as surveillance and technical recording of telecommunications or premises, use of undercover investigators and informants and many others.

Statistics and practical issues

302. One of the problems indicated in the first round report was that there had been "no unified statistics on seized and confiscated property at State level at the time of the on-site visit". This was also true at the level of the Entities and Brčko District. Statistics were also supposed to be kept within the competent judicial and law enforcement bodies yet no information could have been gathered from there either. Unfortunately, the situation has not changed much since then. Evaluators of the present round did not receive comprehensive statistics on confiscation and provisional measures in money laundering cases, only some cumulated figures regarding 2006 and 2007 according to which courts in Bosnia and Herzegovina (i.e. courts at all levels of the jurisdiction in these 2 years confiscated proceeds of crime derived from criminal offences against the economy and payment operations (including, but not limited to money laundering) in the amount of 48,648,333 KM while those derived from criminal offences related to organised crime in the amount of 147,021 KM and €4,000.

2008 -Confiscated material gain and value of imposed fines				
Court	Number of cases in which material gain is confiscated by the court decision	Total value of confiscated material gain KM	Number of cases in which fine is imposed	Total value of fines imposed KM
BIH Court	6	1,204,544	39	659,800
Cantonal/Municipal courts (FBIH)	61	1,560,890	3,013	1,669,757
Municipal courts (RS)	10	4,497,258	20	70,760
Brcko District Court	0	0	91	75,600
Total	**77**	**7,262,692**	**3163**	**2,475,917**

303. As a result of the lack of proper statistics, the evaluators had to rely on other sorts of information regarding the frequency and efficiency in application of provisional measures and confiscation in Bosnia and Herzegovina and all that they found strikingly resembled the experiences of the first round evaluators.

304. In most of the cases, the prosecution is still mainly targeted at proving the predicate crime and thus no further investigation takes place to follow the trail of the proceeds. Certainly, a possible reason might be that, as the evaluators learnt, the understaffed prosecution and judiciary wrestles with a significant backlog of cases related to serious economic crimes because of the pressure of workload and lack of specific expertise.

305. Failure to investigate the proceeds may be one of the main reasons why there have been so few confiscations in money laundering cases. Overall the provisions on confiscation appeared to have been still very infrequently used in practice, even if theoretically it was largely mandatory and the regime looked otherwise basically sound at all levels of legislation. That said, the evaluators noticed serious deficiencies in the efficient implementation of the respective provisions. It was quite symptomatic, at both State level and at the level of the Entities and Brčko District that provisional measures (seizure or freezing of assets) are seldom if ever applied in the preliminary stage of criminal proceedings, an apparent consequence of which is that there are hardly any convictions followed by actual confiscation of proceeds of crime. Though legislation enables a wide range of provisional measures, application of seizure has been extremely limited due to the lack of sufficient awareness, poor inter-agency cooperation and information exchange.

306. It needs, however, to be noted that it is still unclear precisely how early in criminal investigations the preliminary measures could be taken. Though the language "at any time during the proceedings" appears in various legislative texts, the examiners have some concerns that this may not provide a sufficient legislative basis for very early action during the investigation and particularly before these "proceedings" have commenced – and once the investigation is public, the less chance is there to look into the property of the potential perpetrators. Especially in the tax-related money laundering cases typically dealt with in Bosnia and Herzegovina, the shell companies used for money laundering usually have no own property and at the moment when an investigation gets started, all the money laundered had already been transferred to places inaccessible to law enforcement authorities. It only adds to this that, according to some Entity-level law enforcement agencies the team met on-site, public prosecutors mainly lead investigation against the person who deposits money but not against the owner of the money. As a result, depositors may be sentenced but, as discussed above, hardly any confiscation can take place from the fictitious companies.

307. As far as the actual practise with temporary measures is concerned, many prosecutors and even judges the team met onsite advised that the level of proof that is required to achieve a freezing or seizing order is remarkably lower than that which is applied by the trial court when it comes to confiscation of proceeds. While neither of the prosecutors could recall any case where the preliminary proceedings judge refused an application for a temporary measure, this outcome was reported being quite typical in terms of confiscation.

308. The high standard of proof applied by the trial courts thus appears to be a major obstacle with regard to the confiscation of the proceeds of crime, especially when fictitious structures are used for laundering of criminal proceeds. Prosecutors at all levels complained that, when it come to confiscation of proceeds, courts are reluctant to draw inferences from objective factual circumstances as regards the lawful origin of someone's property; even in cases where young and unemployed persons possessing luxury cars, real estate or other expensive items of property give ridiculous explanations about the origin of their property. Overly high evidentiary standards may frustrate and discourage the prosecutors in applying provisional measures at early stages in the proceedings and the less provisional measures are taken in due time the less chance remains to efficiently confiscate any sorts of proceeds at the end of the procedure.

309. A potential solution would be making good use of the provision in CC-BiH Article 110(3) and related articles in non-state level Codes where the defendant is expected, to some extent, give an explanation of the lawful origin of his assets. In fact, some of the non-state level prosecutors the team met did actually refer to this opportunity but no actual case practice was reported. Another way to outcome this evidentiary problem, which was strongly favoured by prosecutors at all levels, was to take the necessary legislative steps so that the burden of proof could explicitly be placed, under certain circumstances, on the defendant.

310. It was also mentioned, as a possible legislative step towards efficiency, that public prosecutors should be authorised to take temporary measures (seizure, freezing etc.) on their own and under their respective competences – that is, to replace the current regime where all such measures must be taken or at least upheld by the court. This idea was raised by an entity-level judge who added that the current regime is, on the other hand, still functional and the provisional measures can be ordered "within hours" but the situation may change as the number of applications increase.

311. It was recurrently mentioned as one of the major deficiencies of the confiscation regime that no agency had so far been designated on all levels for the management of seized property or the execution of confiscation orders. As a result, seized property items including, in many of the cases, expensive cars or other vehicles are only stored at some places without any care any maintenance which results in both depreciation of the property and frustration of the law enforcement and prosecution authorities. Despite the recommendations made in the first evaluation report, there is still no asset forfeiture fund in Bosnia and Herzegovina and neither are there provisions on keeping, managing and sharing of seized and confiscated assets – except for some generic and apparently inexecutable rules like CPC-BiH Article 70 (and similar non-state provisions) according to which *"the seized objects and documentation shall be deposited with the Court, or the Court shall otherwise provide for their safekeeping"*. In order to resolve this problem, a new state-level Law on Confiscation of Proceeds of Crime was being drafted at the time of the on-site visit, which was not made available to the evaluators and neither was any information disclosed about its actual position in the legislative process.

2.3.2 Recommendations and comments

312. Starting from a general point of view, the current legal framework applicable to confiscation and provisional measures seems rather complicated. There are parallel regimes both in terms of criminal substantive and procedural law, that is, a different set of rules has to be applied for instrumentalities, another one for the proceeds of crime and, as far as the criminal offence of money laundering is concerned, there is still a *sui generis* offence-specific confiscation rule regarding property that has been laundered. In addition, criminal and administrative provisions (enforcement law) can sometimes be applied at the same time. On the other hand, there is still need for a clear understanding of the respective provisions especially in terms of their scope of application.

313. The previous report proposed that since the articles which incriminate money laundering in all Criminal Codes explicitly define the obligatory confiscation of assets and this is not the case with the articles which incriminate financing of terrorist acts, the domestic authorities "should review the confiscation regime in this context to ensure that confiscation is obligatory regarding the criminal offence of financing of terrorist acts and in other serious proceeds-generating crimes". Although nothing appears to have since been done in this respect, evaluators of the present round do not maintain this recommendation as they could make sure that confiscation of proceeds is, in fact, mandatory in all four Criminal Codes thus "obligatory confiscation" of proceeds does not depend on offence-specific provisions like CC-BiH Article 209(4). On the other hand, the evaluators call the attention of domestic authorities

to the fact that the specific confiscation regime applicable in money laundering cases pursuant to Article 209(4) and identical provisions in non-state level Codes do not provide for value confiscation which may need to be addressed.

314. As far as provisions on confiscation in CC-RS are concerned, the evaluators of the present round reiterate what was recommended in the previous report according to which the respective law should be amended to enable the confiscation of income or other benefits. Equally, confiscation of proceeds commingled with legitimate assets should also be provided for.

315. Competent authorities at State level and also in the Federation and Brčko District should review the articles in the respective Criminal Codes that provide for the confiscation of instrumentalities and other objects with the aim to remove or, at least, concretise the overly vague conditions under which this security measure can ever be applied (absolute necessity based on public safety or moral reasons etc.) so that the confiscation of such objects can actually be mandatory. Authorities of the Republic of Srpska should, on the other hand, consider introducing compulsory confiscation of such object instead of the current, discretionary provision in CC-RS Article 62(1).

316. Removal of overly insubstantial preconditions of *in rem* confiscation of instrumentalities and other objects ("interests of general security" etc.) should equally take place, this time at all levels of jurisdiction with no exception.

317. Evaluators reiterate the recommendation given by the previous team, according to which consideration should be given to provisions in the criminal procedure which would enable the confiscation of proceeds where the criminal procedure cannot be concluded because the death or absconding of the perpetrator or for any other reason, on condition that there is a proof that the assets derive from criminal offences.

318. Voiding contracts does not appear to be provided at any level of legislation in Bosnia and Herzegovina which, in the evaluators' view, is a shortcoming that should be remedied either by necessary legislative steps or from practical experience gained in decided cases.

319. Lack of practical experience in the functioning of provisions on confiscation and provisional measures made it difficult to form a judgement about their overall effectiveness especially at the levels of the two Entities and Brčko District. In any case, domestic authorities should review these regimes to ensure that they are fully operational and to satisfy themselves that the necessary tools are really in place for a complete and effective system. Such a review should primarily be supported by compiling and maintaining of comprehensive and precise statistics on the volume and effectiveness of confiscation and the provisional measures. Absence of proper statistical figures concerning confiscations and application of provisional measures had been mentioned as a problematic issue already in previous rounds of evaluation and there appears to be no significant development in this field.

320. It is doubtful whether the specific confiscation rule in CC-BiH Article 209(4) and identical non-state rules provide, either in themselves or in combination with Article 74 for the mandatory confiscation of instrumentalities used in or intended for use in the commission of a money laundering offence as far as such objects are not owned by the perpetrator. Domestic authorities should urgently review this issue and seek for urgent remedy to this apparent weakness of the system.

321. The evaluators understand that it comes from the structure of the administration of justice system that provisional measures can only be carried out, as a general rule, by the decision of a preliminary proceedings judge as from the initiation of the investigation. Nevertheless,

domestic authorities should reassess the extent to which this structure might delay or even hinder the seizure of proceeds, if once applied in a concrete money laundering case. They should also reconsider, whether the immediacy of such measures could better be provided by allowing the prosecutor, in extremely urgent cases, on his own authority, to order the investigating bodies to carry them all out, subsequently obtaining the approval of a judge.

322. The possibility of obtain bank information with a view to freezing of assets, as is provided by Article 72(1) and (4) of the CPC-BiH (and identical non-state provisions) appears to be unnecessarily restricted; or at least slowed down in concrete cases by factors originating in either incomplete secondary legislation or simply through inaccurate communication between the state authorities and the financial industry. This results in duplication of the court procedure when bank account information needs first to be obtained for applying for a freezing order. Domestic authorities should reassess this potential shortcoming and seek for a solution.

323. There do not appear to be any provisions for authorities at any level to prevent or void contractual or other actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. It is recommended that legislative amendments are introduced to introduce explicit provisions to fulfil this requirement.

324. Turning to the practical issues, the evaluators fully agree with the previous evaluation team that a much greater emphasis needs to be given to the taking of provisional measures at early stages of investigations to support more confiscation requests upon conviction. There are still relatively few confiscations in money laundering cases which requires definite changes in the approach of all authorities involved whether they be law enforcement agencies, prosecutors' offices or courts. A clear understanding is required of how early in criminal investigations the preliminary measures could be taken and the practitioners should be orientated, either by adequate guidance or training, to apply these measures as early as possible to prevent dissipation of proceeds.

325. In most of the cases, the prosecution is still mainly targeted at proving the predicate crime and thus no further investigation takes place to follow the trail of the proceeds. As far as this is result of inadequate staffing and lack of necessary trainings these shortcomings must urgently be remedied by competent authorities at all levels. Equally, the authorities should seek for a solution to the problem underlying this trend, that is, the overly high standard of proof applied by the trial courts with regard to the confiscation of the proceeds of crime.

326. Repeating another recommendation from the first round report, legislators at all levels should consider ensuring that, in certain well-defined serious proceeds-generating offences, elements of practice which have proved of value elsewhere should be considered, including the reversal of the burden of proof, post conviction, as to the lawful origin of alleged criminal proceeds or the utilisation of the civil standards of proof as to the lawful origins of proceeds. In this respect, particular emphasis should be given to explaining how CC-BiH Article 110(3) and corresponding non-state level provisions are intended to work. As far as RS criminal legislation is concerned, the examiners share the opinion of the local authorities that CC-RS, which currently lacks such a provision, should also be harmonised in this respect.

327. Authorities at all levels should establish unified systems for keeping statistics on the amounts of property seized and confiscated, and designate competent bodies for this purpose, in line what was recommended by the first round report. In this respect, the evaluation team considers it more practical to address this question on a Bosnia and Herzegovina wide basis and not separately for each Entity and Brčko District.

328. Authorities of Bosnia and Herzegovina may also wish to establish a competent agency with adequate procedures for keeping and managing seized and confiscated assets, and introduction of an asset forfeiture fund as well as a mechanism for asset-sharing, in line with the legislative initiatives currently being in the draft phase in the country. Just like in case of keeping and maintaining unified statistics on provisional measures and confiscation, such an agency could optimally be set up at the level of the State.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• High evidential standards as applied by trial courts, the structure of the confiscation regime and an insufficient proportion of confiscations and provisional measures not being taken with the desirable regularity all give rise to concerns over effectiveness. • Mandatory confiscation of instrumentalities is subject to imprecise conditions in most of the cases, while in RS the application of such a measure is discretionary.The specific confiscation regime for money laundering cases does not allow for value confiscation**.** • Confiscation of proceeds commingled with legitimate assets or that of income or benefits derived from proceeds of crime is not provided for by RS criminal legislation. • No provisions in place to prevent or void actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and analysis

329. Criteria III.1 and III.2 require that countries have effective laws and procedures to freeze terrorist funds or other assets of persons designated either by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) or in the context of S/RES/1373(2001). Such freezing should take place without delay and without prior notice to the designated persons involved.

330. As far as freezing under the UN Security Council Resolutions is concerned, the authorities of Bosnia and Herzegovina claimed in their replies to the MEQ that they had a comprehensive legal background to meet all requirements set out in SR.III in which respect reference was exclusively made to the Law on Application of Certain Temporary Measures in Support of Effective Implementation of the Mandate of the International Criminal Tribunal for the Former Yugoslavia and Other International Restrictive Measures ("Official Gazette of Bosnia and Herzegovina" 25/06) (hereinafter: Law on International Restrictive Measures or IRM Law) (See ANNEX VI) as a specific piece of legislation to regulate this issue and indeed, it was considered as such in the Profile on Counter-Terrorist Capacity of Bosnia and

Herzegovina[33] issued by the Council of Europe Committee of Experts on Terrorism (CODEXTER) in November 2008.

331. As for the IRM Law, which is *per definitionem* a piece of legislation to regulate the application of certain restrictive measures in order to support the mandate of the International Criminal Tribunal for the Former Yugoslavia (ICTY) the ultimate question is whether it can serve as legal base for the introduction and application of freezing under the UNSCRs referred to above. Since this Law has not yet been applied in this context, that is, no terrorist assets falling under the scope of UNSCR 1267, 1373 and their successor resolutions have ever been frozen pursuant to the IRM Law, a thorough analysis of the respective provisions needed to be carried out in order to determine whether and to what extent it could actually be applied in this respect.

332. Starting with the title of the Law, it is evident that it refers not only to ICTY-related issues but also to "other restrictive measures" which appears to leave room for application of the IRM Law beyond the mere supporting of the ICTY mandate. As for the subject of the IRM Law, Article 1(1) provides that it "*regulates the application of international restrictive measures that, in accordance with the international law, Bosnia and Herzegovina applies against states, international organisations, territorial entities, movements or natural and legal persons, and other subjects covered by the international restrictive measures"* which scope appears to be wide enough to encompass restrictive measures on the base of UNSCRs 1267, 1373 and successor resolutions. In the view of the evaluators, this fairly large scope is not restricted by the next paragraph (2) according to which the IRM Law "specifically regulates" the application of measures aimed to temporarily prevent *"any use, alienation or other disposal of property of persons indicted in front of the International Criminal Tribunal for the former Yugoslavia[34] (ICTY) since 1991 who are not available to that tribunal and their assistants in evading availability to that tribunal"* bearing in mind that the term "specifically regulates" would rather imply an emphasis on the main goal to be achieved by this Law.

333. A problematic provision is, however, Article 1(3) that defines the purpose of the IRM Law as "*to regulate in Bosnia and Herzegovina the manner of implementation of United Nations Security Council resolutions or European Union decisions that foresee international restrictive measures, particularly United Nations Security Council Resolution 1503 (2003) through the application of certain measures in support of effective implementation of the ICTY mandate"* where the underlined phrase appears to explicitly limit the application of the Law to restrictive measures directly related to the mandate of and, supposedly, actually imposed by the said Tribunal.

334. Nonetheless, this limitation seems released by Article 2(2) which provides that Bosnia and Herzegovina applies international restrictive measures (including "financial restrictions") *"due to implementation of decisions of the United Nations, which are binding under the international law, or when it joins the restrictive measures of the European Union or in other cases in accordance with international law"* which is, again, a quite broad scope of application. Furthermore, Article 2(4) provides that the provisions of Chapters II and III of the IRM Law that deal with temporary financial measures against persons indicted in front of ICTY, but unavailable to that tribunal and their assistants, shall apply to financial restrictions against other persons as well, unless otherwise envisaged by international law.

335. All things considered, the evaluators were convinced that the applicability of the IRM Law actually extends beyond the mere support of the ICTY mandate and therefore nothing

[33] http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/4_theme_files/apologie_-_incitement/CODEXTER%20Profile%20(2008)%20Bosnia%20and%20Herzegovina.pdf

[34] The official name is "International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia"

prevents it being applied in relation with restrictive measures, that is, freezing actions taken under UNSCRs 1267, 1373 and successor resolutions. This has so far been, however, a theoretical possibility as there has been no case law to demonstrate the application of the IRM Law other than in support of the ICTY process.

336. It was only clarified subsequent to the on-site visit that there exists a parallel and completely separate set of legislation in Bosnia and Herzegovina to regulate this issue. Reference was made to the Law on Banking Agency of the Federation ("Official Gazette of FBiH" 9/96) as well as that of Republic Srpska ("Official Gazette of RS" 10/98) where Articles 4(g) of both laws provide as follows:

> *The main tasks of the Agency are the following (…)*
> *g) Performing actions in the support of anti-terrorist measures related to banks upon request of an authorised body, based on appropriate law or in accordance with special resolutions of the UN Security Council, or in cooperation with relevant institutions in regard to this matter.*

337. Further paragraphs (i)-(k) of the same Articles that bear reference to this specific provision also authorise the Agencies to require the Central Bank of BiH to open a special reserve account in the name of any commercial bank that has customer accounts affected by an action taken under paragraph (g) and also to require those commercial banks to transfer the amount of funds involved to the safe keeping of the Central Bank of BiH. In addition to that, the respective laws prescribe that the Agencies publish, on a monthly base, the list of accounts blocked according to paragraph (g) in the respective Official Gazette and that the Agencies forward to the Central Bank of BiH all information related to actions taken according to paragraph (g) including data on any attempted transactions involving the blocked accounts.

338. It needs to be noted that "blocking" as a measure is not expressly mentioned in paragraph (g) but in the subsequent (h) that empowers Agencies to take all appropriate actions "*which may include the blocking of customer accounts in any bank or banks*" throughout the respective Entity or otherwise within the jurisdiction of the respective Banking Agency, but all this in order "*to prevent the funding of activities which are, or which threaten to be, obstructive of the peace implementation process as pursued under the aegis of the General Framework Agreement for Peace in Bosnia and Herzegovina*" that is, definitely not in the context of freezing funds under UNSCRs 1267, 1373 or their successor resolutions that are, as described above, covered by the preceding paragraph (g). The evaluators however understand that "blocking" that is, freezing of bank accounts is considered by domestic authorities to make part of the "actions" referred to in paragraph (g) above (that is, "blocking" may be one of the possible actions that may be taken under either paragraph [g] or [h]).

339. While the IRM Law has not yet been applied in actual practice to freeze terrorist funds or other assets of persons so designated according to the UNSCRs mentioned above, the Laws on Banking Agencies (namely, that of the Federation) had already proved to be successfully applicable for this purpose, not only before the IRM Law was adopted but, at least in one case, since it has been in force. As it was clarified at the pre-meeting, the last time the Banking Agency of the Federation acted upon Article 4(g) of their respective law took place in 2008. As a consequence, since the adoption of the IRM Law, there have been two different and totally separate sets of legislation coexisting in Bosnia and Herzegovina, both intended to meet the requirements set out in SR.III. (The IRM Law did not repeal any provisions of the entity-level Laws on Banking Agencies.) Although the examiners were not given any relevant explanation why there was a need for creating such a parallel, or overlapping legal structure by adopting the IRM Law, the present report nevertheless examines both of these regimes and, to the extent there is any related case practice, the actual applicability of the competing laws.

340. Pursuant to Article 4 of the IRM Law, temporary financial measures may consist of either "freezing of funds" which *"prevents any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management"* or "freezing of economic resources" which prevents their use to obtain funds, goods or services in any way, such as their selling, hiring or mortgaging. In this context, the terms "funds" and "economic resources" are defined in Article 3(c) and (d) of the Law[35] fully in line with Article 1(1) of the Terrorist Financing Convention. Nonetheless, the evaluators have no actual information to decide whether the domestic legislation would be able to cover freezing funds or other assets being "wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations" as required by Criterion III.4.

341. According to Article 5(1) the application of temporary measures of freezing of funds/ economic resources shall entail that:

- *all funds and economic resources belonging to, or owned, possessed or held by the person against whom the measures are applied, shall be frozen*

- *no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the person against whom the measures are applied (not including addition to frozen accounts of interest or other earnings provided that any such additions will also be frozen)*

- *activities to consciously circumvent these measures shall be prohibited*.

342. The IRM Law provides for different regimes of procedural rules for the application of temporary financial measures, depending on whether the persons whose funds or economic resources are to be frozen are those indicted by the ICTY but unavailable to that tribunal or their assistants. In case of the indicted persons, the Council of Ministers of Bosnia and Herzegovina shall render a decision introducing the temporary measures (Article 10[3]). It appears that such decisions are to be adopted on a case-by-case basis and then published in the Official Gazette of BiH. Freezing of funds/economic resources of assistants of indicted persons is, however, applied pursuant to the Criminal Procedure Code of Bosnia and Herzegovina (Article 11[1]). Such a differentiation is likely to mean that criminal procedural rules can only be applied in the second regime, that is, they cannot serve as a legal base for the execution of the Council of Ministers decisions.

343. As for the regime applicable to persons indicted by the ICTY the IRM Law contains practically no specific procedural rules (except for the articles referred to below in relation to Criteria III.9 and III.10).

[35] "Funds mean financial assets and benefits of every kind, such as:
1) cash, cheques, claims on money, drafts, money orders and other payment instruments,
2) deposit with financial institutions or other entities, balances on accounts, debts and debt obligations;
3) securities subject to stock exchange or other type of trade, such as stocks or shares, certificates, bonds and other kinds of securities;
4) interest, dividends and other income on or value accruing from or generated by assets,
5) credit, right of set-off, guarantees and other financial commitments,
6) letters of credit, bills of lading, bills of sale,
7) documents evidencing an interest in funds or financial resources,
8) any other instrument of export financing.
Economic resources mean assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services."

344. As for the regime applicable to the assistants, the IRM Law makes reference not only to the CPC-BiH in general but expressly points to a number of specific articles in Article 11(2) as follows (typography as in the original text)

> (2) *In accordance with paragraph (1) of this Article (…) the Chief Prosecutor of Bosnia and Herzegovina proceeds in particular under Article 35 (*Rights and Duties*) and Article 216 (*Order for Conducting an Investigation*) of the Criminal Procedure Code. To issuing and enforcing of temporary measures against these persons, Article 65 (*Order for Seizure of Objects*), Article 66 (*Seizure without the Seizure Warrant*), Article 72 (*Order Issued to a Bank or to Another Legal Person*) and Article 73 (*Temporary Seizure of Illicitly Gained Property and Arrest in Property*), as well as other provisions of the Criminal Procedure Code shall apply.*

345. Although, as it was noted above, there has been no case practice related to the above provision, it is very likely that freezing of assets owned by assistants of indicted persons requires the initiation of a formal investigation (as CPC-BiH Article 216 is expressly referred above) presumably for the criminal offence of Accessory to a Person Indicted by the International Criminal Tribunal (CC-BiH Article 233). Considering the direct applicability of the CPC-BiH rules, however, it is not clear whether and to what extent the provisions of the IRM Law could add to what has already been provided for under the Criminal Procedure Code, that is, it appears that the very same range of property can be seized under both laws.

346. As discussed above, the IRM Law is, at least from a theoretical point of view, applicable beyond the support of the ICTY mandate, that is, also in relation with restrictive measures taken under UNSCRs 1267, 1373 and successor resolutions. Unfortunately, the provisions in Articles 10 and 11 that define the persons subject to these measures are not flexible enough to be automatically, if at all, applicable in the context of counter-terrorist financing UNSCRs which could easily impede the actual application of the IRM Law in this respect.

347. The first problem is that the subjects of the respective UNSCRs, that is, the persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with UNSCR 1267 as well as those designated in the context of UNSCR 1373 do not automatically fit into the context of the IRM Law which targets persons indicted by the ICTY as well as their assistants. When applying the IRM Law, should the designated (listed) persons be taken into account in lieu of indicted persons or as their assistants – that is, should Article 10 or Article 11 be applied?

348. Considering that the specific regime based on the direct applicability of criminal procedural rules for assistants of indicted persons can only be possible because this sort of activity, as mentioned above is, in itself, a *sui generis* criminal offence under the state-level Criminal Code, it is quite obvious that Article 11 and consequently the rules of the CPC-BiH are absolutely irrelevant in the context of freezing under the above mentioned UNSCRs. On the other hand, Article 10 appears to be applicable but because of the deficiencies referred above it falls short of meeting Special Recommendation III. As far as freezing of assets of the indicted, that is, designated persons pursuant to Article 10 is concerned, the IRM Law can only serve as the legal base for such a procedure without providing, to any extent, for a comprehensive legal framework in this respect. Instead of procedural rules, it is the Council of Ministers that is authorised to issue an additional decision for implementation of a restrictive measure.

349. As discussed above, such decisions are likely to be adopted on a case-by-case basis which means that procedural rules (manners of and exceptions from the implementation etc.) would also be determined on an ad hoc basis presumably depending on the nature of the case. That said, no decisions issued under Article 10 are envisaged to provide for a general set of rules

establishing an effective and publicly known procedure for the implementation of international restrictive measures, including an appropriate freezing procedure.

350. Certainly, Article 12 of the IRM Law requires that, in accordance with a Council of Ministers' decision on the application of temporary measures towards a particular person

- all competent institutions in the country that have data on property of such a person shall be obliged to take, within their competencies, *"concrete actions with the purpose of application of temporary measures"*

- banks, financial institutions and insurance companies with whom the respective person has an account, *"shall be obliged to disable financial transactions from the account of that person"*

- while all bodies and institutions that keep records on property *"shall be obliged to disable, within their competencies, any change of ownership, transfer of the right of ownership or possession and encumbering of property"*

but these, otherwise strict and mandatory provisions still cannot be considered as detailed and publicly known procedural rules as they only create a firm legal background for the effective application of restrictive measures.

351. In any case, the evaluators were assured by domestic authorities that while there have already been some Council of Ministers' issued under the IRM Law against persons indicted in front of the ICTY or their assistants, no such decision had ever yet been issued for the implementation of UNSCRs 1267, 1373 and the successor resolutions since the IRM Law became effective, which means that the Law has so far not been applied in any concrete cases in this respect. In the lack of effective laws (i.e. those going beyond the mere authorisation for issuing implementing decisions) and procedures to freeze funds or other assets owned by or related to persons designated by the relevant UN Security Council Resolutions, Criteria III.1 and III.2 are not met by the Bosnia-Herzegovinian law.

352. Turning back to the alternative regime under Articles 4(g) of the entity-level Laws on Banking Agencies, there is no doubt that it had already been functioning, at least in the Federation of Bosnia and Herzegovina, already at the time of the first round evaluation, far before the adoption of the IRM Law. Being the exclusive legal framework for freezing of terrorist assets in September 2001 when the BiH Council of Ministers adopted its Action Plan for the BiH and Entity institutions in prevention of terrorism activities and actions, the Law on Banking Agency of the Federation did indeed provide enough power to the said Agency to block (freeze) bank accounts in the Federation in amounts totalling KM 8.004.860 at the time of the first round evaluation (November 2003).

353. In such cases, the procedure the Agency applied was that under Article 4(g) as well as (i)-(l) of the respective law, as described above. The Law provides, however, hardly any more procedural rules to decide, for example, whether these actions were carried out without prior notice or the blocking met the "without delay " element of the respective Resolutions. In this respect, all the further paragraphs of Article 4 only provide for the sanctioning of non-compliance. Banks that fail to comply with a blocking order or any other requirement under Article 4(g) to (l) risk the revoking of their licenses while any natural or legal person whose deliberate or negligent act leads to the evasion or attempted evasion of a blocking order by transferring or seeking to transfer funds thereto or otherwise, may be subject to an administrative fine (up to an amount double what was involved) and, if he is a holder of a bank account, be subject to having the same blocked and listed as aforesaid. In this procedure, the Agency is authorised to call upon such persons to produce all documents related to the

transaction and also to initiate a procedure with the authorised court *"of seizing the assets, books and records of any individual, legal entity or body who or which deliberately acts in such manner as to lead to the evasion or attempted evasion of a blocking order as aforesaid, and to liquidate the business of such individual, legal person or body."*

354. As for the requirement under Criterion III.5 the evaluators have no information about the establishment of any system for communicating to the financial sector and/or the general public the actions taken or to be taken under the freezing mechanisms at either State or Entity level (the IRM Law only deals with the obligation to deliver such information to the Ministry of Security of Bosnia and Herzegovina in Article 6). Equally, the evaluators have not yet been informed about any guidance prepared and issued under Criterion III.6.

355. Turning to the requirements in Criteria III.7 and III.8 the evaluators also found that the IRM Law which, in its present form, cannot be taken into account as a comprehensive legal source, fails to meet the requirements in Criterion III.7 (publicly known procedures for de-listing requests and for unfreezing of the assets of de-listed persons) and III.8. (publicly known procedures for unfreezing the assets of persons accidentally affected by a freezing mechanism). It should be noted that, according to Article 13 of the said Law, the application of a restrictive measure to an indicted (i.e. designated) person "*shall cease to apply when the cessation of the application of the measure against that person is determined*" which requires a further decision to be passed by the Council of Ministers but among the reasons for cessation no circumstances specified in Criteria III.7 and III.8 can be found (i.e. unfreezing the assets of de-listed persons or in verified cases of mistaken identity or "false positive").

356. Neither of the entity-level Laws on Banking Agencies provide explicitly for the unfreezing of blocked assets. Nevertheless such actions must presumably have taken place on a regular basis, considering the significant decrease in the total amount of frozen funds between the two rounds of evaluation, as a result of which the volume of such assets, deposited on the special reserve account maintained at the CBBiH, fell to 3.959.373,44 KM by the time of the third round on-site visit. Out of this sum, 3.915.033,81 KM represents the funds related to designated persons or organisations in accordance with UNSCR 1267, 1373 and any subsequent resolutions while the rest belongs to persons who were designated upon the OHR decisions as persons who obstruct or threaten to obstruct peace implementation process realised under the General Peace Agreement in Bosnia and Herzegovina. The frozen assets include cash funds in various currencies as well as the amount of deposits created by replacement of frozen controlling (shareholders') rights for frozen deposits, gained through acquiring shares of the designated person by the bank (own shares) in whose ownership structure the designated person appeared (in a replacement process conducted in cooperation and under the authority of the respective Committee of the UN Security Council).

357. As it was clarified by the Banking Agency of the Federation, this significant decrease took place as a result of subsequent examinations conducted by the said Agency and other relevant institutions and organisations, both domestic and international, of some persons whose funds and controlling rights were frozen on the ground of suspected connection with designated persons. However, finally no such suspicion was confirmed and so the freezing of the affected funds/ controlling rights had to be removed. Unfortunately, the evaluators were provided with no legislation, and particularly specific procedural rules, upon which this "examination" and the subsequent release of the assets might have taken place. That is, while the Laws on Banking Agencies appear quite robust when it comes to freezing, they do not provide any legal basis to withdraw such actions and therefore the legal foundations of such an unfreezing procedure are still unclear to the evaluators.

358. Criterion III.9 that requires appropriate procedures for authorising access to funds or other assets is adequately addressed by Article 8 of the IRM Law according to which the Court of

Bosnia and Herzegovina shall authorise the release of certain frozen funds or economic resources if it determines that they are *"necessary for basic life expenses, including payments for food-stuffs, rent or lease or mortgage for the living place, medicines and medical treatment, taxes, insurance premiums, and public utility charges"* (Para 1) or that they are intended exclusively for payment of reasonable professional fees, reimbursement of expenses associated with the provision of legal services, fees or service charges for routine holding or maintenance or other extraordinary expenses (Para 2). In this context, the Court may determine conditions under which it authorises the release or making available of funds or economic resources. The IRM Law also requires that the Court inform the Ministry of Security of any such authorisation granted *"no later than eight days prior to the granting of authorisation"* (Para 4). Article 9 is thus one of the few parts of the IRM Law that contain detailed procedural rules as required by SR.III and therefore Criterion III.9 can be accepted as met by the domestic legislation (even if Criteria III.1 and III.2 on freezing of funds and other assets of designated persons proved to be, as discussed above, not met by the Bosnian-Herzegovinian law). However, the parallel entity-level legislation, that is, the Laws on Banking agencies appear to be silent on this issue and the evaluators are not aware on any actual practice in this field.

359. As regards the regime applicable to indicted persons, the IRM Law provides in Article 10(4) that *"against the decision of the Council of Ministers, a procedure in front of the Court of BiH may be initiated"*. While the law is silent on the details of this "procedure", the Bosnia-Herzegovinian authorities made it clear that Article 10(4) indeed refers to a court procedure where the competence of the state-level court is based on Article 8 of the Law on Court of Bosnia and Herzegovina, according to which *"the Court has jurisdiction to decide actions taken against final administrative acts or silence of administration of the institutions of Bosnia and Herzegovina and its bodies, Public Agencies, Public Corporations, institutions of the Brčko District and any other organisation as provided by State Law, acting in the exercise of a public function"* and, in particular, over *"the assessment of the legality of individual and general enforceable administrative acts adopted under State Law (…) for which judicial review is not otherwise provided by law"*. The Council of Ministers' decision would be qualified such a "final administrative act" under the state-level Law on Administrative Procedure (Official Gazette of BiH 29/02)

360. Consequently, the state-level legislation in Article 10(4) of the IRM Law provides a forum of appeal against the Council of Ministers' decision on the application of a temporary financial measure and as such, it meets the requirement in Criterion III.10 according to which countries should have appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court. When it comes, however, to an action brought according Article 4(g) of the respective Laws on Banking Agencies, there is no such procedure specified in the legislation known to the evaluators and therefore it cannot be known what if any forum of appeal is available for those whose accounts are blocked or are otherwise affected by such an action.

361. It goes without saying that with respect to the deficiencies of legislation intended to address SR.III, there appear to be no provisions to comply with the requirements of criteria III.12 (bona fide third parties) and III.13 (measures to monitor compliance with the relevant legislation).

362. From a practical point of view, the regime of disseminating the lists with names of designated persons and entities is structured as follows. Consolidated UNSCR lists are received by the Ministry of Foreign Affairs of Bosnia and then sent to the Ministry of Security from where they will be automatically disseminated, in accordance with Article 14 of the Law on Ministries and other Administrative Bodies, to the FID, to the Ministries of Interior of both Entities, to the Banking Agencies of RS and FBiH as well as to other relevant institutions and

agencies in Bosnia and Herzegovina. Forwarding of the updated lists to the banking sector is then performed by the respective Banking Agencies.

363. The procedure that has to be met if a bank identifies a designated name is equally duplicated. That is, banks are required to inform the respective Banking Agency thereof, which decides on the application of the measure provided by Article 4 of the respective Law on Banking Agency and it is then executed according to the respective Law on Banks (Article 47 in FBiH Article 101 in RS). At this point, the evaluators need to note that neither of the said laws contains any detailed procedural rules in this respect. The Banking Agencies also made it clear that such an action would also be reported as a suspicious transaction report pursuant to the state-level AML Law which may, in theory, give rise to the application of the regime under the IRM Law. (The IRM Law, on the other hand, does not oblige banks or financial institutions to report the mere detection of names of designated persons to any authority.)

364. On its part the Central Bank, in terms of the Law on the Central Bank of Bosnia and Herzegovina, and pursuant to the order of the relevant Banking Agency (FBiH/RS) maintains the separate reserves accounts. These accounts serve for the transfer and deposit of blocked assets (funds) resulting from money laundering and the financing of terrorism or any activity that could obstruct the implementation of the Peace Agreement. The Central Bank has no competence on the movement of these funds which can only be unblocked (unfrozen) and then transferred back to the respective commercial banks through an order of the relevant Banking Agency.

365. As mentioned above, the evaluators were not made aware of a single case where funds or assets of persons or entities designated in accordance with UNSCR 1267, 1373 or successor resolutions had been detected and blocked in the territory of Bosnia and Herzegovina. However, the evaluation team was informed about the case of a Bosnian-Herzegovinian citizen who had actually been designated on such a list (UN Consolidated List established and maintained by the 1267 Committee last updated time on 23.09.2009) nonetheless this fact was apparently ignored by domestic authorities until being officially informed that certain assets transferred abroad by this person had been blocked, because of this reason, by a financial institution in Germany. The subsequent inquiries proved that before this transfer took place, the said person had already had numerous bank transactions in Bosnia and Herzegovina (including application for a bank loan) but his designated status had never been examined (no official had ever checked whether his name was on any list) which is, in itself, an alarming sign of ineffectiveness of the system.

366. Comments subsequently made by the respective Banking Agency (FBiH) only deepened the concerns of the evaluation team. According to the said Agency, this person had actually been a customer of some banks in the Federation and his accounts had been "*under permanent, intensified monitoring*" without detection of any suspicious (unusual) transactions. Apparently, the Agency had also been aware of the fact that this person "has been designated, and is on the UN list". What sounds worrisome to the evaluators is the conclusion that *"However, the person is also a free citizen, who is employed, who receives salary through the bank's accounts and who pays matured loan instalments. All transactions could be classified as such transactions that are defined by the relevant UNSCRs. Is it possible to freeze, or to have constantly freezing the salary of the person who is the bank's customer, although such person is the designated person, who is free to live and work?"* This opinion of a competent and responsible authority shows, in the evaluators' view, significant misunderstanding of the meaning and purpose of Special Recommendation III and particularly that of the notion of "funds" under this SR and the Terrorist Financing Convention. Being a "free citizen" of the respective country with the unquestioned rights "to live and work" cannot serve as an argument for exemption from the regulations by which UNSCR 1267 is executed in Bosnia and Herzegovina. In addition to that, the said Agency expressed their view that this situation

had either been caused by a problem about designation and therefore could be solved by removing the respective name from the list of designated persons or "*could be this is about initiation of investigation and submitting evidence about the liability*" i.e. there should have been a criminal procedure initiated to prove the criminal liability of the respective person which opinion, again, shows such a misinterpretation of SR.III that may even give rise to questioning the grounds of the previous unfreezing actions performed by the same Agency.

Additional Elements

367. As Bosnia and Herzegovina was not yet active in the legal implementation of SR.III, there are consequently also no legal provisions in place to cope with the additional elements III.14 and III.15.

Statistics

368. No comprehensive statistics were made available to the evaluators with regard to provisional measures relating to terrorist funds. The authorities were, however, able to provide information on a case-by-case basis.

2.4.2 Recommendations and comments

369. The evaluators are seriously concerned about the complete lack of a comprehensive, effective and directly applicable legal framework that would provide a sufficient legal basis for freezing accounts of persons named on the respective lists without delay, and especially for answering to the numerous practical questions following implementation of the United Nations Resolutions. This shortcoming was not at all remedied by the fact that since the year 2006, there have been two parallel and entirely separate sets of legislation in Bosnia and Herzegovina, both drafted and adopted with the intention to provide a legal base for freezing of terrorist assets.

370. It is apparent that the Law on International Restrictive Measures that was referred to as the ultimate legislative solution to comply with Special Recommendation III. is far too incomplete in its present form. Since it was designed for other purposes (to support the ICTY mandate) its direct applicability in CFT relations and especially for the implementation of the respective UNSCRs is a question of interpretation. Even if its application is accepted, the law still provides nothing more but an essential legal basis and a legislatorial authorisation for the issuance of ad hoc decisions in concrete cases without any detailed rules on roles, responsibilities and procedures. The evaluators therefore strongly advise that a comprehensive set of detailed and generally applicable rules for an administrative procedure should be drafted and adopted, practically on the conceptual base that has already been provided by the IRM Law.

371. Neither the alternative regime under the Laws on Banking Agencies can be considered as comprehensively responding to the requirements of SR.III. It gives adequate power to the Agencies to freeze (assets on) bank accounts but no detailed and publicly known procedural rules in this respect were provided to the evaluators, particularly when it comes to the issue of unfreezing/delisting or providing access to the frozen funds (some of which questions are, on the other hand, more or less adequately addressed in the regime under the IRM Law). The evaluators note that while assets related to designated persons had actually been frozen in significant amounts, predominantly before the previous round of evaluation, by one of the respective Agencies, roughly half of these assets has since been released where the lack of reliable procedural rules together with some doubts about the overall perception of the meaning and purpose of the respective UNSCRs and SR.III all cannot resolve all concerns in this respect.

372. As for the coverage of the legislation, it is not broadened by the coexistence of two alternative systems instead of one. In fact, the two regimes are so separate from each other (that is, there is no apparent connection between the state-level IRM Law and the entity-level Laws on Bank Agencies) that they cannot complement each other to any extent. Instead, the parallel legislation only leads to unresolved overlaps between the two regimes.

373. In this respect, all the institutions should be given clear user-friendly guidance and instructions concerning their rights and obligations under the freezing mechanisms, such as in the case of errors, namesakes or requests for unfreezing and for access for basic expenses. Equally, it was unclear what monitoring is being undertaken of the private sector's compliance with freezing assets of designated persons or whether any of the recommendations in the Best Practice Paper had been implemented.

374. The examiners therefore recommend

- establishment of a single, effective system for implementation without delay by all financial institutions in this field, together with the provision of clear and publicly known guidance concerning their responsibilities;

- create and/or publicise procedures for considering de-listing requests and unfreezing assets of de-listed persons;

- create and/or publicise a procedure for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the persons is not a designated person;

- consideration and implementation of relevant parts of the Best Practice Paper.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place. The existing legal framework consists of parallel and remarkably overlapping regimes which either are incomplete particularly when it comes to procedural rules (Laws on Banking agencies) or were designed for other purposes (the IRM Law to support the ICTY mandate) thus both are only to a very limited extend applicable in this respect.

2.5 The Financial Intelligence Unit and its functions (R.26, 30 and 32)

2.5.1 Description and analysis

The Financial Intelligence Department (FID),

375. The FIU of Bosnia and Herzegovina, The Financial Intelligence Department (FID), is a division of the State Information and Protection Agency (SIPA). SIPA was established by the Law of the State Investigation and Protection Agency (SIPA LAW) which came into force on 4 May 2004. Article 11 of the SIPA Law defines the departments which comprise SIPA. Article 13 of the SIPA Law sets out the duties of the FID as being to:

- *Receive, collect, record, analyse, investigate and forward to the Prosecutor information, data and documentation received in accordance with the law and other regulations of BiH on prevention of money laundering and funding of terrorist activities*
- *Carry out international co-operation in the field of prevention and investigation of money laundering and funding of terrorist activities*
- *Provide to the Prosecutor an expert support in the financial field*

376. According to Article 45 of the new AML Law, the FID, under supervision of the director of SIPA, performs the tasks related to the prevention, investigation, and detection of money laundering and funding of terrorist activities. This includes receiving, registering, analysing, investigating, and forwarding to the prosecutor all information, data and documentation received in line with the AML Law and other regulations on the prevention of money laundering and financing of terrorist activities. These duties are further clarified by Article 46 which clarifies the reporting responsibilities of the FID.

377. In addition to the new AML Law, the work of the FID is also regulated by the Instruction on Work procedures for Prevention of Money Laundering and Prevention of Terrorist Activities of the Financial Intelligence Department which was signed by the Director of SIPA on 21 November 2008.

378. The FID serves as the national centre for receiving analysing and disseminating disclosures of STRs and other relevant information concerning suspected ML or TF activities. Nevertheless, in practice, the law enforcement agencies in the entities and BD do not submit requests to FID and instead gain access to STR information through Court orders and not directly from the FID.

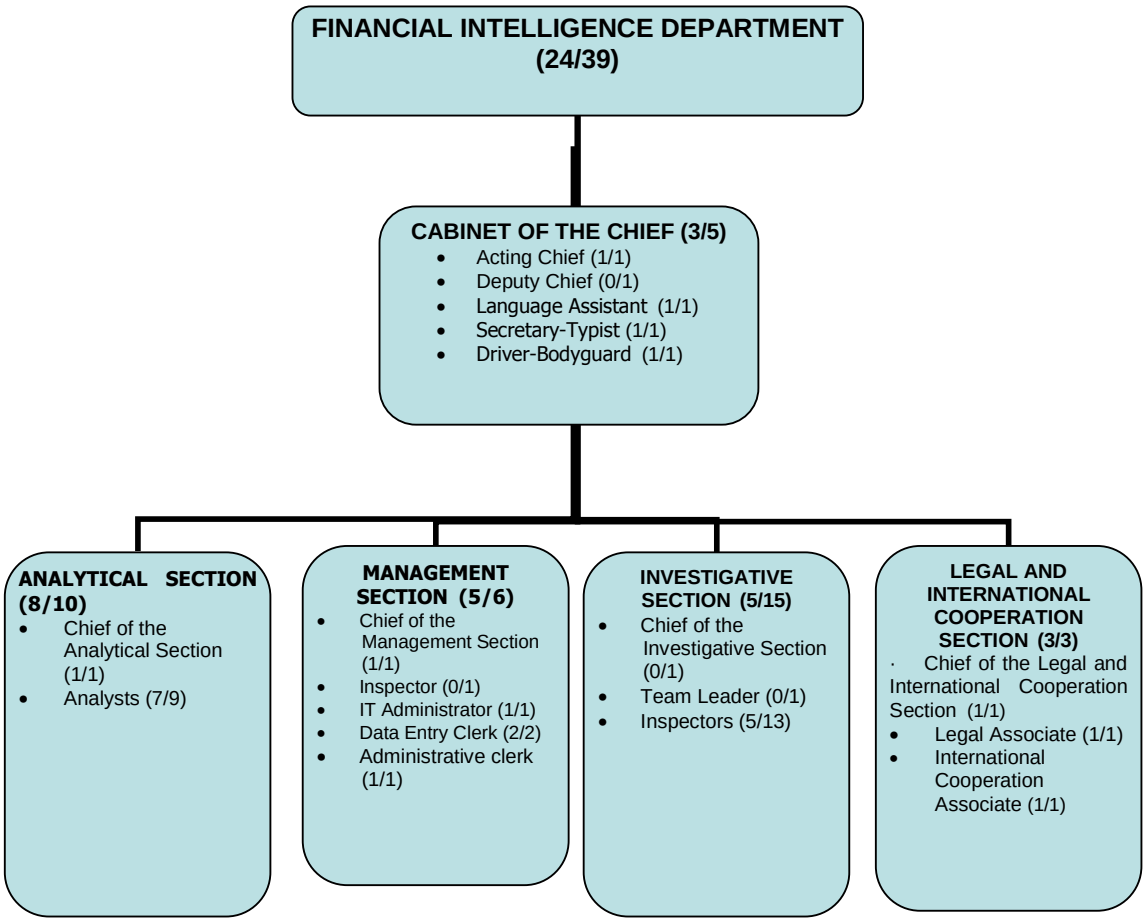
379. The FID is considered a law enforcement type FIU that engages in both analytic tasks as well as formal law enforcement investigations. The FIU is staffed by both civil servants and police officers. According to SIPA's Book of Rules on Internal Organisation and Systematisation of Positions, the FID should be staffed with 39 people, to include 20 police officers, 15 civil servants and 4 employees. At the time of the on-site visit, the FID was staffed at 62% of its intended capacity, employing 28 people, of which 11 are police officers, 13 civil servants, and 4 employees. It was particularly notable that of a budgeted complement of 20 Police Officers only 8 were in place and with regard to the Investigative Section only 5 positions out of 15 budgeted positions were filled.

Table 5: FID Staffing levels

Sector	Optimal staffing per the Book of Rules on Internal Organisation and Systematisation of Positions	Actual at time of on-site visit
Police Officers	20	8
Civil Servants	15	12
Employees	4	4
Total	**39**	**24**

Structure and Function of FID

380. The FID is divided into four main sections: 1) Analytical Section, 2) Investigation Section, 3) Department for Legal Issues and International, and 4) Management Section. The chart below illustrates the organisation of the FID at 31 December 2008.



381. The Analytical Section of the Financial Intelligence Department receives, requests, and analyses information with the purpose of determining grounds for suspicion that a crime was committed. It also prepares and sends suggestions for temporary suspension of transactions to the Chief of the Department and assists in the work of the Investigations Section by

submitting additional data on suspects to the Legal Affairs and International Cooperation Section. This section is staffed by civil servant analysts.

382. The Investigations Section is responsible for collecting information, data and documentation as required by the AML Law in addition to material already received by the department, with the purpose of detecting money laundering and financing terrorist activities, determining if there are grounds of suspicion that a crime was committed, preparing crime reports and performing other duties. This section is staffed by police officers.

Table 6: Case statistics

Year	reports about transactions above threshold	reports about suspicious Transactions*		cases opened by FIU**		notifications to law enforcement/ prosecutors		indictments				convictions			
								ML		FT		ML		FT	
		ML	FT	ML	FT	ML	FT	cases	persons	cases	persons	cases	persons	cases	persons
2005				**161**		**27**		**2**				**6**			
2006	**203,316**	**28**	**2**	**177**	**10**	**23**	**2**					**3**			
2007	**258,319**	**87**	**2**	**124**	**20**	**23**	**3**					**1**			
2008	**288,231**	**68**	**2**	**111**	**2**	**17**	**28**								

*All STRs were received from banks, no other financial institutions or DNFBPs submitted STRs.

** In addition to cases relating to STRs, cases opened by FID for each year include, large value transactions (CTRs) which the FID deem to be suspicious as well as requests from foreign FIUs.

383. The Department for Legal Issues and International Cooperation performs information and data exchange with international financial-intelligence units and other international and local institutions, as well as legal matters. It provides support to the Analytical Section and the Investigation Department in seeking information from foreign government bodies.

Table 7: International requests for information received and sent by the FID

Incoming	**2007**	**2008**
Notifications	193	130
Requests for Information	67	50
Disseminated data	68	63
TOTAL	***328***	***243***
Outgoing		
Notifications	11	13
Requests for Information	92	49

Disseminated data	70	51
TOTAL	***173***	***113***

384. The Management Department of FID is responsible for the daily internal management and functioning of the Department. These tasks include procurement and personnel issues; reception and documenting all correspondences of all transactions pursuant to the AML Law, (i.e. entering and updating all data into FID database); implementation of all safety SOPs; ensuring all incoming and outgoing information on persons under obligation; managing entire electronic-technical capacities and operations within the Department; managing and maintaining Department's information technology system; and creating and entering data into the database.

385. When visiting the FID during the on-site visit, the evaluators were concerned by what seemed to be an inefficient operation. 7 analysts and 6 investigators handle all the CTRs and STRs received and rely on manual procedures with little or no IT supporting them. With regard to the CTRs, the analysts claim to manually read each and every cash deposit reported to FID when requested in support of an investigation; no IT tools are effectively used to monitor or analyse these. With regard to the STRs, no real link analysis appears to be performed to attempt to bring together family or business connections. Consequently the analysts interviewed by the evaluators could not remember a single case which was effectively disseminated to law enforcement and investigated.[36]

386. Overall the FID appeared to the evaluators to be isolated from the general law enforcement effort due to restrictive interpretation of existing laws, and other organisational issues. During the on-site visit law enforcement agencies in the entities and Brčko District clearly stated that they were not willing to freely cooperate with the FID. Certainly it appeared to the evaluators the FID is not tasked by or freely provided with information by other law enforcement agencies at the level of the entities and Brčko District when investigating predicate offences or money laundering. The FID does not receive information requests from entity level police investigators and only rarely does it receive such requests from entity level prosecutors, or from any other law enforcement agencies.

387. The FID does receive cross border cash reports but does not receive any information as to violations of cross border cash reporting.

Guidance to financial institutions

388. Article 52 b. of the new AML Law requires that the FID participate in the development of a list of indicators for recognising suspicious transactions and list of countries applying internationally recognised standards in the prevention and detection of money laundering and financing of terrorist activities. Furthermore, Article 52 c requires FID to Participate in the professional training of employees and authorised persons in persons under obligation, authorised bodies of BiH, FBiH, RS, District and organisations with public authorisations.

389. The FID was involved in the production of the Book of Rules on Data, Information, Documents, Identification Methods and Minimum Other Indicators Required for Efficient Implementation of Provisions of the Law on the Prevention of Money Laundering (Book of Rules) which clarifies the requirements for obligors. The Book of Rules is the responsibility of and is signed by The Minister of Security of BiH.

[36] An automated electronic red flag system is currently under development.

390. FID has engaged itself in educating the banking sector; FID organised a training session for banks on the SIPS system in 2005; no other trainings sessions have been specifically arranged by FID for the banking sector although FID does regularly contribute to training seminars arranged by other bodies.

391. At the time of the on-site visit, no written guidance had been provided to the non-banking sector on their AML CFT obligations. During 2006, there was a two-day seminar for banks, leasing companies, accountants, auditors and brokers. The lectures were given by the FID Staff (5 staff members). In December 2006, the Chief of the FID gave a lecture on the topic "Legal, institutional and international framework for BiH, with a focus on types of FIUs, as well as on FID of BiH". Furthermore, in May 2007, the Chief of FID gave a lecture on "Practical cases of ML in insurance company". In 2007, the same persons under obligation attended a two day seminar, where the FID Staff members also gave lectures.

Access to Information

392. Article 51 of the new AML Law grants the FID the ability to request information from agencies in BiH, FBiH, RS, and the Brcko District. Institutions must deliver the requested information to the FID and/or provide the FID free access to any needed information within 8 business days of the request.

393. According to information presented to the evaluators by the FID, the FID has direct and/or indirect access to approximately 17 different sources of information. In addition to its own database where transaction information is stored, the FID also has direct access to the Central Banks Central Registry of Accounts as well as the CIPS citizens' database (database of citizens of Bosnia and Herzegovina including information on date and place of birth; identification numbers; drivers license data, photos, etc.). A full list of all data sources available to the FID is included in table 8 below.

Table 8: Summary of Available Databases and Records

SOURCES	Direct Access	Indirect Access
AMLS (Database of suspicious, cash and connected reports from banks)	X	
Database of suspicious, cash and connected reports from other persons under obligation (Article 3. of the AML Law)		X
Other information and reports from records of persons under obligation		X
Central Bank of Bosnia and Herzegovina Registry of Accounts (database of transaction accounts of legal persons in Bosnia and Herzegovina)	X	
Records on Archived Cases of FID		X
IBA (Internal Database of the Analytical Section)	X	
CIPS citizens' database (database of citizens of Bosnia and Herzegovina/date of birth, place of birth and residence, ID Card number, driving license number, photo...)	X	
Black lists (UN lists, OFAC lists) / (internet access)	X	

Other records of bodies in Bosnia and Herzegovina (Courts, Tax Administrations, …)		X
Registry of VAT persons under obligation(internet access)	X	
Statistical registry of companies in the Federation of Bosnia and Herzegovina (no update)	X	
Registry of Foreign Trade Chamber in Bosnia and Herzegovina (contains only data on Chamber members) / (internet access)	X	
Interpol		X
ASF database (database of vehicles and travel documents)	X	
Criminal and Operational Records (Data from Ministries of Interior)		X
Other records of bodies in Bosnia and Herzegovina (Courts, Tax Administrations, …)		X
Internet	X	

394. The BiH authorities have produced a list of databases potentially available to the FID Analysts. Nevertheless, during the on-site visit, the evaluators were advised by the FID analysts that they did not in fact have regular de facto access to criminal records, and other relevant databases when performing their functions. This was particularly the case with regard to entity level information. Though databases may be theoretically available the de facto access to database leaves reasons for concern. Therefore, despite the information presented to the evaluators, it still appears that the FID has limited access to the full range of financial, law enforcement, and administrative databases required to perform its analytical responsibilities. The information available to the FIU does not appear to be accessible to analysts in a timely manner. Furthermore, as stated above, the FID does not currently conduct link analysis to ascertain family and business connections and relationships in the entities and Brčko District as well as at the state level. The FID's own AMLS database is rudimentary and lacks advanced analytical capabilities to assist analysts in properly organising, manipulating, and analysing data. At the time of the on-site visit, cash transactions reported to the FID were not properly examined and most of the work was performed manually. This form of work together with the lack of a system in place to automatically detect transactions connected to criminal or suspected persons hampers the FID's ability to properly analyse both CTRs and, when relevant, connected STRs. This is especially of concern due to the high level of misunderstanding and lack of awareness in reporting, as well as the high number (288,231 in 2008) of cash transaction reports received. In the view of the evaluators this has a material impact on the effectiveness of FID.

Powers to obtain and disseminate information

395. Article 47 of the new AML Law provides the FID with the authority to demand information on property and on bank deposits of persons under investigation, as well as other information, data and documentation, necessary for performing the tasks of the FID pursuant to the provisions of this Law. In urgent cases, the FID may request information, data and documentation verbally, and may inspect documentation in the premises of person under obligation however, the FID shall be obliged to submit a written request to person under obligation not later than the following working day. Furthermore, Article 51 extends these powers to requests to public institutions. Article 51 also provides FID with the authority to provide such public bodies with data and information related to money laundering and financing of terrorist activities, but only if such information and data may be significant to those bodies.

396. Article 48 provides the FID with the power to suspend transactions and Article 50 provides FID with the power to order the person under obligation to continually monitor financial operations of clients in respect of which there are grounds for suspicion on money laundering or financing of terrorist activities.

397. SIPA has signed MoUs with all law enforcement agencies at all levels in BiH. Although these powers appear to be adequate, as stated above the evaluators were concerned about the general lack of cooperation between the FID and public bodies in the entities and Brčko District which raised serious concerns about the effectiveness of cooperative arrangements.

398. Nevertheless, FID is not authorised to disseminate financial information to domestic authorities on its own initiative. The old LPML does not contain any provisions authorising any dissemination of information by the FID other than Article 22 (1) which states

> *If the FID considers on the basis of information, data and documentation obtained under this Law that there are grounds for suspicion of a criminal offence in connection with a transaction or a person, it shall notify in writing and submit the necessary documentation to a prosecutor.*

At the time of the on-site visit the then acting head of FID advised the evaluators that he did not, as a matter of policy disseminate information to any other authorities in BiH. With regard to the new AML Law, which came into effect after the on-site visit, Article 51.5 states:

> *Upon the approval of SIPA Director, and upon a detailed request, the FID can provide bodies and institutions referred to in paragraph 1 of this Article with data and information related to money laundering and financing of terrorist activities, only if such information and data may be significant to these bodies and institutions when issuing decisions of their competence and investigation purposes*.

Therefore, dissemination of information from FID to domestic authorities is now permitted it depends on receipt of "*a detailed request"* and on the "*significance*" of the information to those bodies. The evaluators consider that this places an unacceptable constraint on the FID's authority to disseminate financial information to domestic authorities for investigation or action. The evaluators have not been able to assess the effectiveness of the dissemination process since the adoption of the new AML Law.

399. With regard to the timeliness of receipt and dissemination of information, according to section 31 of the new AML Law, STR reporting must be made immediately and before completion of the transaction, unless there is fear of tipping off in which case the report must be made within 3 days. According to section 47 of the new AML law reporting entities must forward additional information, data and documentation requested by FID within 8 working days (or 2 days in urgent cases). According to section 48 of the new AML law FID has the power to temporarily suspend any transaction for 5 days. The legal framework set out for FIDs function seems to encourage timely reporting of STRs and their prompt and efficient analysis. Nevertheless during the onsite visit the evaluators were advised that the above mentioned short deadlines set in the law were not in fact realistic considering the current level of effectiveness, and that in many cases FID could not finalize its analysis within the legislative timeframe.

Data protection and storage

400. Section X of the new AML Law sets out the rules for data protection and storage. Article 61 of the new AML Law states that "FID shall use information, data and documentation obtained in accordance to this Law only for the purposes defined by this Law". This is further defined in Article 64 which clearly states that data, information and documentation obtained may only be used by FID for the purpose of prevention and detection of money laundering and financing of terrorist activities.

401. With regard to security of data, Article 62 3. states that the FID cannot give information, data and documentation collected in accordance with the Law to persons to which they refer to. This latter provision does, however, appear limited in scope and does not impose a unilateral prohibition on passing information of third parties. Nonetheless, when taken with the provisions in Articles 61 and 64 the evaluators are of the opinion that information held by FID is securely protected and disseminated in accordance with the law. As mentioned previously, the Instruction regulates work procedures and Article 6 entitled Data Protection and Storage specifically stipulates the protection of data.

Article 6

(Protection and storage of data)

(1) Information, data and documentation gathered in accordance with the Law on the Prevention of Money Laundering can be used only in accordance with the Law, they represent official secret and an authorised person who established the level of secrecy is the one who can remove the marking of an official secret, as stipulated by the Book of Rules on secret data protection in the State Investigation and Protection Agency.

(2) The employees are obliged to observe provisions of the Law on Protection of Secret Data and the Book of Rules on Secret Data Protection in State Investigation and Protection Agency.

402. Furthermore, the Article 4 Book of Rules on Protection of Secret Data within SIPA (See ANNEX XI) further defines the protection of data held within SIPA.

Periodic Reports

403. Article 52 1. d) of the new AML Law requires the FID to publish statistics on money laundering and terrorist financing activities on an annual basis with a view to informing the public on the forms of money laundering and terrorist financing. Although the report is only published in Serbian, the evaluators were provided with English language extracts from the annual report for 2008 which contained both statistics and examples of money laundering transactions that had been detected by the FID.

International Cooperation

404. The FIU became a member of the Egmont Group on 30 June 2005 and shares information internationally with its counterpart FIUs.

405. Articles 53-55 of the new AML Law authorise the FID to share information internationally. Specifically, the FID can request foreign law enforcement bodies, prosecutorial or administrative bodies, financial intelligence units and international organisations involved in prevention of money laundering and financing of terrorist activities to submit data, information and documentation required for carrying out its obligations under the law. The FID can also submit data, information and documentation obtained in Bosnia and Herzegovina to foreign FIUs either as per their request or as per self-initiative, conditioned that confidentiality protection is provided.

406. In 2008, the FID received a total of 243 incoming documents (notifications, requests, dissemination of data), while there were a total number of 113 outgoing documents. FID's internal procedures aim to respond to international requests within 5-10 business days; it is, however, noted that complex requests may take considerably longer to obtain data and respond. There are no statistics to support these response times.

Table 9: Data on International Cooperation

Incoming	**2007**	**2008**
Notifications	193	130
Requests for Information	67	50
Disseminated data	68	63
TOTAL	***328***	***243***
Outgoing		
Notifications	11	13
Requests for Information	92	49
Disseminated data	70	51
TOTAL	***173***	***113***
TOTAL	**501**	**356**

2.5.2 Recommendations and comments

407. The FID has been established, with operational independence within SIPA, as the BiH Financial Investigation Unit (FIU) cooperating internationally as a member of the Egmont Group.

408. It is noted that the FID has only limited access to the full range of administrative, financial, and law enforcement databases required to perform proper analysis. Such information is not always accessible on a timely basis. Cash transactions reported to the FID are not utilised as no alert system is in place to detect transactions connected to criminal or suspected persons. Furthermore, the FID does not appear to conduct link analysis to family and business. The evaluators recommend that the FID develops its database capability as well as its analytical tools and makes far greater use of electronic means of monitoring and analysis.

409. Article 51.5 of the new AML Law needs to be amended to allow FID to disseminate information on its own initiative to domestic authorities for investigation or action when there are grounds to suspect money laundering and/or terrorist financing.

410. Staffing of the Investigation Department at FID is not in proportion to the commonly understood expectations of other law enforcement agencies regarding FID's role in initiating ML investigations in BiH. FID should make it a priority to attract suitably qualified staff to fill the current vacancies.

411. With regard to statistics, the annual report prepared by the FID appears to contain a number of useful statistics which can be used assessing the effectiveness of the FID.

412. FID's operation is isolated from the general law enforcement effort due to restrictive interpretation of existing laws, and other organisational issues. Financial intelligence at FID is not requested by or disseminated to other law enforcement agencies at the level of the entities and Brčko District when investigating predicate offences or money laundering. The evaluators consider that it is vital that there is full and effective cooperation between all relevant bodies in the entities and Brčko District and the FID, in particular, the Working Group of Bosnia and Herzegovina Institutions related to the Prevention of Money Laundering

and Terrorism Financing should make it a priority to achieve full cooperation between all relevant bodies.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	**PC**	• FID appears to operate in isolation from other law enforcement agencies and Financial intelligence at FID is not requested by or disseminated to other law enforcement agencies at the level of the entities and Brčko District when investigating predicate offences or money laundering. • At the time of the on-site visit there was no effective dissemination of information to domestic authorities and the power of the FID to disseminate information to domestic authorities is still limited by the new AML Law. • No guidance provided to non-banking sector by FID regarding manner of reporting. • Manual review of large cash transaction reports brings into question the effectiveness of the computerised database and overall effectiveness of analysis by FID when analysing CTRs and STRs.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 and 28)

2.6.1 Description and analysis

Recommendation 27

413. BiH has designated law enforcement authorities on all levels (state, entity, and cantonal) that have responsibility for ensuring that ML and FT offences are investigated. On the state level the two main ministries responsible for investigating ML and FT are the Ministries of Justice and Security[37] On the entity level a similar division of responsibilities exists, for instance According to Article 7 of the Law on Ministries of the Republic Srpska[38] the Ministry of Justice's duties are to be carried out "in accordance with the law and other regulations of the RS and BiH." And similarly with regard to the Ministry of Internal Affairs of RS (Article 9)[39].

414. Similarly in the Brčko District, according to the Statute of the Brčko District of Bosnia and Herzegovina (Chapter IV)Article 62 The District shall have its own Police Service and

[37] the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina "Official Gazette" of Bosnia and Herzegovina, 5/03 The Ministry of Justice (Article 13) and the Ministry of Security (article 14) which has in it the State Border Service as well

[38] "Official Gazette" of Republic Srpska, 70/02

[39] "The Ministry of Internal Affairs is authorised to … protection from violent endangerment of the system defined by the Constitution and endangerment of the security of the Republic……prevention and discovery of crimes; …cooperation with the other police structures in BiH in accordance with valid regulations of RS and BiH; providing information through the media and other public means and performs other tasks in accordance with law and other regulations of the RS and BiH."

perform all police functions as stipulated by law. According to article 67 the District Prosecutor's Office shall be independent from the Judiciary and the District Police, and shall prosecute offenders in criminal proceedings and perform other functions impartially in accordance with the Constitution and laws of Bosnia and Herzegovina, this Statute and District laws.

Institutional Capacities

415. The following agencies, among others, fighting organised crime and corruption operate within the Ministry of Security at the level of Bosnia and Herzegovina:

- State Investigation and Protection Agency (SIPA),
- State Border Service (SBS),
- Office for Cooperation with Interpol

416. In addition to the foregoing, the European Union Police Mission (EUPM) is operating in BiH is in line with the general objectives of Annex 11 of the General Framework Agreement for Peace in BiH. The EUPM leads the coordination of the policing aspects of the European Defence and Security Policy (ESDP) efforts in the fight against organised crime, assisting local authorities in planning and conducting major and organised crime investigations, contributing to an improved functioning of the whole criminal justice system in general and enhancing police-prosecutor relations in particular. At the end of 2007 the EUPM mandate was extended for another two years (from 1 January 2008 to 31 December 2009).

SIPA

417. The most important law enforcement body with the task of combating ML and FT is SIPA - the State Investigation and Protection Agency (SIPA) whose mandate is specified in the Law on State Investigation and Protection Agency[40] as combating organised crime, terrorism, war crimes, human trafficking and other criminal offences against humanity and values protected by international law, and serious financial crime.

418. According to Article 1, SIPA shall regulate its competence and organisation, as a policy body of BIH. For all other issues relevant for the functioning of SIPA as a police body the Law on Police Officials of BiH shall apply. According to Article 2, SIPA is an administrative organisation within the Ministry of Security of BiH with operational autonomy, established for the purpose of performing police tasks, headed by a director and financed from BiH Budget.

419. According to article 3 the tasks within the scope of SIPA's competence are:

1. Prevention, detection and investigation of criminal offences falling within the jurisdiction of the Court of BiH especially: organised crime, terrorism, war crimes, trafficking in persons and other criminal offences against humanity and values protected by international law, as well as serious financial crime;

2. Collection of information and data on such criminal offences as well as observance and analyses of security situation and phenomena conducive to the emergence and development of crime;

3. Assistance to the Court and the Prosecutor's Office of BiH in securing information, and execution of the orders of the Court and of the Chief Prosecutor of BiH;

[40] Pursuant to Article IV 4 a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina at the session of the House of Representatives held on 24 April 2004 and at the session of the House of Peoples held on 4 May 2004, has adopted the Law on the state Investigation and Protection Agency.

4. Physical and technical protection of persons, facilities and other property protected under this Law;

5. Witness protection;

6. Implementation of international agreements on police co-operation and of other international instruments that fall within the scope of its competence;

7. Criminal expertise;"

420. According to Article 5, employees of SIPA are police officials, civil servants and other employees in accordance with the Rulebook on Internal Organisation.

421. According to Article 6, police officials employed within SIPA shall apply police powers in accordance with the Law on Police Officials of BiH and shall act as authorised officials in accordance with criminal procedure codes in BiH

422. According to Article 7, SIPA is managed by a Director of SIPA who has the highest authorised police rank, appointed by the Council of Ministers upon proposal of the Selection Commission in accordance with the Law on Police Officials of BiH, for mandate of four years with the possibility of renewal for a second consecutive term.

423. According to Article 11, SIPA is composed of 4 main operational departments and units:

- The Criminal Investigative Department (CID);
- The Financial Intelligence Department (FID);
- The Department for Protection of Persons and Objects;
- The Witness Protection Department;

424. According to Article 12 the CID shall:

a) Work on detection and investigation of criminal offences falling within the jurisdiction of the Court, locating and capturing of the perpetrators of these criminal offences and bringing them before the Prosecutor, under the supervision of and pursuant to the guidelines and directives issued by the Prosecutor in accordance with the criminal procedure code;

b) Work on prevention of criminal offences;

c) Provide operational assistance to the Financial Intelligence Department;

d) Collect information and data on criminal offences, observe and analyse security situation and phenomena conducive to the emergence and development of crime;

e) Organise and conduct criminal expertise.

425. According to Article 23, SIPA may co-operate with foreign law enforcement and other foreign appropriate bodies, for the purpose of fulfilling its tasks under this Law. The co-operation may include the exchange of data and joint execution of the activities that fall within the scope of SIPA's competence. SIPA may provide foreign law enforcement and other foreign appropriate bodies with data on citizens of BiH based on information that the citizen poses a danger to the security of BiH, the receiving State or a broader danger to regional or global security. In criminal matters, the co-operation with foreign law enforcement agencies shall be conducted through the Office for Co-operation with Interpol (see below).

426. SIPA shall not provide data on citizens of BiH unless it has "reasonable assurance that the recipient will provide the data with the same level of protection as provided in BiH." Article

23(5) states that "If the data relate (sic) to the criminal proceedings instituted in BiH, the exchange of data referred to in this Article shall be carried out in accordance with the criminal procedure code.

427. All together SIPA is staffed with approximately 200 investigators of which 28 are financial investigators (out of 40 positions). At the time of the on-site visit there were 32 investigators working on economic crimes issues within SIPA, including SIPA Headquarters (FID and CID) and Regional Offices.

State Border Service

428. The Competencies of the State Border Service (SBS) are regulated by the Law on State Border Service and they include: enforcement of the Law on Supervision and Control of State Border, enforcement of the Law on Movement and Stay of Aliens, prevention, detection and investigation of criminal offences regulated by criminal legislation of Bosnia and Herzegovina when these criminal offences are directed against the security of the state border or against execution of tasks and duties of the SBS. They include criminal offences in accordance with the provisions of abuse of public documents serving as proof of identity and obligation of possessing a visa, and provisions related to movement and stay of aliens and asylum, if criminal offences are committed during border crossing or are directly related to border crossing, and criminal offences related to transport of illicit goods across the state border, transport of goods without official approval or in case of violating an enforced ban.

429. Within the SBS is a Central Investigation Office, which is responsible for recording, discovering and processing criminal offences in the area of organised crime, in particular in the segment of organised human trafficking, illegal migration and organised forms of goods smuggling.

Office for Cooperation with Interpol

430. The Office for Cooperation with Interpol is also located within the Ministry of Security. The Office for Cooperation with Interpol is an independent service whose rights and duties are specified by special regulations. Its task is to ensure and promote cooperation with police authorities, judicial bodies in fighting international organised crime and other forms of international crime, in the spirit of the Universal Declaration on the Human Rights.

The Intelligence and Security Agency

431. The Intelligence and Security Agency (OSA) operates as an independent agency for gathering security and intelligence information. It is directly responsible for its work to the Parliament of Bosnia and Herzegovina, (i.e. the Parliamentary commission) and its competencies are specified by the Law on Security and Intelligence Agency of Bosnia and Herzegovina[41], which, among other things, encompass gathering, analysing and distributing data on organised crime directed against Bosnia and Herzegovina, in particular in the fields of drugs, arms and human trafficking, illicit international production of weapons of mass destruction or components, materials and devices required for their production; illicit trading in products and technologies which are under international control.

Indirect Taxation Authority of Bosnia and Herzegovina

432. The Indirect Taxation Authority of Bosnia and Herzegovina, is an independent administrative organisation at the level of Bosnia and Herzegovina, which enforces legal and other regulations on indirect taxation and policy laid down by the Council of Ministers of BiH

[41] "Official Gazette of Bosnia and Herzegovina, number 12/04"

at the proposal of the Steering Board of the Indirect Taxation Authority. It was established under the Law on Indirect Taxation System[42] and is directly responsible to the Council of Ministers of BiH through its Steering Board. Competencies of the ITA are regulated by the Law on ITA[43] which, among other things, reflect in prevention, discovery and investigation of customs, tax and other violations, and, in accordance with instructions of the responsible prosecutor, taking activities in connection with investigating criminal offences related to indirect taxation through its organisational part of the Sector for Enforcement and Compliance with Customs and Tax Legislation.

Cantonal Ministries of Internal Affairs

433. The Federation of BiH consists of ten cantons. Each canton has its Cantonal Ministry of Internal Affairs, consisting of Police Administrations formed on the territorial and functional principle. Police Administrations consist of two or more Police Stations (municipal level). Competencies of the Federation Ministry of Internal Affairs (Federation MUP Police Administration) are regulated by the Law on Internal Affairs of the Federation of Bosnia and Herzegovina[44] and, refer, inter alia to prevention of terrorism, inter-cantonal crime, trafficking drugs, organised crime and discovery and apprehension of perpetrators of these criminal offences in accordance with the mentioned Law.

434. The cantonal Ministries of Internal Affairs' competencies are specified by the Cantonal Laws on Ministries of Internal Affairs, which are consistent with the Federation Law on Internal Affairs. Their competencies are restricted to the territory of their cantons but they are obligated as well to inter-cantonal cooperation and cooperation with the Federal Ministry of Internal Affairs. Apart from maintaining public peace and order in the cantonal territory, these competencies also refer to organised crime, drugs, terrorism and others, as regulated by the cantonal law.

Ministry of Internal Affairs of the Republic of Srpska

435. The competencies of the Ministry of Internal Affairs of the Republic of Srpska are specified by the Law on Internal Affairs of the Republic Srpska[45]. The Ministry is organised into five Public Security Centres, which are directly linked to the Seat Office of the Ministry. Functionally, the Ministry consists of seven administrations, one of which is the Crime Police Administration, consisting of seven departments. Crime Police Administration deals, among other things, with prevention of organised crime, production and trafficking of drugs, business crime and corruption, theft of motor vehicles as well as criminal offences in the domain of general crime.

Brčko District Police

436. Brčko District Police has full, actual and territorial competence on the territory of Brčko District as regulated by the Law on Brčko District Police[46]. The Crime Police Unit exercises its duties in accordance with the Law, focusing on fighting serious and organised crime. Within Brčko District Police, the Department for Combating Economic Crime and Corruption currently employs 6 investigators, and it is managed by the Assistant Chief of Criminal Unit for that area, and the Department for the fight against organised crime and terrorism currently employs 7 investigators and it is managed by the assistant chief of criminal unit for that area. Investigators are authorised to investigate ML and TF but, in practice, they rarely do so.

[42] "Official Gazette of Bosnia and Herzegovina, number 44/03 and 52/04"
[43] "Official Gazette of Bosnia and Herzegovina, number 89/05"
[44] "Official Gazette of the Federation of Bosnia and Herzegovina, number 49/05"
[45] "Official Gazette of RS, number 48/03"
[46] "Official Gazette of Brčko District of BiH, number 2/00 – 33/05"

Prosecution Authority

437. The Prosecution Authority is independent from executive and legislative branches. The structure, function and operational independence is provided by the law as is the procedure through which prosecutors are appointed. The evaluators were advised that the prosecutors are able to perform their work in area of money laundering and terrorist financing, independently

438. Pre-trial investigations on money laundering and terrorism financing are conducted by the Police Administration under the supervision of the prosecutors. With regard to the Republic of Srpska, before the trial, the competent Prosecutor's Office, through organisational units of Public Security Centres or through the Crime Police Department, conducts investigations into money laundering and financing terrorism.

439. Article 35-37 of the Criminal Procedure Code of BiH[47] set out the fundamental rights and main duties of the BiH Prosecutor as follow:

Article 35
Rights and Duties

(1) The basic right and the basic duty of the Prosecutor shall be the detection and prosecution of perpetrators of criminal offenses falling within the jurisdiction of the Court.

(2) The Prosecutor shall have the following rights and duties:

a) as soon as he becomes aware that there are grounds for suspicion that a criminal offense has been committed, to take necessary steps to discover it and investigate it, to identify the suspect(s), guide and supervise the investigation, as well as direct the activities of authorised officials pertaining to the identification of suspect(s) and the gathering of information and evidence;…

(3) In accordance with Paragraphs 1 and 2 of this Article, all bodies participating in the investigative procedure are obligated to inform the Prosecutor on each undertaken action and to act in accordance with every Prosecutor's request.

Article 36
Taking Actions

The Prosecutor shall take all actions in the proceedings for which he is himself authorised by law or through the persons who are authorised pursuant to the law to act on his request in criminal proceedings.

Article 37
Giving Instructions

In order to exercise his rights and duties, the Prosecutor may, in concrete cases, give necessary instructions to the Prosecutor's offices in the Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District of Bosnia and Herzegovina.".

440. Articles 18 and 45 of the Criminal Procedure Code of FBiH[48] set out the fundamental rights and main duties of the FBiH State Prosecutor as follows:

"The basic right and the basic duty of the prosecutor shall be the detection and prosecution of perpetrators of criminal offences falling within the jurisdiction of the court.

[47] Criminal Procedure Code of Bosnia and Herzegovina *"Official Gazette" of Bosnia and Herzegovina, 3/03*

[48] Criminal Procedure Code of the Federation of Bosnia and Herzegovina "Official Gazette" of the Federation of Bosnia and Herzegovina, 35/03

The prosecutor shall have the following rights and duties:

as soon as he becomes aware that there are grounds for suspicion that a criminal offence has been committed, to take necessary steps to discover it and investigate it, to identify the suspect(s), guide and supervise the investigation, as well as direct the activities of authorised officials pertaining to the identification of suspect(s) and the gathering of information and evidence;

to conduct an investigation in accordance with this Code;

to grant immunity in accordance with the law;

to request information from governmental bodies, companies and physical and legal persons in the Federation;

to issue summonses and orders and to propose the issuance of summonses and orders in accordance with this Code;

to order authorised officials to execute an order issued by the court as provided by this Code;

to propose the issuance of a warrant for pronouncement of the sentence pursuant to Article 350 of this Code;

to issue and defend indictment before the court;

to file legal remedies;

to perform other tasks as provided by law."

441. According to article 46 The Chief Federal Prosecutor or Cantonal Prosecutor shall take actions before courts pursuant to the federal or cantonal law, as applicable.

442. The rights and duties of the RS prosecutors in the detection and prosecution of perpetrators of criminal offences have been set forth in Article 43 According to the RS criminal procedure code [49] including to perform an investigation, to grant immunity in accordance with the law; to request information from governmental bodies, companies and physical and legal persons in Republic Srpska; to issue summonses and orders and to propose the issuance of summonses and orders as provided under this Code; to order authorised officials to execute orders issued by the court as provided by this Code;

443. According to the Brčko District Criminal Procedure Code [50] Article 35 Rights and Duties, the fundamental right and the fundamental duty of the Prosecutor shall be the detection and prosecution of perpetrators of criminal offences falling within the jurisdiction of the Court. The Prosecutor shall have the right and duty to:

"*take necessary steps to discover a criminal offence and conduct investigation immediately after having learned that there is grounded suspicion that it was committed, identify the suspect(s), direct and supervise the investigation, as well as to direct the activities of authorised officials concerning the identification of a suspect, taking statements and collection of evidence;*

conduct an investigation in accordance with this Law; grant immunity in accordance with law;

request information from governmental bodies, companies and physical and legal persons in Bosnia and Herzegovina; issue summons and orders, and propose the issuance of

[49] Republic Srpska Criminal Procedure Code (1 July 2003 article 21

[50] Law on Criminal Procedure of the Brčko District of Bosnia and Herzegovina "Official Gazette" of the Brčko District of Bosnia and Herzegovina, 10/03

summons and orders as provided under this Law; order an authorised official to execute an order issued by the Court pursuant to this Law; propose the issuance of a criminal warrant pursuant to Article 334 of this Law; indict and defend indictment before the court; file legal remedies; perform other tasks provided by law.

In accordance with Paragraphs 1 and 2 of this Article, all bodies participating in the investigation shall inform the Prosecutor on each undertaken action and act in accordance with each request of the Prosecutor."

444. According to article 36 The prosecutor shall take all actions in the proceedings for which he is authorised by law, either by himself or through persons who are, under the law, bound to act upon his requests in the criminal proceedings.

445. According to article 37 In order to exercise his rights and duties, the prosecutor may, in particular cases, which are within the jurisdiction of the court, give necessary instructions to authorised officials.

446. The Court of BiH and the Prosecutor's Office of Bosnia and Herzegovina function at the state level and their competencies are stipulated by the Law on Court and Prosecutor's Office.

447. The BiH Prosecutor's Office is an institution whose basic duty is to prosecute offenders of the crimes that come under the authority of The Court of BiH, which are prescribed by Criminal Code of BiH, but also crimes which were stipulated by entity or the Criminal Code of Brčko District when all preconditions of state authority, in accordance to the Law on Court of BiH, are met. Among other things, this Prosecutors' Office is authorised to prosecute the crimes of organised crime on BiH level, especially the international drug trade, human trafficking, corruption crimes where the offenders are representatives of BiH institutions, as well as offences of economic crime which are endangering the European integrity and unity of market in BiH. Also, it is authorised for the offences stipulated by entity or Brčko District Criminal Codes, meaning the acts of organised crime which are endangering sovereignty, territorial integrity, political independence, national security and international subjectivity of BiH; or when they could lead to serious repercussions or consequences for the economy of BiH; or could lead to other damage for BiH or could induce serious economic damage or other damages out of territory of given entity or Brčko District of BiH (article 13 of the Law on Court of BiH).

448. In order to investigate more efficiently and criminally prosecute the said crimes, a Special Department for Organised Crime, Economic Crime and Corruption was established within the Prosecutor' Office of BiH, and a number of international prosecutors were appointed to work there, in the transitional period, together with domestic prosecutors

449. During the on-site visit the evaluators had an opportunity to discuss the application of the AML CFT regime in BiH with judges and prosecutors on all levels. Some of these noted to the evaluators how in their opinion the impact of the legislation of the ML offence on the BiH jurisprudence has been minimal. Money Laundering is still perceived by many professionals as a form of tax evasion (mainly through fictitious companies) and not as a separate criminal offence, or in some cases as an aggravating circumstance for harsher sentencing of a predicate offence.

450. Guidelines have not been issued to prosecutors although this was advised in the previous evaluation report.

451. The evaluators were advised during the on-site that a steering committee responsible for the implementation of the 2003 AML has been formed. The committee has 18 members from both the state and entity level and includes judges, prosecutors, representatives of the justice

ministry, academics, and lawyers. The committee had recommended 130 changes to the Criminal Procedure Code.

452. The evaluators were not always able to determine whether BiH law enforcement and judicial officials had a clear understanding of who is actually authorised to investigate ML in BiH. Answers given by judges and prosecutors varied (FID, Banking agency, Financial police). This was especially true when there was no international component to the investigation. The evaluators were advised of cases where criminal investigations were separated and the predicate offence was prosecuted on the entity level while the ML component was prosecuted on the state level.

453. The evaluation team has been advised that since 2003 the law has been amended. Criminal investigations are now been conducted by the prosecutor and not by a judge. The prosecutor today plays a pivotal role, giving relevant orders and communicating with the judge for receiving the various judicial orders when needed. The team met with a specific prosecutor assigned for investigating suspicion arising from STRs - from the FIU when founded suspicion is determined.

Powers to postpone or waive arrest or seizures

454. The evaluators have been advised that the general authority of prosecutors as set forth in the Criminal Procedure Code[51] allows them when investigating ML cases to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering.

Additional elements

455. To date measures are in place that provide law enforcement or prosecution authorities with an adequate legal basis for the use of a wide range of special investigative techniques when conducting investigations of ML or FT. Article 116(2) of the Criminal Procedure Code of BiH [52] specifies the following techniques.

a) surveillance and technical recording of telecommunications;

b) access to computer systems and computerised data processing;

c) surveillance and technical recording of premises;

d) covert following and technical recording of individuals and objects;

e) use of undercover investigators and informants;

f) simulated purchase of certain objects and simulated bribery;

g) supervised transport and delivery of the objects of a criminal offence.

456. The measures referred may also be ordered against persons against whom there are grounds for suspicion that they will deliver to the perpetrator or will receive from the perpetrator of the offences information in relation to the offences, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to those persons.

457. The law specifies two exceptions to these powers with regard to attorney client privilege and incitement to commit a criminal offence.

[51] Criminal Procedure Code of the Federation of Bosnia and Herzegovina "Official Gazette" of the Federation of Bosnia and Herzegovina, 35/03 Article 18 - "The prosecutor is obligated to initiate a prosecution if there is evidence that a criminal offence has been committed unless otherwise prescribed by this Code."

[52] Criminal Procedure Code of Bosnia and Herzegovina "Official Gazette" of Bosnia and Herzegovina, 3/03

458. According to article 117 of the BiH CPC Criminal Offences as to Which Special Investigative Measures May Be Ordered are in case of criminal offences punishable by at least three years of imprisonment or by a more severe sentence.

459. This section was only recently amended (previously referred to crimes punishable from 4 years)– thus the possibility of applying these measures to ML investigations is relatively new. The evaluators were not made aware of any experience in applying these measures to ML or FT investigations.

460. In FBiH similar provisions appear in section 130 of the FBiH CPC[53] although the evaluators were not made aware of any implementation of such measures in financial investigations.

461. In RS Similar provisions appear in section 226 – 227 of the RS CPC[54]. The evaluators where advised during the on-site visit that the RS authorities use some of these methods (e.g. controlled delivery) but that many of these measures were not yet applied in financial investigations and that the authorities had questioned the legal basis for conducting full undercover financial investigations including, for instance, the establishment of fictitious companies as part of a covert operation. In their view this type of investigative technique was not possible in the RS nor in the BiH by SIPA. When such an operation was necessary the RS authorities seek assistance from foreign investigative authorities.

462. In BD Similar provisions appear in Sections 116-117 of the BD CPC[55] although the evaluators were not made aware of any implementation of such measures in financial investigations.

463. The evaluators were not made aware of any Permanent or temporary groups specialised in investigating the proceeds of crime (financial investigators) other than in SIPA.

464. The evaluators were not made aware of any ML or FT Co-operative investigations with appropriate competent authorities in other countries.

465. The evaluators were not made aware of interagency review on a regular basis of ML and FT methods, techniques and trends reviewed by law enforcement authorities.

Analysis

466. As far as the Evaluation Team was informed, ML investigations, prosecutions and convictions take place primarily at state level while there are hardly any cases conducted at the level of the entities and Brčko District. It appears that in such cases, the prosecution is mainly targeted at proving the predicate crime and thus no further investigation takes place to follow the trail of the proceeds. Furthermore, the evaluators learned that the understaffed prosecution and judiciary wrestles with a significant backlog of cases related to serious economic crimes because of the pressure of workload and lack of specific expertise. Failure to investigate the proceeds may be one of the main reasons why there have been so few confiscations in ML cases.

467. Though a strategy paper has been formed for the combat against organised crime[56] this paper seems to have been implemented only on the state level and not at the Entity and cantonal

[53] Criminal Procedure Code of the Federation of Bosnia and Herzegovina "Official Gazette" of the Federation of Bosnia and Herzegovina, 35/03
[54] Republic of Srpska Criminal Procedure Code 1 July 2003
[55] Law on Criminal Procedure of Brcko District of Bosnia and Herzegovina (Revised Text) "Official Gazette of Brčko District of BiH, NO. 10/03"
[56] Strategy of Bosnia and Herzegovina for Fight Against Organised Crime and Corruption (2006-2009) Sarajevo, March 2006

level. Furthermore, careful reading of this document reveals that though money laundering is mentioned, combating money laundering seems to be a low priority and not included in the major goals set to be met by the BiH government.

468. The legal and institutional framework for investigating and prosecuting predicate offences is primarily implemented at the level of the entities and Brčko District. However, the strategy to combat organised crime, money laundering and terrorist financing has mostly been implemented at the level of BiH legislation and through the establishment of SIPA. Although SIPA has been given sufficient resources and legal authority to lead the implementation of the AML/CFT regime the deficiencies in the overall BiH law enforcement structure, together with the lack of sufficient training on financial investigations, prevent it from having the anticipated impact on the overall law enforcement effort.

469. CID appears to have achieved initial success with the detection of intelligence on organised crime. However, it has not yet demonstrated the expected results in detecting the money laundering associated with these crimes, due to lack of effective coordination both within SIPA (with FID) and with other law enforcement agencies on all levels.

470. The fragmented law enforcement structure in BiH has led to an artificial separation between the investigation of predicate offences at the level of the entities and Brčko District and money laundering at the state level. This, combined with the low level of trust between agencies from different entities and the low level of willingness to share information and cooperate, lead to concerns as to the overall effectiveness of the law enforcement agencies with regard to the investigation of ML and TF.

471. In BiH prosecutors have a pivotal role in setting law enforcement priorities and directing investigations. Unfortunately both ML investigations and confiscation seem to be a low priority for prosecutors especially at the level of the entities and Brčko District. The evaluators came across an extremely low level of awareness by prosecutors and judges both of the overall AML/CFT legislation, and particularly of the money laundering offence.

472. Special investigative techniques have only recently been allowed for the investigation of ML.

473. A lack of sufficient national cooperation and information exchange exists between all agencies involved in the investigation of predicate offences, tax offences (income tax at the level of the entities and Brčko District and VAT on the state level), and ML/FT at the state and entity levels as well as in the Brčko District. The number of successful ML convictions and confiscation of crime proceeds are consequently low depending much on the ad hoc initiative of the prosecutor leading the investigation.

Corruption (effectiveness)(relating to all law enforcement bodies)

474. The low level of trust between governmental agencies on all levels (vertically and horizontally) and between the public and private sector compromises the ability to conduct effective AML investigations.

475. The BiH authorities claimed that corruption is no longer a problem within the judicial system. However, international reports and the public perspective present a different view (for further information see Section 1 above). Unless the Government of BiH succeeds in eradicating corruption, its law enforcement bodies will continue to be less effective than possible.

Recommendation 28

476. The Criminal Procedure Code of BiH allows for the competent authorities responsible for conducting investigations of ML, FT and other underlying predicate offences to compel production of, search persons or premises for[57], and seize[58] and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons. According to the Criminal Procedure Code,[59] these powers are carried out through orders issued by the court on the motion of the prosecutor or on the motion of authorised officials upon the approval of the prosecutor. These powers are available for use in investigations and prosecutions of ML, FT, and other underlying predicate offences, or in related actions (e.g. actions to freeze and confiscate the proceeds of crime).

477. The competent authorities in BiH as referred to above have the powers to be able to take witnesses statements[60] for use in investigations and prosecutions of ML, FT, and other underlying predicate offences, or in related actions.

478. While the confiscation regime is otherwise basically sound at all levels of legislation, apart from certain, unresolved shortcomings indicated in the previous MONEYVAL report, the evaluators noticed serious deficiencies in the efficient implementation of the respective provisions. It was quite symptomatic, at both the state level and at the level of the entities and Brčko District, that provisional measures (seizure or freezing of assets) are seldom if ever applied in the preliminary stage of criminal proceedings, an apparent consequence of which is that there are hardly any convictions followed by actual confiscation of proceeds of crime. Though legislation enables a wide range of provisional measures, application of seizure has been extremely limited due to the lack of sufficient awareness, poor inter-agency cooperation and information exchange, and to the fact that no authority has been designated on all levels for the management of seized property, or the execution of confiscation orders. Financial investigations, in general terms, are exceptionally rare as the prosecution is overly offence-orientated. The high standard of proof applied by the courts appears to be an obstacle with regard to the confiscation of the proceeds of crime, especially when fictitious structures are used for laundering of criminal proceeds.

Recommendation 30

479. Some representatives of law enforcement bodies that the evaluation team met with expressed dissatisfaction with their working condition, means and the resources available. Nevertheless, the opinion of the evaluators is that the state level investigative bodies are adequately resourced.

480. The evaluators learnt that the understaffed prosecution and judiciary wrestles with a significant backlog of cases related to serious economic crimes because of the pressure of workload and lack of specific expertise. Failure to investigate the proceeds may be one of the main reasons why there have been so few confiscations in ML cases.

481. A number of joint training seminars between law enforcement agencies and prosecutors and also between prosecutors and judges have been conducted. Although there have been no

[57] Chapter VIII Actions Aimed at Obtaining Evidence Section 1 - Search of Dwellings or Other Premises and Persons Article 65 Search of dwellings, other premises and personal property
[58] Section 2 - Seizure of Objects and Property
[59] Article 79 of the Criminal Procedure Code
[60] Section 5 - Examination of Witnesses Article 95 - Summons to Examine Witnesses

specific training seminars on money laundering or financing of terrorism, Topics covered have included corruption, financial crime, and terrorism and the funding of terrorist

482. During 2007 and in the first half of 2008, with the view to performing high quality of work in the field of combating corruption and crime, SIPA continuously trained its investigators. In the given period, 42 training sessions were conducted in BiH, attended by 15 investigators. ICITAP organised the greatest number of training sessions (11), followed by the U.S. Embassy (9), VE-CARPO (8), French Police (3), and EUROPOL, Central Bank, RS Ministry of the Interior, FBI, and Austrian BK (two each), while URFP organised one (1). The topics covered at these trainings were the following:

1. Proactive attitude toward fraud and corruption,
2. Investigating and prosecuting financial crime perpetrators,
3. Combating serious financial crime/application of ANACRIM method,
4. Terrorism financing and money laundering,
5. Analytical investigative methods,
6. Investigating and prosecuting financial crime,
7. Advance course in analytical and investigative methods,
8. Legal instruments in civil procedure with regard to temporary and permanent confiscation of proceeds of crime,
9. Terrorism financing and money laundering,
10. Managing complex investigations,
11. Money laundering,
12. Financial investigations and confiscation of illegally gained property,
13. Strategic intelligence analysis,
14. Interviewing techniques - basic course,
15. Interview and police interrogation,
16. Money counterfeiting,
17. Combating corruption, and
18. Tax fraud in the area of direct taxes.

483. Centres for education of judges and prosecutors in the Federation and RS, together with the Judicial Commission of the Brčko District, every year through their professional development program implement the strategic guidelines from the 2007-2010 Mid-term strategy for initial training and professional development. According to the Project of High Judicial and Prosecutorial Council of BiH titled "Establishing better coordination mechanisms between the police and prosecutors offices," whose implementation is being prepared, special attention will be paid to education and professional development of prosecutors and the police, which will be another step toward establishing better and more efficient mechanisms in anti-corruption efforts.

484. In 2008, ICITAP (U.S. Ministry of Justice - International Criminal Training Assistance Program) organised training for inspectors of the Federation Tax Administration - Intelligence and Investigations Division, on the topic of "Financial investigations and prosecution in the field of financial crime".

485. According to the 2007-2008 training plan, the Tax Administration of the Federation continuously conducts training of its employees on the following topics:

- "Law on Profit Tax"
- "Law on Income Tax".

486. The Tax Administration of the Federation continuously conducts a planned training of its employees per department in consistent implementation of tax provisions related to tax incentives, all with the view to preventing corruption. In future training sessions and seminars, GRECO recommendations concerning tax incentives will be presented as a regular topic for education of Federation Tax Administration employees.

487. Bearing in mind that the main recommendation of the GRECO evaluation team in Bosnia and Herzegovina for tax authorities, is to organise special training for tax inspectors in order to make them aware of tax incentives that hide corruption payments, the RS Tax Administration has done the following:

- In the past three years, training has been organised continuously for inspectors who perform inspections of taxpayers and for inspectors-investigators who are in charge of discovering and documenting different forms of tax fraud and financial crime. Training has been conducted through professional seminars that lasted several days and were organised by the Tax Administration, treating the most topical taxation issues, held by experts from the Tax Administration and other professional institutions. As a rule, such seminars are planned and held at least twice a year.

- Apart from that, inspectors-investigators, and a number of inspectors who perform inspections of the taxpayers, participated in all professional training sessions in this field, organised by the law enforcement institutions at the level of Bosnia and Herzegovina and the international community.

488. The evaluators were not made aware of any attempt to connect these tax related training efforts to AML CFT issues.

Recommendation 32

489. Although required by law,[61] BiH does review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis. It does not maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing.

490. Statistics on ML and FT investigations, prosecutions and convictions, the number of cases and the amounts of property frozen, seized, and confiscated relating to ML, FT and criminal

61 According article 26 of the LPML, in order to enable the centralization and analysis of all data related to money laundering and funding of terrorist activities, prosecutor's offices shall forward to the FID information on criminal offences of money laundering and funding of terrorist activities and on minor offences as prescribed in Articles 39 and 40 of this Law. Prosecutor's offices shall be obliged to forward twice annually to the FID the following information:
The name, surname, date of birth and permanent address, or the name and seat of the company against whom an indictment has been confirmed for money laundering or the financing of terrorist activities or a request for initiating minor offence proceedings based on the provisions of this law has been filed;
Place, time and manner of perpetrating the suspected criminal offence or minor offence;
The stage of the proceedings;
The amount of money or the value of other property, which is the subject of a temporary seizure, an arrest in property, or confiscation and the date of the decision.

proceeds etc. were only partially made available to the evaluators vis a vis the evaluation but were not maintained routinely by the authorities.

491. The only meaningful statistics provided were from the Tax Administration of Republic of Srpska as set out below.

492. For the period from 2002 to 2008, 174 applications and reports on criminal offences committed by 190 persons were submitted to the district attorney's offices of the Tax Administration of Republic of Srpska.

493. The decline in the number of persons charged, as demonstrated in these statistics, may be explained by the description given by RS law enforcement authorities to the evaluators claiming that shifting the AML/CFT effort to the state level had reduced the effectiveness of the system on the entity level.

Table 10: RS Tax Administration reports submitted to Prosecutor's Office

Year	Number of Criminal Charges Submitted to District Attorney's Offices	Responsible Persons Charges Levelled Against	Amount of Damages KM
2002	22	25	15,357,951.43
2003	20	22	38,286,542.59
2004	44	55	11,213,862.90
2005	40	40	23,849,869.96
2006	18	22	4,285,055.65
2007	16	16	3,634,788.69
2008	14	15	1,229,811.34

2.6.2 Recommendations and comments

494. ML and FT should be set as a higher priority for law enforcement. The money laundering offence should be an integral part of an investigation when investigating a predicate offence involving a funds generating crime. Prosecutors should also place a greater focus on targeting and proving ML as well as the underlying predicate crime. In addition much greater efforts should be put into tracing, seizing freezing and confiscating the proceeds crime.

495. BiH should address the problems facing the prosecution and judiciary by increasing resources and staffing in order to deal with the backlog of cases related to serious economic crimes affecting not only the effectiveness of the judicial process but also the investigative capacity of law enforcement agencies in the BiH.

496. A clear AML CFT national strategy should be prepared with set goals to be achieved by law enforcement bodies on all levels, including the state, entity, and cantonal levels. The main goal of such a strategy should be increasing the effectiveness of action taken against the proceeds of crime by harmonising the independent law enforcement efforts against predicate offences, ML, and tax evasion.[62]

[62] The AML/ CFT national strategy for the period 2009-2013 was prepared by the Working group of institutions of Bosnia and Herzegovina for the prevention of money laundering and funding of terrorist activities and it was adopted by the Council of Ministers of BiH on 30 September 2009. The vision of the Strategy and its Action Plan is that Bosnia and Herzegovina has an efficient and coordinated system for the prevention of money laundering and financing of terrorism based on inter-institution cooperation and international standards.

497. Considering the pivotal role of prosecutors, measures should be taken to raise awareness among prosecutors and judges both of the overall AML/CFT legislation, and particularly of the money laundering offence.

498. Measures should be taken to enhance national cooperation and information exchange between all agencies involved in the investigation of predicate offences, tax offences, and ML.

499. Now that the law has been amended special investigative techniques should be utilised to investigate money laundering.

500. All law enforcement authorities should continue to strengthen inter-agency AML/CFT training programs in order to have specialised financial investigators and experts at their disposal.

501. Corruption is a problem and it continues to be a problem for all law enforcement bodies and the judicial system. The perception of corruption undermines confidence in the various law enforcement agencies, prosecutors offices and the judiciary and inhibits inter-agency cooperation. While the government is to be commended for its policy efforts to eliminate corruption, these efforts have still not had sufficient impact throughout the country.

502. Little or no use is made of statistical data to pinpoint areas of risk or highlight where resources are required. It was the view of the evaluators that the statistics that were provided had been prepared largely to support the evaluation visit. It is recommended that comprehensive statistics on all aspects of money laundering and terrorist financing should be maintained and regularly analysed in order to assess the effectiveness of the system and make improvements where necessary.

2.6.3 Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.27	**LC**	• Low effectiveness as ML rarely investigated as an offence when not related to tax evasion. • Perception of corruption may have an impact on effectiveness of the system. • No clear national strategy geared to increase the effectiveness of action taken against the proceeds of crime.
R.28	**LC**	• Concerns over effectiveness

2.7 Cross Border Declaration or Disclosure (SR IX)

2.7.1 Description and analysis

503. BiH has not implemented a comprehensive system with reporting obligations for incoming and outgoing cross-border transportations of currency or bearer negotiable instruments that could be related to money laundering or terrorist financing.

504. Certain reporting obligations exist under current legislation on the entity and BD level which cover some relevant criteria of SR IX.

505. According to article 41 of the Law on Foreign Exchange Operations of Republic of Srpska (Official Gazette of Republic of Srpska, no. 24.11.2003):

> *"When crossing state border, both residents and non-residents are obliged to declare each and every bringing into/taking out of the country foreign currency cash, convertible marks cash and securities in the amount exceeding the amount prescribed by the Government.*
>
> *Obligations from paragraph 1 of this Article refer also to a representative, authorised person or plenipotentiary , who carries foreign currency cash, convertible marks cash and securities over the state border for a legal person or entrepreneur."*

506. According to article 57 of this Law:

> "*A fine in the amount ranging from 1,500 KM to 17,000 KM shall be imposed to authorised bank, bank, governmental institution and organisation, resident-legal person and non-resident- legal person for a violation:*

507. According to article 43 of this Law:

> *43. .....if he/she does not declare to a custom officer each and every bringing into, i.e. taking out of cash in domestic or foreign currency, cheques and other securities in the amount exceeding amount prescribed by the Law stipulating prevention of money laundering (Article 41, paragraph 1.)..... „*

508. According to section 60 of this law:

> *"A fine in the amount ranging from 300 KM to 1,500 KM shall be imposed to resident-physical person for a violation:*
>
> *7. .....if he/she does not declare bringing into, i.e. taking out of cash in domestic or foreign currency, cheques and other securities in the amount exceeding amount prescribed by the Law stipulating prevention of money laundering (Article 41)..... "*

509. The threshold for the abovementioned reporting obligation has been set in section 3 of the decree issued under this law published in the Official Gazette of Republic of Srpska no.16, dated 25.02.2005. to be €2,500 or its equivalent in convertible marks. According to section 4 of this decree it is forbidden for a resident to carry cash above this threshold across the border (subject to specific permit to be given by the minister of finance).

510. In the Federation of Bosnia and Herzegovina article 58 of the Law on Foreign Exchange Operations („Official Gazette of the Federation of Bosnia and Herzegovina“, no. 35/98) states that:

> *"Taking out of the foreign currency cash, securities and gilts denominated in foreign currency is done under conditions stipulated by the Ministry."*

511. Article 64 of this law states that the fine in the amount ranging from 200 to 2000 KM will be imposed to both domestic and foreign physical persons for a violation "*If he/she takes domestic currency cash out from the country and brings domestic currency cash into the country contrary to the regulation*".

512. According to the Book of Rules on conditions and procedure of taking foreign currency cash, securities and gilts denominated in foreign currency out of the country, (which was brought in force on the basis of Article 58 of the Law on Foreign Exchange Operations) the threshold for reporting is 5,000 DM (this threshold has not been updated since the introduction of Convertible Marks). The Book of Rules was published in the Official Gazette of the Federation of Bosnia and Herzegovina - no.35, dated 12.09.2000.

513. The above mentioned obligations in Law on the Foreign Exchange Operations of the Federation of Bosnia and Herzegovina have been implemented in the Brčko District by the Brčko District Supervisor's Order dated August 4, 2006.

514. The Indirect Tax Administration (ITA) is an independent body responsible for the collection of customs duties, excise duties and taxes. It has 5 departments and 4 regional centres. The Customs Department deals exclusively with customs. The 4 regional centres cover about 45,000 registered tax payers. The Indirect Tax Administration has no competence in AML/CFT measures but it informed evaluators that responsibilities for cross-border movement of cash or other financial instruments fall within its competence. The Indirect Tax Administration (ITA) is represented on the Working Group.

515. Under Article 25 of the old LPML Customs authorities were required to report cross border transactions to the FID. With the new AML Law, under Article 59, it is now specifically the Indirect Tax Authority (Administration) that is obliged to report. This will be amplified in the following paragraphs in analysing compliance with the relevant essential criteria for Special Recommendation IX.

516. Criterion SR IX.1 requires the implementation of either a declaration or a disclosure system. The ITA informed evaluators that any movements of cash or financial securities for the amount of 10,000 KM and over are not allowed without a declaration for which the ITA issues an acknowledgement. This threshold is inconsistent with the actual above mentioned obligations set out in the different entity level legislation, and raised the question as to its ability to perform its obligation under Article 25 of the old LPML – now Article 59 of the new AML Law - where it is required that cross-border movements in the amount of 10,000 KM or more are to be reported to the FID within three days.

517. With regard to Essential Criteria SR IX.2, SR IX.3 and SR IX.4, the ITA informed evaluators that since February 2008 the ITA no longer has the power to confiscate undeclared excesses or to stop the movement of currency in order to ascertain any money laundering or financing of terrorism suspicion. Before February 2008 the ITA had in fact confiscated money to the amount of €258,500 in 24 cases for the period 2005-2006. Since 2008 the ITA only informs the FID in terms of Article 25 of the LPML. To this effect the ITA, through its Customs Section in the Regional Centres keeps records of cross-border movements of cash which it makes available to the FID.

518. As already indicated above, Article 25 of the old LPML – now Article 59 in the new AML Law - requires the Customs administration authorities (now ITA) to forward to the FID all information regarding the cross-border movement of cash and financial securities in the amount of 10,000 KM and over.

519. The evaluators were concerned with regard to the low level of cooperation at the domestic level, which is lower than that which is expected under Criterion SR IX.6 and appears to be neither effective nor efficient. The BiH authorities believe that there is a need to develop and enhance co-operation between the relevant authorities/agencies.

520. In its organisational structure the ITA has a section that is responsible for the centralisation of intelligence and international co-operation. The section operates within the ITA control office in Banja Luka. It collects and exchanges intelligence at the international level. Indeed this section is the focal point for establishing co-operation and exchange of information and documentation with other customs authorities at the regional and international level (Criterion SR IX.7).

521. No authority exists for the implementation of the elements of SR.IX (10) other than the ability to initiate a criminal investigation when there is suspicion of money laundering or terror financing. The ITA informed the evaluators that since 2007 it no longer has the competence to impose sanctions, even if only through the confiscation of excess undeclared cash. According to Article 59 of the new AML law, the ITA transfers such information to the FID but no investigations have been initiated.

522. Criterion SR IX.12 requires countries to co-operate if they discover unusual cross-border movements of gold or other precious metals. According to ITA such cooperation would likewise fall under the competences of the Central Office in Banja Luka. The evaluators were advised of some individual cases where a natural person tried avoiding measures of customs control to enter the customs territory of BiH with gold and silverware along with other goods.

523. With regard to the safeguarding and protection of exchange of information, according to Article 28 of the old LPML, the FID may only use information it received under the Law for the purposes stipulated by the Law. This principle has been retained under the new AML Law through Article 64. The ITA further advised that data and notifications collected in relation to cross-border transactions are designated as 'official secret' to ensure full confidentiality and protection under the Law on Indirect Taxation and ITA Code of Conduct for employees.

524. The March 2009 "International Narcotics Control Strategy Report" (Volume II) of the US Department of State – Bureau for International Narcotics and Law Enforcement Affairs – states the following in connection with the cross-border transfer of cash (pp 128 – 133):

> The threat posed by bulk cash couriers is not well understood in BiH. Remittances from abroad are estimated to be in the millions of U.S. dollars annually, and constitute as much as 20 percent of the BiH gross domestic product. Many of these remittances likely enter the country in the form of cash. Customs officials are required to report any cross-border transportation of cash in excess of KM 10,000 (approximately $6,770), but this regulation is not enforced and there is no declaration or disclosure system in place for cash entering the country.

Additional elements

525. At the time of the on-site visit it appeared to the evaluators that the responsibilities for the implementation of Special Recommendation IX were not clearly established. As reported some of the responsibilities previously allocated to the ITA were removed, without any reasonable cause (at least as explained to the evaluators). The evaluators therefore conclude

from the discussions with the ITA representative that BiH has not undertaken any study on the effective implementation of the FATF Best Practice Guidance paper for SR IX.

526. The evaluators have been informed that all declarations collected by the ITA customs sections are physically forwarded to the FID in accordance with the AML Law. The evaluators interpret this to mean that no electronic system is in place for such submissions. The Bosnian authorities have clarified that, in addition to the delivery of notices and information by the ITA to FID in writing, there are additional technical means of delivery of the same information in electronic form.

2.7.2 Recommendations and comments

527. There is an urgent need to adopt a legislative regime on the state level of BiH for full implementation of SR IX to include domestic cash and negotiable instruments.

528. The ITA does not appear to be fully involved in implementing the current partial regime existing on the entity level in the context of AML CFT according to SR IX efficiently and effectively. In particular it lacks the appropriate powers and tools to do so. A significant number of essential criteria do not appear to be met and *there is therefore a need to review the whole framework of cross border declarations and disclosures against the essential criteria for SR IX*.

529. Adequate funding and training is required for Customs and the financial sectors to implement and respect the customs and tax legislation.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**NC**	• No obligation at the state level for reporting cash and negotiable instruments. Limited and varying reporting obligations exist at the entity level; but not for Bosnian currency (In the Federation and BD) and not for negotiable instruments. • The ITA has no authority to obtain further information from the carrier upon discovery of a false declaration (SR IX.2). • The ITA has no authority to restrain currency where there is suspicion of ML/FT or where there is a false declaration (SR IX.3). • The ITA does not retain the information required by SR IX.4 and is therefore not able to make such information available to SIPA in accordance with SR IX.5. • No or ineffective cooperation at the domestic level (SR.IX.6). • No power to apply sanctions or seize funds by ITA (SR.IX.8) (SR.IX.9) (SR.IX.10) (SR.IX.11). • Uncertainty on whether, upon a discovery of an unusual movement of gold or other precious metal, the ITA would cooperate with the authorities of the originating/destination countries. • Lack of effectiveness.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Law, regulation and other enforceable means

530. According to the Interpretative Notes to the FATF Methodology, the basic obligations under Recommendations 5, 10 and 13 should be set out in *law or regulation.* More detailed elements to these Recommendations and, more specifically, to Recommendations 6-9, 11, 14-15, 18 and 21-22 could be required either by law or regulation or by *other enforceable means* issued by a competent authority.

531. The FATF Methodology (February 2009 version), defines *law or regulation* as being primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory obligations with sanctions for non-compliance. As to *other enforceable means* the Methodology recognises guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non-compliance and which are issued by a competent authority.

532. In Bosnia and Herzegovina the old LPML, as enacted at State level, was supported by the Book of Rules on data, information, documents, identification methods and minimum other indicators required for the efficient implementation of the provisions of the law on the prevention of money laundering (Book of Rules on Data and Information). This Book of Rules was issued by the Minister of Security on the basis of Article 34 of the old LPML. More specifically, the old LPML provided empowering clauses for the Minister of Security to issue rules. The Book of Rules on Data and Information is further supported by the Decisions on Minimum Standards of the relevant supervisory authorities issued under the terms of their respective laws.

533. The evaluators have carried out a thorough assessment of this documentation in accordance with the FATF Methodology. The evaluators have concluded as follows as regards the Book of Rules on Data and Information and the Decisions on Minimum Standards.

534. The Book of Rules on Data and Information is issued by the Minister of Security as empowered by Article 34 of the old LPML and officially gazetted. Whereas Article 34 required that the Book of Rules on Data and Information for specific provisions in the Law be issued within 3 months from the day the Law comes into force (4th May 2004), the Book of Rules was apparently issued on 14 March 2005 and came in force after a 60 day transition period for persons under obligation to harmonise their internal documents. Moreover, at times the Book of Rules goes beyond the provisions of the empowering clauses of the LPML. As a result certain provisions of the Book of Rules on Data and Information do not carry sanctions either directly or indirectly.

535. Consequently, the evaluators have examined the provisions of the Book of Rules on Data and Information individually against both the empowering clauses and the sanctions provided for under the (old) main legislation. It was noted that the Book of Rules on Data and Information itself does not speak of the imposition of sanctions. The objective of this assessment was therefore to identify the extent to which this Book of Rules could indirectly impose sanctions. Table 11 out below summarises the findings of this assessment.

536. On the basis of this assessment the evaluators conclude that the Book of Rules on Data and Information (at State level) could not be considered as *other enforceable means* as a whole.

However, the evaluators have further concluded that those sections of the Book of Rules on Data and Information, where, as indicated in Table 11, there is a direct empowering clause and are, as such, sanctionable under the main (old) LPML, could be treated as *other enforceable means*.

537. That said, however, since the completion of the evaluation on-site visit the evaluators have been informed that Bosnia and Herzegovina has adopted a new Law on the prevention of money laundering (PA BiH No. 362/09 June 15, 2009). Article 74 of the new AML Law provides that the Minister will pass a decision and instructions defined by articles 26, 30, 41 and 44 of the new AML Law after consultations with the FID and in accordance with international standards on prevention of money laundering and financing of terrorist activities within 3 months as of the date of enforcement of this new Law. Article 23 of the new AML Law refers to providers of payment services; article 30 deals with information to be submitted to the FID and requires the Minister to prescribes what information, data and documentation should be delivered to the FID; article 41 requires the Minister to issue instructions on what data is to be reported to the FID by persons performing professional activities; and finally Article 44 the Minister shall give directives about what information will be included in the record on conducted identification of clients and transactions. The Minister is required to issue further guidance in the Book of Rules for other provisions of the new AML Law.

538. The new AML Law requires the Minister to issue a new Book of Rules within 3 months as of the date of enforcement of the new law – which Book of Rules, as far as the evaluators have been made aware, has not yet been issued. Technically the Book of Rules issued under the old LPML has therefore become obsolete with the coming into force of the new law as the current Book of Rules no longer has a legal basis. The BiH authorities have advised that until the new Book of Rules is issued the old Book of Rules remains valid. This however is not supported by any provisions of the law. In the light of the above assessment, however, the evaluators will still take the current Book of Rules as being applicable as *other enforceable means* for the purposes of measuring compliance and effectiveness during the on-site visit as up to that time the old Book of Rules was still applicable.. The new AML Law itself will be taken for measuring both compliance and effectiveness following the on-site visit.

539. The next level of regulation within Bosnia and Herzegovina is the Decisions on Minimum Standards issued by the respective Banking Agencies at the level of the Federation of BiH and the Republic of Srpska.

540. In accordance with the provisions of the Law on the Banking Agency of the Federation of Bosnia and Herzegovina, in 2002 the Board of the Banking Agency of the Federation issued its *Decision on Minimum Standards for Banks' Activities on Prevention of Money Laundering and Terrorism Financing.* Article 38 of the Law on Banks requires banks to conduct business in accordance with the Law on Banks, regulations issued by the Agency and their licence conditions. Article 65(16) of the Law on Banks imposes sanctions if a bank "conducts business contrary to the provisions of Article 38 of this Law". Consequently, non-compliance with the Decision on Minimum Standards becomes sanctionable – even though the penalties ranging from 1,000 KM to 10,000 KM may not, in the opinion of the evaluators, be adequately considered as being effective, proportionate and dissuasive. The evaluators have further been informed that such sanctions have been imposed by the Banking Agency.

541. A similar situation prevails at the level of the Republic of Srpska. In 2003 the Board of the Banking Agency of the Republic of Srpska issued a similar *Decision* on Minimum Standards. Non-compliance is sanctionable in accordance with Article 123(16) in relation to Article 86 of the Law on Banks of the Republic of Srpska. In the opinion of the evaluators, however, even though the penalties ranging from 5,000 KM to 17,000 KM may be higher than

those applied by the Federation, yet these again may not be considered as being adequately effective, proportionate and dissuasive.

542. Whilst recommending a review and harmonisation of the sanctions regime, the evaluators considers the Decisions on Minimum Standards issued by the respective Banking Agencies as *other enforceable means*.

543. It appears that there are no similar Decisions issued by the relevant supervisory authorities for the securities market and the insurance sector.

Table 11 – Assessment of the Book of Rules on Data and Information against the old LPML

Item	Topic	Enabling Article in the LPML	Sanctions LPML	Book of Rules	OEM (Y/N)
1	Guidelines for indications of suspicion	7 (1)	39 (1)	26-26	Y
2	Guidelines on connected transactions *	7 (6)	39 (1)	37-39	Y
3	Guidelines on identification information to be included in records	8 (2)	39 (1) 40 (1)	3-13, 15	Y
4	Ongoing review of ID documents and, in particular, where there are significant changes calling for a re-evaluation of relationship	-	-	14	N
5	Guidelines on identification required for non-face-to-face transactions	12 (1)	40 (1)	20, 22-23	Y
6	Reliance on third parties	-	-	21	N
7	List of countries that meet internationally accepted standards*	7 (8) 12 (3)	39 (1) 40 (1)	50-52	Y
8	Contents of Reports to be forwarded to FID	13 (2)	39 (1)	24-25	Y
9	Entities on which CTRs do not need to be sent to FID*	13 (3)	39 (1)	40-49	Y
10	Cross border (transfer of money or value) wire transfers	-	-	16	N
11	Correspondent banking	-	-	17	N
12	Special attention to the identification of client and transactions for which there is a raised risk of money laundering	-	-	18	N
13	Use of special software*	-	-	19	N
***** *These provisions in the Book of Rules are more targeted in providing clarity and do not necessarily need the imposition of sanctions.*					

Laws on Banks

544. Inter alia, Article 47 of the Law on Banks of the Federation of Bosnia and Herzegovina requires that:

(i) banks do not get involved in money laundering or financing of terrorism activities or transactions that may involve money laundering or the financing of terrorism as defined in Article 2 of the old LPML;

(ii) banks shall take measures to identify customers – both when establishing a business relationship or at transaction level;

(iii) banks shall report to the Financial Police or its successor or the Agency all transactions greater than 30,000 KM or those suspected of being related to money laundering;

(iv) banks are exonerated from professional secrecy in reporting as per (iii) above; and

(v) banks shall block deposit accounts or any other form of account if so ordered by the Financial Police or its successor or the Agency and shall forward all related information to the Federal Banking Agency.

545. Similar provisions can be found under Article 101 of the Law on Banks for the Republic of Srpska.

546. Article 65(23) of the Law on Banks for FBiH and Article 123(23) of the Law on Banks for the RS both provide for sanctions if a bank "participates in transactions contrary to the provisions of Article 47 (Article 101 (RS)) of this Law".

547. The obligations under both Article 47 (FBiH) and Article 101 (RS) are partly mirroring the obligations at State level established under the AML Law – with the risk of some differences. Moreover the penalties/sanctions under the respective Laws on Banks, apart from differing between the Entities, are lower than those imposed by the AML Law and can therefore create an uneven sanctions regime subject to arbitrage. There is also an ambiguity as to who shall impose these sanctions and whether a breach of such obligations (for example the non identification of a prospective customer) is a breach of the AML Law at State level, the respective Laws on Banks at Entity level, or at both State and Entity levels.

548. Indeed, in the course of the discussions with the industry, the evaluators were informed that banks find the provisions of the Laws on Banks confusing and that there is a need for the objectives of the Banking Agencies through these articles and those of the Financial Investigation Department (FID) of SIPA through the AML Law at State level be harmonised. The evaluators were informed that Article 47 in the FBiH Law on Banks and Article 101 in the RS Law on Banks were inserted and were considered important before the State had one AML Law. At this stage however these provisions create ambiguity and uncertainty for the industry. Although it has never occurred, the industry does believe that for the same offence institutions could be sanctioned either by the FID under the AML Law or by the relevant Banking Agency under the respective Law on Banks at the Entity level or by both. Banks confirmed that to date all sanctions have been imposed by the respective Banking Agencies.

549. The evaluators conclude that the provisions in the respective Laws on Banks of the Federation of BiH and of the Republic of Srpska create a certain degree of ambiguity and uncertainty. Indeed the application of sanctions at the Banking Agency level undermines the application of sanctions at State level under both the old and the new AML Law. Moreover, there are differences also in the monetary value of penalties that can be applied under the Law on Banks for the Federation of BiH (1,000 KM –10,000 KM), the Law on Banks for the

Republic of Srpska (5000 KM –17,000 KM), and the new AML Law at State level [Art 72 20,000 KM –200,000 KM and Article 73 10,000 KM –100,000 KM].[63]

550. *The evaluators highly recommends that this matter be addressed urgently*, possibly by the Working Group as an inter-ministerial and professional body of the Council of Ministries of Bosnia and Herzegovina, in order to rectify and clarify ambiguities, uncertainties and conflicts in the application of the AML Law at State level and for the industry.[64]

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

551. The old LPML determines measures and responsibilities to be imposed upon obliged entities and other responsible authorities for detecting, preventing and investigating money laundering and the funding of terrorist activities. The law also prescribes measures and responsibilities for international co-operation in this regard. This objective has been retained under the new AML Law.

552. The old LPML does not recognise a risk based approach for customer due diligence although it does provide for some exceptions, mostly related to those identified under the FATF Recommendations in relation, for example, to certain insurance products. It is only under the new AML Law that a customer due diligence risk based approach is being introduced and this through Articles 19 to 25. Under Article 7(8) the old LPML, now transposed into Article 24 of the new AML Law, further excludes the application of identification measures if the client is:

(i) An authority of Bosnia and Herzegovina, the Federation of BiH, the Republic of Srpska, the Brčko District or an organisation with public authorisation;

(ii) A bank, insurance company and natural and legal persons brokering in the sale of insurance policies and investment and mutual pension companies and funds whatever the legal form with headquarters or parent institutions in a member country of the European Union or in a country which, according to information from the FID, international organisations and other competent international bodies, meets internationally accepted standards for the prevention and detection of money laundering and funding terrorist activities and is designated as such a country by the Minister.

553. It is only under the Decisions on Minimum Standards issued separately by the Banking Agencies of the Federation of BiH and the Republic of Srpska that there are some references to the application of a risk based approach. However, there do not appear to be similar provisions for the other parts of the financial sector or for DNFBPs. Indeed it is only through the new AML Law that there are provisions requiring '-persons under obligation' to carry out a risk assessment through which they are expected to determine the risk level of groups of clients or a single client, business relationship, transaction or product regarding possible misuse for the purposes of money laundering or terrorism financing. As indicated above the provisions under Article 7(8) of the old LPML are now reproduced under Article 24 of the new AML Law under simplified identification and therefore, contrary to the full exemption under the old law, the obligation on 'persons under obligation' now is to applied simplified procedures. But then again this is a requirement on obliged entities in relation to their

[63] Refer to analysis and comments re Recommendation 17

[64] The evaluators have been subsequently informed that the Working Group have identified this as a specific issue and are in the process of rectifing and clarifying ambiguities, uncertainties and conflicts in the application of the new AML Law at State level and for the industry.

customers and not in relation to the overall situation in the country for those elements of the system that could be used for money laundering.

554. It does not appear, therefore, that Bosnia and Herzegovina has carried out any formal national assessment of the risks to the country for money laundering and the financing of terrorism. The evaluators however note the setting up of the Working Group since July 2008 whose tasks include "the creation of Strategy for prevention and combating of money laundering". It does not appear that such a Strategy has been developed. But, in March 2006 Bosnia and Herzegovina did adopt a published strategy for the fight against organised crime and corruption.

555. It appears to the evaluators that the risk of money laundering and terrorist financing remains overall high. As concluded in the First Evaluation Report a clear understanding of the concept of money laundering remains lacking with several representatives of obliged persons and institutions confusing money laundering with tax evasion and corruption generally.[65]

556. In conclusion the evaluators have identified a need for the Bosnian authorities to conduct a more formal risk assessment of the country's vulnerabilities to the threats of money laundering and the financing of terrorism. Such an assessment should in particular examine the risks confronting financial institutions, designated non-financial businesses and professions and non-governmental and non-profit organisations.[66]

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5- Customer due diligence

557. The old LPML does not specifically provide for full customer due diligence obligations as required under the FATF Recommendations. Customer identification procedures are generally covered through Section II Item 1 of the old LPML. In brief, obliged entities are required to identify their clients when opening an account or establishing a business relationship. At transaction level obliged entities are required to identify their client during each transaction or connected transactions of 30,000 KM or more. But this does not amount to the full customer due diligence requirements. There are provisions in the Law to identify the person on whose behalf a transaction is undertaken and to identify direct and indirect ownership of 20% or more of the shareholding in case of legal persons – but this does not necessarily cover the concept of 'beneficial owner'. To an extent, the new AML Law has now addressed these issues by defining the customer due diligence procedures, whilst also defining beneficial ownership.

Anonymous accounts and accounts in fictitious names

558. Criterion 5.1 requires that financial institutions are not permitted by law to keep anonymous accounts or accounts in fictitious names. Although there is no specific prohibition in the old LPML to this effect, yet Article 7 prohibits the opening of an account for a client or the establishment of a business relationship with a client unless that client is identified as provided for in the Law. In so far as the banking sector is concerned the relevant Decisions on Minimum Standards of the respective Banking Agencies at Entity level both state that "Bank cannot open an account nor operate with such a customer who insists on staying anonymous or gives a false name." However, the new AML Law attempts to address this matter under

[65] Refer to First Mutual Evaluation Report, 6 June 2005 (MONEYVAL (05) 13) page 31 paragraph 39

[66] The evaluators have been informed that the strategy and action plan were adopted in September 2009.

Article 27 requiring that 'persons under obligation' will not open, issue or have secret accounts, saving books or signatory saving books or saving books of the carriers or other goods that enable, directly or indirectly, hiding of client's identity. Notwithstanding, the position regarding numbered accounts remains unclear even though the private sector met by the evaluators and the authorities have assured the evaluators that numbered accounts do not exist.

559. In the 2005 Evaluation Report the evaluators noted that Article 28 of the Law on Foreign Exchange Transactions of FBiH allows banks to open and keep savings deposits in bearer form but denominated in foreign currency for resident legal persons and non-resident natural persons. Such funds may be freely used for payments abroad. It appeared at the time that in RS and BD foreign exchange controls also existed but, at the time, relevant laws were not provided for consideration. During the current evaluation the evaluators were informed that there have been no changes to the Law and that in the opinion of the authorities Article 28 does not allow savings deposits in bearer form. The current evaluators endorse the findings and the views of the evaluators in the 2005 Report. It therefore appears that the situation has remained as it was. The aforementioned provisions in the new AML Law may indeed have now introduced a conflict with the Law on Foreign Exchange Transactions as mentioned.

Customer due diligence

560. Criterion 5.2 requires financial institutions to undertake customer due diligence (CDD) measures when.

(i) establishing business relationships;
(ii) carrying out occasional single or several interlinked operations above the designated threshold (€15,000);
(iii) carrying out occasional wire transfer transactions in single or several interlinked operations above the designated threshold (€1,000 – SR VII);
(iv) there is suspicion of money laundering or financing of terrorism;
(v) the financial institution has doubts about the veracity or adequacy of previously obtained customer ID data.

561. Article 7 of the old LPML, which does not specifically make references to CDD measures but only to identification procedures, required the identification of clients when:

(i) Opening an account or establishing a business relationship.
(ii) During each transaction or connected transactions of 30,000 KM or more.

Article 6 of the new AML Law now requires obliged entities and persons to apply CDD when:

a. Establishing a business relationship with a client;
b. A transaction of 30,000 KM or over is conducted, regardless the number of operations, either one or set of several obviously connected transactions;
c. There is a suspicion of authenticity or adequacy of previously received information about the client or the real owner;
d. There is a suspicion of money laundering or financing of terrorist activities re transaction or a client, regardless the amount of transaction.

562. The old LPML defined a transaction as the opening of an account; the deposit or withdrawal of cash as defined in the Law; transfer of funds between accounts; exchange of currency; the sanctioning of loans or the extension of credit; the purchase or sale of any share, stock, bond, certificate of deposit, or other monetary instruments or investment security;

transactions in real estate or any other payment, transfer, or delivery by, through or to a natural or legal person referred in Article 3 (obliged entities)of the Law, by whatever means. This is a very wide and broad definition that basically captures all types of transactions where CDD measures should be applied.

563. Under the new AML Law the term 'transaction' has been given a less comprehensive meaning *any type of receiving, keeping, exchanging, transferring, using or other way of handling money or property by persons under obligation.* The new law has also introduced a definition of 'cash transaction' as being *each transaction in which a person under obligation physically receives the cash money from/to a client.*

564. With these two definitions and with the requirement to undertake CDD when "a transaction of 30,000 KM or over is conducted" there may arise doubt as to whether the undertaking of a cash transaction actually calls for the obligation to undertake CDD, even though the requirement remains for the amount of 30,000 KM or over.

565. Both the old and the new AML Laws however are silent on the imposition of CDD measures, or customer identification procedures, when carrying out occasional transactions that are wire transfers where the amount is €1,000 or more. The evaluators were informed that in such cases banks would still identify the customer just in case eventually there is a suspicion on the transaction – a far fetched option. The new AML Law addresses electronic transfer of money under Article 26 which however does not impose this obligation but requires the Minister for Security to define the information to be gathered in the transfer of money through the new Book of Rules which, as far as the evaluators are aware, has not yet been issued.

566. The new AML Law has however introduced a direct requirement in instances where

(i) There is a suspicion of money laundering or terrorist financing. For the banking sector the evaluators were previously referred to Article 12 of the relevant Decisions on Minimum Standards of the respective Banking Agencies of FBiH and RS which require a review of a client relationship should a customer fail to provide satisfactory explanation for significant changes in that customer's behaviour. The evaluators did not concur that this situation covers the identification procedures for this criterion;

(ii) The financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. The evaluators were previously again referred to Article 12 of the Decisions on Minimum Standards could have, though in a remote and indirect way, partially covered this requirement for the banking sector (but the Decisions are only considered as *other enforceable means*). Likewise the provisions of Article 14 of the old Book of Rules on Data and Information which article, for the purposes of this Report, is not considered as *other enforceable means.*

Required CDD Measures

567. Criterion 5.3 requires, by law or regulation, that financial institutions identify their customers (permanent or occasional, legal or natural) and verify such identity using reliable independent source documents, data or other information. The paper of the Basel Committee Working Group on Cross-border Banking (General Guide to Account Opening and Customer Identification) suggests the type of information that is to be obtained in the case of natural and legal persons for identification purposes, including for corporations and professional intermediaries. The Paper recommends various methods for the verification of the identification information. Although the old LPML provides for the type of documentation/information required for the identification of customers, yet it falls short of a specific provision requiring obliged entities to verify the information obtained against

independent and secure sources except for the provisions of Article 9 of the old law which, though not exhaustive, provides some indication conducive to a verification obligation. Article 7 of the new AML Law now requires 'persons under obligation', as part of the CDD process, to establish the identity of the client and to validate his/her identity based on documents, data or information obtained from authentic and objective sources.

568. For customers that are legal persons or legal arrangements, Criterion 5.4 requires the verification that any person acting on behalf of a customer is so authorised and identified together with the verification of the legal status of the legal person or arrangement. The former part of Criterion 5.4 is required to be set out by law or regulation. Article 10 of the old LPML requires obliged entities to identify whether a person is acting on his own behalf or on behalf of a third party. Although the text of the old LPML does not specifically require an obliged entity to ensure that such a person is so authorised, the wording is conducive to such interpretation. Article 10 is specific on the obligation to verify the legal status of the third party in the manner as established by the old LPML under Articles 8 and 9. The new AML Law has clarified this requirement further under Article 10 – 12.

569. Criterion 5.5 addresses the identification of the beneficial owner of a client that is a legal entity or in the form of a legal arrangement, including its control and management structure. This main criterion includes a number of sub-criteria that need to be satisfied, some at law or regulation level, in compliance. Article 10(1) of the old LPML requires obliged entities to ascertain whether a person is acting on his own behalf or otherwise. If the latter, obliged entities are required to identify the third party in accordance with the identification procedures under the Law. The Law however is silent on issues relating to the control structure (mind and management) where the customer is a legal person. At the time of the on-site visit the concept of "beneficial owner" was not defined in any law, regulation or other documentation. The only reference in the old LPML is an obligation for an obliged person or entity to identify each natural person (not legal persons) who, directly or indirectly, owns at least 20% of the business share, stocks or other rights and on which grounds he or she participates in the management of that legal person. The Decisions on Minimum Standards of the respective Banking Agencies (Article 11(1)) further require banks, in the case of business companies, to get to know the ownership structure and authorised decision makers. The old LPML requires that information on legal persons shall be obtained by an examination of the original or certified copy of the documentation from the court register or other public register. In the course of the evaluation the evaluators could clearly sense the lack of understanding of the concept of beneficial ownership throughout the whole sector. Moreover, the evaluators understand that the ownership structure of legal entities is not updated by the Courts Registry for subsequent changes in shareholdings that take place after registration and hence it is difficult to understand how full identification is or can be carried out in the case of legal persons.[67] This issue has been addressed under the new AML Law which now carries a definition of beneficial owner under the term 'real owner' which defines such persons for the purposes of a domestic legal entity and for the purposes of a foreign one – both of which remain linked to the 20% ownership. Although the definition is not completely in line with that under the FATF 40, yet it captures the main requisites. However the requirement to identify the beneficial owner under the new Article 15 covers procedures only for domestic legal entities. Obligations for foreign legal entities are covered through the requirements of Article 10.7. Moreover, whilst allowing for a declaration by the legal representative to fulfil the CDD requirements it does not provide for the verification thereof. Moreover, the new AML Law does not specifically require the establishment of the 'mind and management' of a legal person in the course of the identification process.

570. Criterion 5.6 requires financial institutions to obtain information on the purpose and intended nature of the business relationship. This requirement is adequately covered through

[67] Refer to the comments and analysis under Recommendation 33

paragraph 4 of Article 8(1) of the old LPML requiring information on the "Reason for establishing a business relationship or conducting the transaction and information about the activities of the client." Under the new AML Law this is more specifically covered by Article 7.1. At least for the banking sector, both the industry and the Agencies confirmed that this is done in practice.

571. Criterion 5.7 requires financial institutions to conduct ongoing due diligence on the business relationship. Such a requirement must be in the form of an obligation prescribed by law or regulation. The obligation under this criterion goes beyond the identification process documentation in that it requires the ongoing scrutiny of transactions throughout the relationship to ensure that these are conducted consistent with the institution's knowledge of the customer business profile, risk and source of funds. The old LPML is silent on this matter. This is only recognised under the Decisions on Minimum Standards of the respective Banking Agencies (*other enforceable means*). The new AML Law however now makes reference to the obligations under Criterion 5.7 in that 'persons under obligation' are required to keep regular tracking of business activities taken by the client through the person under obligation. Yet the new AML Law falls short from defining how this obligation is expected to be met but, except for the provisions of Article 18, leaves it within the competences of the 'persons under obligation' themselves to establish internal procedures on how to meet this obligation.

Risks

572. As already stated the old LPML does not provide for a risk based approach. The Book of Rules on Data and Information under the old law tries to partially address the risk based concept through Article 17 for correspondent banking and through Article 18 in recognising that other laws or regulations may provide for more strict identification requirements and that obliged entities shall pay special attention where there is a raised risk of money laundering or financing of terrorism. As already explained earlier, in the context of these provisions the Book of Rules is considered as having the force of *other enforceable means* as at the time of the onsite visit despite the eventual repeal of the old AML Law. As regards the banking sector the relevant Decisions on Minimum Standards of the respective Banking Agencies at Entity level both provide for banks to apply an enhanced due diligence identification and monitoring process for higher risk categories of customers. Article 15 of both Decisions calls on banks to establish a more intensive monitoring process for accounts that represent a higher level of risk. In this regard Article 15 requires banks to develop a risk matrix with key indicators that will enable them to categorise customers according to risk. Finally Article 15 requires banks to create effective internal procedures for accounts with higher risk levels. The evaluators have been informed by the banks that the evaluators met, that they have in fact put such procedures in place with a 5-level risk matrix that categorises customers from level 1 (no risk) to level 5 (where clients are not accepted). This has been confirmed by the respective Banking Agencies. Such requirements are not however addressed for other sectors of the financial system, in particular the insurance and the securities sectors. The new AML Law has now introduced the application of a risk based approach through Article 5 which requires 'l persons under obligation' to carry out a risk assessment of their clients and products, as was required under the Decisions on Minimum Standards as shown above, but more specifically through Article 19 for 'simplified' and 'intensified' procedures which are further defined in Article 20 to 25.

573. The application of reduced or simplified measures where there are low risks in terms of Criterion 5.9 are partly addressed by the old LPML, such as in the case of insurance undertakings where the annual premiums for life policies are within the established lower limits – a principle that has been retained under the new AML Law. Moreover, and as explained above, Article 7(8) of the old LPML – now article 24 under the new AML Law - further provides that the identification process shall not be applied where the client is an

authority of Bosnia and Herzegovina, FBiH, RS or Brčko District or an authority with public authorisation; or where, under specified conditions, the client is a bank, insurance company and natural and legal persons brokering in the sale of insurance policies and investment and mutual pension companies. As explained above the new AML Law has introduced a risk-based approach whilst retaining the aforementioned circumstances where simplified CDD procedures are applied. Indeed the new AML Law has now introduced the main circumstances for the application of higher due diligence as defined in the FATF-40 in relation to correspondent banking, politically exposed persons and non-face-to-face business.

574. In accordance with Criterion 5.10, the latter exceptions identified in the previous paragraph are applicable under the AML Law for entities with headquarters or parent institutions in a member country of the European Union or in a country designated by the Minister as meeting international accepted standards for the prevention and detection of money laundering and funding of terrorist activities. The Book of Rules on Data and Information identifies such countries under Section VIII. Under the new AML Law a 'person under obligation' can apply simplified customer due diligence to clients that are placed by that 'person under obligation'' into a group of clients with low risk level. This is derived from the new Article 5 requiring 'persons under obligation'' to carry out a risk assessment "prepared according to the risk assessment guidelines established by FID or other respective supervisory body." Since the new AML Law has come into effect a few weeks after the on-site visit it does not appear that any guidance in this regard has been prepared and issued and hence it is presumed that the industry can only continue to operate on the previous guidance under the old LPML in this regard. Indeed under Article 16(4) of the new law the Minister for Security is required to issue a list of countries which introduce and agree with standards against money laundering and financing of terrorist activities, as it was defined in Directive 2005/60/EC.

575. Criterion 5.12 requires that the extent of CDD measures applied on a risk sensitive basis should be consistent with guidance issued by the relevant competent authorities. As already explained, the old LPML does not recognise a risk based approach. For the banking sector the application of CDD measures on a risk sensitive basis is only partially addressed for higher risk customers through the Decisions on Minimum Standards of the respective Banking Agencies. There is no other guidance in this regards to the other parts of the financial sector, and in particular the insurance and the securities sectors as also confirmed by the relevant authorities and the industry. Although the new AML Law is introducing a risk based approach the Minister of Security, in the new Book of Rules, is expected to issue a report on technical criteria adopted by European Commission in accordance with Article 40 of Directive 2005/60/EC, data from competent international organisations and information form FID. Indeed Bosnia and Herzegovina has not at this stage adopted the technical criteria of the European Union under Directive 2006/70/EC – the Implementation Directive – and hence no guidance in this regard has yet been issued.

Timing of Verification

576. Criterion 5.13 requires the timely verification of the identity of the customer and the beneficial owner. The old LPML does not specifically refer to a verification process of the identity of the customer and the beneficial owner. Some indirect references to a verification process can be inferred through Article 9 of the old LPML which guides obliged entities as to which documents can be used for identification purposes. Similar guidance is included in Article 11 and Article 12 of the old Book of Rules on Data and Information which, likewise, does not refer to a verification process. The relevant Decisions on Minimum Standards of the respective Banking Agencies, under Article 7, prohibit banks "from establishing new business relations with the customer unless the identity of new customers is determined in a fully acceptable fashion". Article 7 goes on to state that "identification process is performed at the beginning of a business relationship." But, with regard to verification, Article 7 states "Once

banks establish the business relationship with the new customer, as well as in cases mentioned in the previous paragraph, they are required to verify and collect information….," signifying that banks can verify the identity of the customer after having established the business relationship. For the insurance sector, this is covered by the Book of Rules for the insurance sector. The evaluators did not come across any specific legal or other provisions for a verification process, other than the old LPML and the old Book of Rules on Data and Information, for the securities sector. Likewise the new AML Law, in carrying forward and enhancing the relevant provisions of the old law, is silent on the timing of verification. Indeed the only reference to *verification* of identity lies in Article 7 which required the validation of data when establishing the identity of the client.

577. Under Criterion 5.14 countries may permit the completion of the verification process following the establishment of the business relationship subject to predefined criteria. As detailed above the old LPML and the old Book of Rules on Data and Information do not specifically address the verification process. Moreover, although as explained above the relevant Decisions on Minimum Standards of the respective Banking Agencies imply the completion of the verification process after having established the business relationship, this is not subject to any criteria as defined by Criterion 5.14. Consequently, it follows that there are no risk management procedures that would support such conditions. The situation has remained the same under the new AML Law.

Failure to satisfactorily complete CDD

578. Criterion 5.15 requires that where the CDD process cannot be satisfactorily completed then business should not proceed and consideration should be given to making a suspicious report. Article 7 of the old LPML attempts to reflect Criterion 5.15. However the text of Article 7 is not clear in this regard. Criterion 5.15 may be better reflected in Article 2 of the old Book of Rules on Data and Information. Indeed, in the course of the evaluation discussions, banks and other sections of the financial sector confirmed that where the identification procedures cannot be completed, business is not concluded and a report is filed with the FID. Under Article 7(3) of the new AML Law a 'person under obligation'' is prohibited from establishing a business relationship or carrying out a transaction if that person is unable to complete the identification process as established by the same Article 7. Article 7 however does not impose an obligation on the 'person under obligation'' to consider filing a suspicious report.

579. Criterion 5.16 requires the termination of the business relationship and the filing of a suspicious transaction report where business has commenced and the identification criteria cannot be met. The old LPML and the old Book of Rules on Data and Information are silent on this issue as they do not specifically provide for the commencement of business prior to the identification process. Nor do they provide for the non-commencement of business prior to establishing the identification process. It is again only Article 7 of the relevant Decisions on Minimum Standards of the respective Banking Agencies that prohibits banks from establishing new business relationships where the identification process is not completed. Similar provisions for the insurance and the securities sectors appear not to be established, although the industry confirmed that in such circumstances they would terminate relationship and report to the FID. The position appears to have remained the same under the new AML Law.

Existing customers

580. The old LPML is silent on the re-application of CDD measures to existing customers on the basis of materiality and risk as is required under Criterion 5.17. The old Book of Rules on Data and Information, under Article 14 requires obliged persons and entities to perform regular reviews of existing documents throughout the business relationship, including where

there are significant transactions. For the purposes of this evaluation, however, Article 14 of the Book of Rules is not considered as '*other enforceable means*". For the banking sector, however, similar provisions are found in the relevant Decisions on Minimum Standards of the respective Banking Agencies. No similar provisions have however been traced or brought to the attention of the evaluators for the insurance and the securities sectors. The evaluators could note however, that there appeared to be some confusion within the industry in applying the provisions of Criterion 5.17 with the obligation to forward to the FID all cash transaction of 30,000 KM or more under Article 13 of the old LPML. The new AML Law does not appear to have changed this position.

581. As already indicated, the evaluators were assured that banks do not hold any anonymous accounts or accounts in fictitious names. Yet the old LPML requires obliged entities to conduct the identification of the bearer of a passbook during each transaction performed using a passbook. This requirement is also reflected in the old Book of Rules on Data and Information which goes on to prohibit any transaction using a bearer passbook which does not reveal the identity of the account holder. These obligations, which have been confirmed to be applied by the industry, to an extent could be considered as meeting the requirements under Criterion 5.18 – though indicating the possible existence of bearer accounts. The reference to 'bearer of a passbook' has been replaced by the words 'bankbook holder' under Article 14(8) of the new AML Law.

Recommendation 6 – Politically Exposed Persons

582. The old LPML is silent on the requirement to identify politically exposed persons and to have in place mechanisms and risk management systems to apply enhanced customer due diligence. Likewise the old Book of Rules on Data and Information does not refer to politically exposed persons. Indeed, at the time of the onsite visit, there was not even a definition of who could be identified as a politically exposed person. It is only through the relevant Decisions on Minimum Standards of the respective Banking Agencies that there are references to politically exposed persons. Under item 3.5 of Article 10 of these Decisions banks are required to "fully implement all procedures for customer identification..." for private banking and publicly and politically exposed persons. Article 15(3) further requires banks to "adopt a clear policy, internal guidelines and procedures and to establish control with special task to control prudential performance in relation to politically exposed individuals." There are no similar provisions for the insurance and the securities sectors. Furthermore, there are no provisions to determine whether a beneficial owner falls within the definition of a PEP. Banks have informed that they apply this requirement through their customer acceptance policies and risk matrices.

583. Article 22 of the new AML Law now specifically addresses the issue of politically exposed persons. Although the definition of PEPs may not be completely in line with that of the FATF Recommendations, yet it captures the main requisites. Article 22 specifically refers to *foreign* PEPs as natural persons who is or was assigned with significant public function during the previous year, including the closest family members and close associates. The Article continues to define the latter whilst establishing a category of persons that would be considered as PEPs. The reference to 'the previous year' may be an attempt to translate the relevant provision under Article 2(4) of the EU Commission Implementation Directive 2006/70/EC, but may lend itself to interpretation as if placing a timing as to when such person was first assigned a significant public function.

584. Criterion 6.2 requires financial institutions to obtain senior management approval for establishing business relationships with PEPs. There are no provisions to this effect in any law, regulation or other rules. Both the Banking Agencies and the banks claim to have such

obligations embedded in their internal rules. Article 22(6)(b) of the new AML Law now imposes this obligation for those entities that enter into a business relationship with PEPs.

585. It is only through item 3.5 of Article 10 of the relevant Decisions on Minimum Standards of the respective Banking Agencies that a reference is made to the source of funds of PEPs but there are no references to beneficial owners that are identified as PEPs as is required under Criterion 6.3. Banks are therefore required to perform a review of sources of funds. There are no similar provisions for the insurance and the securities sector. The requirement to identify the source of funds is now covered by Article 22(6)(a) of the new AML Law but the new law still remains silent on beneficial owners that are identified as PEPs.

586. Criterion 6.4 requires financial institutions to conduct enhanced ongoing monitoring of their relationships with PEPs. Although there are no such provisions specifically in the old LPML or the old Book of Rules on Data and Information, an element of enhanced monitoring is inferred from the relevant Decisions on Minimum Standards of the respective Banking Agencies, mainly through Article 5. Banks appear to be applying this through their customer risk policies. The evaluators were provided with no information in this regard with respect to other parts of the financial sector. The new AML Law however now imposes a general obligation on all persons' under obligation' under Article 22.

Recommendation 7 – Correspondent Banking

587. The old LPML is silent on issues related to correspondent banking. Article 17 of the old Book of Rules on Data and Information addresses the establishment of correspondent banking relationships. But, as has already been established, Article 17 of the old Book of Rules cannot be considered as *other enforceable means*. It is therefore only item 3.7 of Article 10 of the relevant Decisions on Minimum Standards of the respective Banking Agencies that becomes applicable – which banks claim to be applying. The new AML Law, in introducing enhanced or 'intensified' customer due diligence as part of the risk based approach, now establishes the relationship under correspondent banking. First of all the law now defines 'correspondent banking' as being the relationship where a foreign credit institution opens an account with a domestic institution. Article 21 of the new law then defines the procedures to be followed by banks when entering into such a relationship – for some unknown reason however the Article refers to 'Tax Payer' as opposed to 'person under obligation''**.**

588. Criterion 7.1 requires financial institutions to gather sufficient information about a respondent institution such that an informed decision can be taken for such relationships. Item 3.7 of Article 10 of the Decisions requires banks to gather all necessary information on their correspondent (no reference to 'respondent') banks in order to have a full knowledge of their activities and reputation. Banks are allowed to establish correspondent (no reference to 'respondent') banking relationships only with those banks that are located in countries that practice effective AML/CFT supervision. Article 10 requires banks to gather information on correspondent banks in the area of prevention of money-laundering and terrorism financing, including information on the adequacy of their customer acceptance and the know-your-customer policies. The evaluators have been assured that banks examine this information to assess the degree of AML/CFT compliance – Criterion 7.2 - but no evidence was made available that could corroborate this claim.

589. Further to the requirements under the Decisions, Article 21 of the new AML Law now includes specific provisions requiring 'persons' under obligation' to collect and examine such data.

590. Criterion 7.3 requires the approval of senior management before a new correspondent relationship is established. There are no provisions to this effect in the old LPML, the old Book of Rules on Data and Information or the Decisions on Minimum Standards, although

banks have confirmed that they do so as part of their management of higher risk accounts. This has now become an obligation under the new AML Law.

591. The evaluators were not provided with any evidence that banks document the respective AML/CFT responsibilities of each institution as required by Criterion 7.4.[68]

592. As regards Criterion 7.5 in relation to the maintenance of "payable-through-accounts", item 3.7 of Article 10 of the relevant Decisions on Minimum Standards of the Federation of BiH and the Republic of Srpska only requires banks to prevent the risk of correspondent accounts being used by third parties. Article 10 therefore stops short from addressing the requirements as established under Criterion 7.5. Moreover this issue is not addressed in the new AML Law.

Recommendation 8 – Threats from new or developing technologies

593. There are no provisions for financial institutions to take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes. The evaluators have been informed that the use of electronic banking is low and, in any case, accounts cannot be opened electronically. The new AML Law remains silent on this matter.

594. Criterion 8.2 requires the establishment of policies and procedures that address the specific risks associated with non-face-to-face business relationships or transactions. Article 12 of the old LPML allows the identification of a client in his absence (non-face-to-face), provided the necessary identification documents are obtained in accordance with the provisions of the LPML and in the manner regulated by the Minister. Article 22 of the old Book of Rules on Data and Information as issued by the Ministry of Security does not specify the 'manner' on how the information is to be collected in non-face-to-face transactions or relationships. It only requires obliged entities to "Determine special and appropriate measures for decreasing the higher risk levels existing in operations with non-face-to-face clients". The evaluators have been informed that electronic-banking is limited and accounts cannot be opened electronically. Item 3.6 of Article 10 of the relevant Decisions on Minimum Standards of the respective Banking Agencies seems to contradict this statement. In carrying forward the provisions of the Book of Rules on Data and Information, Article 10 of the respective Decisions requires banks to apply customer identification and ongoing monitoring, as is applied for any other customer, to "non-face-to-face customers who open accounts by telephone or by different electronic technologies". Similar provisions are included under Article 20 of the old Book of Rules on Data and Information.

595. Other elements of the financial sector, in particular the insurance and the securities sectors, are silent on this matter. The evaluators however have been informed that in practice no business is carried out through electronic means. The new AML Law identifies non-face-to-face business as one of the circumstances where 'persons' under obligation' are required to apply 'intensified customer identification and monitoring measures'. Indeed Article 23 details the additional criteria to be applied in such circumstances during the identification and business relationship process.

3.2.2 Recommendations and comments

596. In general a customer identification procedure (not full CDD measures) is in place. The evaluators note that the situation for the banking sector is better and more effective than that for the rest of the financial sector. Indeed, for example, brokerage houses hold that since their

[68] The evaluators do, however, note that a footnote to R.7 states "It is not necessary that the two financial institutions always have to reduce the respective responsibilities into a written form provided there is a clear understanding as to which institution will perform the required measures"

customers have to open a bank account, they do not believe it is their responsibility to identify a customer as this should be done by the bank – even though they are providing a financial service to that customer. Notwithstanding, the evaluators found a number of shortcomings in relation to certain essential criteria for Recommendation 5, including where key elements are required to be provided for through legislation. A number of these findings have now been addressed by the new AML Law but the effectiveness of these new provisions cannot be measured.

597. Although there is a broad awareness amongst the industry as regards customer identification legal obligations, this does not appear to be the case in practice. The concept of the beneficial owner and the resultant identification requirements, although now better identified under the new AML Law, still need to be addressed and implemented more effectively. Indeed, the lack of legal obligations in some instances appeared to impact on the effectiveness of the system.

598. As regards Recommendation 5 the evaluators note that a number of findings in this regard identified during the on-site visit have now been addressed under the new AML Law. These include:

- a specific prohibition on opening or holding of anonymous accounts of any kind, including accounts in fictitious names;
- insert the customer-due-diligence concept in the Law as opposed to the customer identification process, even if for the banking sector this is partially addressed through the relevant Decisions on Minimum Standards of the respective Banking Agencies;
- an obligation to apply CDD measures where there is suspicion of money laundering or terrorist financing regardless of any thresholds; and when the financial institution has doubts on the veracity of previous identification;
- a mandatory requirement for the CDD measures to be applied on an ongoing basis;
- Introduction of a risk based approach for CDD procedures for all sectors, thus enhancing the existing obligations for the banking sector under the relevant Decisions.

599. In the light of the foregoing assessment of the situation in Bosnia and Herzegovina against the essential criteria for Recommendation 5, and having taken into consideration the findings of the on-site visit, including the developments through the new AML Law, yet *it is recommended that the authorities take the following measures for all sections of the financial services industry:*

1. Review Article 28 of the Law on Foreign Exchange;
2. Include an obligation to apply the CDD measures when carrying out occasional transactions that are wire transfers;
3. Review the definition of "transaction" in the new AML Law which may not necessarily include "cash transactions" and hence there is doubt on the application of CDD measures;
4. Provide awareness and guidance on the applicability of the risk based approach for CDD;
5. Although specific provisions have been included in the new AML Law imposing an obligation for the verification of the identity of customers, these provisions do not address the timing of verification with a review the Decisions on Minimum Standards accordingly;

6. Ensure there is awareness and understanding by the industry on the newly introduced concept of the beneficial owner, possibly also revising Article 15 of the new AML Law;
7. Introduce an obligation for all obliged entities and persons to identify the 'mind and management' of a legal person beyond the requirements for banks under the relevant Decisions on Minimum Standards of the respective Banking Agencies;
8. Consider an obligation for the termination of business where a business relationship is established but the identification process cannot be completed; and
9. Introduce a legal obligation to apply CDD measures to existing customers beyond what is currently provided for banks under the relevant Decisions on Minimum Standards.

600. At the time of the on-site visit PEPs were only partially and limitedly addressed and only for the banking sector. However even these provisions did not entirely cover the requirements for Recommendation 6. There did not appear to be any similar provisions for the whole financial sector. Although the new law now provides for the treatment of PEPs there is a need to create awareness and provide guidance on the identification process, including where the beneficial owner is a PEP.

601. Correspondent banking was found to be largely addressed by the relevant Decisions on Minimum Standards of the respective Banking Agencies. However the coverage was not comprehensive and does not appear to specifically cover respondent bank's relationships. Although correspondent banking is now included under the new AML Law, yet the issue of 'payable through' accounts is not addressed. *It is advisable that (cor)respondent banking relationships be reviewed accordingly.*

602. Although it appears that electronic business in the financial sector is low, there are no obligations for financial institutions to have policies in place to prevent the misuse of technological developments. *This should be provided for in the new AML Law which to date does not address this issue.*

603. As regards non-face-to-face business there is a need to clarify Article 10 of the relevant Decisions on Minimum Standards.

604. The evaluators would like to reiterate that despite the coming into force of the new AML Law they remain concerned on the findings as at the time of the evaluation visit to BiH. The coming into force of the new law provides the revised legal framework but leaves much to be desired on the implementation and effectiveness. This in particular because although the law has come into force, yet it still requires the issue of the Book of Rules which will eventually provide guidance on its implementation and more awareness on the part of 'persons' under obligation', albeit to different degrees, on the concepts and the philosophy of the law and their obligations.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**NC**	• Article 28 of Law on Foreign Exchange allows the opening and retention of bearer savings accounts in foreign currency. • No obligation to apply CDD measures in all instances as required by Recommendation 5. • No timing for the verification of identification information and need to revise Decisions on Minimum Standards accordingly.

		• No mandatory obligation to apply CDD measures to all existing accounts. • Lack of awareness on the concept and applicability of a comprehensive coverage of the beneficial owner, including identification procedures. • No overall obligation to establish and identify the 'mind and management' of a legal person. • The requirements for financial institutions to conduct ongoing due diligence on the business relationship are not clear. • No requirement for obliged entities to consider filing a suspicious report where the identification process cannot be completed. • No obligation to consider the termination of business where a business relationship is established but the identification process cannot be completed. • Lack of guidance on the application of the newly introduced risk based approach and other new obligations under the new law as the new Book of Rules has not yet been issued**.** • Unable to measure the effectiveness of implementation of the newly introduced AML Law.
R.6	**PC**	• The treatment of beneficial owners that are PEPs is not clearly defined in the law. • Definition may lend itself to different interpretations. • Lack of awareness of the industry in identifying PEPs; • Measurement of effectiveness
R.7	**PC**	• No requirement for banks to document the AML/CFT responsibilities of respondent banks. • No specific obligations regarding 'payable through account'. • Measurement of effectiveness.
R.8	**NC**	• No provisions for financial institutions to take measures to prevent the misuse of technological developments. • Need to clarify application and effectiveness of Article 10 of the Decisions on Minimum Standards (FBiH, RS) for the banking sector.

3.3 Third Parties and introduced business (R. 9)

3.3.1 Description and analysis

605. In the course of the evaluation the evaluators were informed that irrespective of what the old LPML says, banks do not rely on third parties for customer identification purposes. Such reliance however is applied at a group level – even though the law does not cover this. Indeed, the old LPML does not make specific references to third parties and introduced business at all. However there are some indirect references in connection with non-face-to-face business and the use of companies specialised in customer due diligence that could be on the borderline of Recommendation 9.

606. Article 12 of the old LPML allows the identification of a client "in his absence" under prescribed conditions. Article 22 of the old Book of Rules on Data and Information then imposes prudential requirements on obliged entities to collect all information, documentation and data for such clients as is required under the LPML.

607. Article 21 of the old Book of Rules on Data and Information however allows a person under obligation to perform an independent review of non-face-to-face clients by a "reputable third party", such as a company specialised in due diligence reviews of clients. Article 21 is then reflected in Item 3.6 of Article 10 of the relevant Decisions on Minimum Standards of the respective Banking Agencies.

608. It is Item 3.3 of Article 10 of the Decisions on Minimum Standards then that establishes the procedures that banks are to apply for due diligence reviews of customers by companies specialised in customer due diligence. Under Article 10 a bank must ensure that all relevant identification information and documents related to customer identification are immediately forwarded to it and examined. Such information is made available to the bank supervisors in the course of their audit examinations.

609. It is however Articles 16 and 17 of the new AML Law that now determine third parties and cover the reliance on such third parties for carrying out parts of the customer due diligence. However the Article is rather generic in nature in that it only allows 'persons' under obligation' to rely on third parties to carry out certain parts of the CDD process but does not provide for how this process should be applied. It does however require 'persons' under obligation' to ensure that the third party *meets the conditions prescribed by this Law* whilst retaining responsibility for the CDD process upon the 'person' under obligation' concerned. Criterion 9.1 and 9.2 therefore remain partially and limitedly covered by Article 10 of the Decisions of the Banking Agencies respectively.

610. Criterion 9.3 requires financial institutions to ensure that the third party is a regulated entity. Despite the fact that Article 16 defines a third party in relation to persons under obligation in terms of the new AML Law, Article 17 of the new AML Law, as indicated above, is rather limited in scope and only requires financial institutions to ensure that the third party *meets the conditions prescribed by this Law*. The evaluators do not interpret this requirement to fulfil the obligations under criterion 9.3.

611. Criterion 9.4 requires that third parties upon whom reliance is placed should be based in countries that adequately apply the FATF Recommendations. There are no such references in the old LPML, the old Book of Rules on Data and Information or the Decisions on Minimum Standards. Item 3.3 of Article 10 of the Decisions on Minimum Standards does however require that specialised companies must comply with the minimum practices for customer due diligence. The new AML Law remains silent on this matter although Article 16 (Third Parties) of the new AML Law charges the Minister for Security to make a list of countries which apply standards against money laundering and financing of terrorism activities.

612. Criterion 9.5 requires that ultimate responsibility for customer identification and verification should remain with the obliged entity. This is reflected in Article 10 of the Decisions on Minimum Standards which specifies that the final responsibility remains with the banks when the services of companies specialised in customer due diligence are used. Article 10 of the Decisions on Minimum Standards has now been strengthened through Article 17(3) of the new AML Law which specifically states that responsibility remains with the 'person under obligation''.

613. In the course of the evaluation the evaluators tried to establish whether the procedures for third party reliance using the services of "companies specialised in customer due diligence" would fall directly under the provisions of Recommendation 9 or outside the

Recommendation but within 'outsourcing or agency relationships'. The main criterion here would be Criterion 9.3 – that the third party is regulated and supervised. The evaluators have been informed that there are no such specialised companies in Bosnia and Herzegovina. However, the evaluators could not establish whether such companies would have to be licensed by the respective Banking Agencies or another authority, whether if licensed such companies would be subject to regulation and supervision and by whom and whether these companies themselves would be recognised as obliged entities under the AML Law. These appear to be unchartered grounds for both Banking Agencies and hence there are no policies or procedures in place should the eventuality occur. Thus, it was not clear how the system would operate. There are no similar provisions for the insurance and securities sectors, except for those under Article 21 of the old Book of Rules on Data and Information.

614. The new AML Law now provides for allowing 'persons' under obligation' to make use of a third party, as defined in Article 16, to perform parts of or all the CDD process. In the opinion of the evaluators such third party could still be the "companies specialised in customer due diligence" in which case all concerns afore-expressed would remain.

3.3.2 Recommendation and comments

615. Although the old LPML does not specifically prohibit or allow third party reliance or introduced business, likewise it does not specifically allow it. However as explained above, there are provisions that appear to indirectly allow such procedures. This is particularly so in relation to the use of companies specialised in customer due diligence. The absence of such companies, though recognised, impacts on procedures to licence and regulate them. This creates an uncertainty as to whether third party reliance is allowed or not. Notwithstanding the fact that the new AML Law has now clarified this doubt in that it specifically allows 'persons' under obligation' to rely on third parties, as defined by the new AML Law, yet the new provisions do not fully cover the FATF criteria for Recommendation 9.

616. In the circumstances *it is highly recommended that the legislative and other relevant provisions be revised* such that the obligations and requirements should be harmonised with Recommendation 9.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**NC**	• No requirement to immediately obtain the necessary information from the third party. • No requirement to ensure that identification data is available on request from the third party. • There are no specific provisions to ensure that the country base of the third party applies adequate AML/CFT measures. • There are no requirements to ensure that the third party is a regulated entity. • There are no provisions on introduced business. • Lack of effectiveness.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

617. Article 35 of the FBiH Law on Banks imposes an obligation of secrecy on all officers and employees of banks not to use or divulge information they obtain in the course of their services to the banks. Such obligation remains in force even after bank officers and employees terminate their employment. Similar provisions are included in Article 83 of the Law on Banks of RS.

618. Article 104 of the Law on Securities Markets of the Republic of Srpska also imposes an obligation of secrecy as regards all officials, members and other employees of a stock exchange intermediary for all information acquired in the course of their duties. Article 104(2) provides gateways for the disclosure of confidential information to the Commission, a stock-exchange, a regulated public market, legal and administrative bodies in the execution of their supervisory capacity or other authorities pursuant to the Law on Securities Markets or other laws. Similar provisions are found in the Law on Securities Markets for FBiH. There are however no specific gateways for disclosure of information to the FID.

619. Article 18 of the Law on Insurance Companies of FBiH provides very exhaustive confidentiality obligations on officers and employees of an insurance company. The Article does however provide for gateways but there are no specific gateways for disclosure of information to the FID. Similar provisions and gateways are provided under Article 18 of the Law on Insurance Companies of the Republic of Srpska.

620. Article 19 of the Law on the Banking Agency of RS also requires all officers and employees to keep confidential all information of the Agency. A similar Article 19 is found in the Law on the Banking Agency of FBiH.

621. Under Article 269 of the Law on Securities Markets of both Entities, all officers and employees of the Securities Commission shall consider all information available in any way to the Commission as official secret.

622. Article 30 of the LPML – now reflected under Article 63 of the new AML Law - however lifts confidentiality to all obliged entities and persons, authorities of BiH, FBiH, RS and Brčko District, and to organisations with public authorisation, a prosecutor, a court and their staff when such information is disclosed to the FID.

3.4.2 Recommendations and comments

623. Confidentiality obligations under the respective laws are strict, often not providing gateways particularly when disclosing information specifically related to AML/CFT. However, Article 30 of the old LPML has overarching implications being a law at State level and hence the provisions of this Article, now reflected in Article 63 of the new AML Law, would override confidentiality clauses in the respective laws.

624. The industry and the authorities have confirmed that the system is effective and that in their opinion the necessary protection under the law is adequate.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	

3.5 Record keeping and wire transfer rules (R.10 and SR. VII)

3.5.1 Description and analysis

Recommendation 10- Record Keeping

625. Criterion 10.1 requires financial institutions, *inter alia*, to maintain all necessary records on transactions for at least five years following completion of a transaction. These records should be sufficient to reconstruct individual transactions. Criterion 10.2 similarly requires financial institutions to maintain identification records, account files and business records for at least five years following the termination of the business relationship.

626. Article 31(1) of the old LPML requires an obliged entity or person to keep information, data and documentation obtained on the basis of the LPML for at least ten years after identification, completion of transaction, closing of an account or the termination of the validity of a contract.

627. Although Article 31(1) imposes an obligation to maintain records for a longer period than that required under FATF Recommendation 10, yet the initiation of the ten year period is not clear. Article 31(1) states that the ten years are applicable after 'identification', but does not address the situation that a business relationship could be ongoing; or after closing of an account, but does not address the situation that other accounts could be held by the same customer; or after the completion of a transaction, but does not address the situation of ongoing transactions as opposed to occasional transactions. Furthermore, Article 31(1) does not distinguish between identification and transaction records.

628. Article 31(1) of the old LPML has been transposed into Article 65(1) of the new AML Law. Consequently the concerns expressed above remain valid under the new law.

629. Under Criterion 10.3 financial institutions are expected to make such information available to domestic competent authorities in a timely manner. The old LPML appears to address this obligation in an indirect way. First under Article 17 but only if the FID suspects money laundering or funding of terrorism, where it can demand all necessary information from obliged entities and persons. Second under Article 20 of the old LPML the FID may demand information, data and documentation from the authorities of BiH, FBiH, RS and Brčko District and from other organisations with public authorisation, where this is needed for the performance of its duties. Article 20 however does not refer to the obliged entities and persons directly but to the relevant authorities and then only when requested by the FID. Under the new AML Law the provisions of the previous Article 17 have been transposed into Article 47(1) with Article 20 being transposed into Article 51.

Special Recommendation VII – Wire Transfers

630. Cross border and domestic wire transfers between financial institutions in FBiH are governed by the Law on Payment Transactions. According to Article 38 of this Law, the Ministry of Finance of FBiH shall issue regulations regarding the format and contents of Payment Orders. Article 39 further clarifies that in the case of conflicts between the Law on Payment Transaction and the Law on Internal Payment Operations the provisions of the former will apply.

631. Similar provisions are found in the Law on Payment Transactions of RS. However in referring to possible conflicts of laws in Article 39, the RS Law does not make references to any Law on Internal Payment Operations.

632. In Brčko District these transactions are covered by the Law on Payments Transactions through Article 8. However, Article 37 requires the District Mayor to prescribe the procedures, format and content of payment transactions. Likewise, in Brčko District, Article 38 stipulates that in the event that the provisions of the Law on Payment Transactions conflicts with the provisions of other laws regulating such matters the provisions of the former law shall apply.

633. According to these Laws, though not specifically stated but clearly implied, it is only authorised banks that can effect cross border and domestic payments. However, in terms of Article 14 a bank may appoint an agent to act as third party processor on the bank's behalf. According to Article 15 an agent must be authorised to perform payment operations and in providing clearing and/or payment services. An agent must further comply with the law on the Central Bank of Bosnia and Herzegovina and other regulations. Indeed, in the course of the evaluation the evaluators were informed that the banks have indeed appointed a number of agents. However, under Article 16 of the Law the bank retains full responsibility for any action or omission of an agent or third party processor.

634. The Post Office informed the evaluators that it also effects inbound and domestic payments in terms of the Law on Payment Transactions. The Post Office confirmed that such payments are often for small amounts with connected transactions being very few. Moreover, as the evaluators have been informed, very few payments, including connected transactions, are above 30,000 KM and hence the Post Office does not file cash reports with the FID. The maximum limit for such payments through the Post Office is set at 50,000 KM. Settlement is always done in cash. A payer has to fill in a form with all necessary information details on payer and beneficiary. At the Post Office all information is captured electronically and forwarded to the bank for settlement.

635. The Laws on Payment Transactions of FBiH, RS and Brčko District establish detailed operational and technical procedures for ordering and settlement of transactions. However, the Laws are silent on issues covered by the essential criteria of Special Recommendation VII.

636. Criterion SR VII.1 requires ordering financial institutions to obtain, maintain and verify details on the originator of a wire transfer consisting of name, account number and address (full originator information). As already explained in relation to Recommendation 5, the old LPML does not require the identification of the customer for occasional transactions that are wire transfers for amounts of €1,000 (2,000 KM) or more. In the course of the evaluation, the evaluators were however informed that in practice the financial institutions would identify the customer for transactions of €5,000 (10,000 KM) and over. Article 26 of the new AML Law requires 'persons under obligation' to obtain accurate and complete information on payer and include them into a template or message that tracks electronic transfer of funds. Article 26 however stops short from detailing the information that is to be collected, verified and appended to the transfer. These are to be established under the Book of Rules as defined by the Minister for Security.

637. Criterion SR VII.2 (cross-border wire transfers) and Criterion SR VII.3 (domestic wire transfers) provide for what elements of the 'full originator data' are to accompany the payment instruction for the wire transfer. The Laws are silent on this matter, although from an in depth reading it may be concluded that such information would be available to the originating bank. Moreover, there are no provisions in the Laws to ensure that each intermediary in the payment chain ensures that all originator information continues to accompany the wire-transfer as is required under criterion SR VII.4. The new AML Law is also silent in this regard with only an indirect indication under Article 26(1) where it is required that the information gathered accompanies the transfer all the time throughout the payment process.

638. Beneficiary financial institutions should be required to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information – Criterion SR VII.5. The only reference in the Law that in extreme remote circumstances could be related to this criterion is Article 20(2) which states that where the beneficiary of the receiver's account is not identified in the payment order received by the destination bank, than the destination bank should not effect payment. However, this provision is more prudential in nature in that it safeguards the paying bank from effecting payment to the wrong beneficiary. Article 26(3) of the new AML Law is now more specific in this regard in requiring intermediary and/or recipients of funds either to deny the transfer or to ask for additional information to be submitted over a specified period if the payer complete information is missing.

639. Criterion SR VII.6 ensures that financial institutions are monitored for their compliance with rules and regulations implementing SR.VII. Since, as explained, wire transfers and other cross-border and domestic payments under the Law of Payment Transactions of the FBiH, RS and Brčko District can only be effected through banks, it follows that such operations are supervised by the respective Banking Agencies. It appears however that the Post Office is not subject to any monitoring.

640. With regards to the application of effective, proportionate and dissuasive sanctions in accordance with Recommendation 17 as applied through criterion SR.VII.7, the evaluators could not identify any specific sanctions. As payment transactions are effected by banks, however, it is presumed that banks would be subject to sanctions as detailed in the respective Laws on Banks of both the Federation of BiH, the Republic of Srpska and Brčko District.

3.5.2 Recommendation and comments

641. Although both the old and the new AML Laws require the retention of all documentation and information obtained on the basis of this Law, yet both laws fall short of meeting all the essential elements of Recommendation 10. In particular there is no distinction between identification and transaction information; and there are no clear provisions for the initiation of the 10 year retention period. The availability of identification information and transactions data to the authorities is indirectly addressed with the only reference on obliged entities being that of delivering the data "without delay or within 8 days" to the FID upon its request. The provision of such data to the supervisory authorities would however be covered by the general relevant provisions for the supervisory authorities under the respective legislation (for example the Laws on Banks). *It is therefore strongly recommended that the provisions on record keeping under Article 65(1) of the new law be reviewed and extensively updated and broadened to meet the requirements under Recommendation 10.* In this respect the revision should definitely differentiate between identification data and transaction data, including one off or occasional transactions. In this context the review should ensure the establishment of the commencement of the retention period under each circumstance.

642. Although wire transfers are covered by the Law on Payment Transactions of both Entities and Brčko District yet most of the criteria for SR VII are not met as the law only covers the technical operational aspects. The new AML Law now addresses some of the missing aspects identified at the on-site visit. The new law however does not differentiate between domestic and cross-border payments and hence it is difficult to identify compliance with the respective criteria. Moreover, the evaluators could not assess effectiveness as the new law came in force after the visit. Notwithstanding, *the evaluators recommend that specific legal provisions be introduced*:

- to ensure that full originator information accompanies cross-border transfers;

- to establish what information should accompany domestic transfers;
- to ensure that the Post Office is monitored on its compliance with such regulations as may be established;
- to ensure that appropriate sanctions can be and are applied for non-compliance.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• No differentiation between identification information and transaction data. • No clear indication of the initiation of the 10 year retention period for identification information and transaction data.
SR.VII	**PC**	• No obligation for full originator information to accompany cross-border transfers. • No indication what information is to accompany an internal wire transfer. and no obligation for financial institutions to do so. • No monitoring of the activities of the Post Office. • Application of sanctions for non compliance not clear.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 and 21)

3.6.1 Description and analysis

Recommendation 11 – Large complex transactions

643. The requirements under Recommendation 11, in particular under criterion 11.1, go beyond the ongoing due diligence of monitoring customer transactions in relation to the business profile or for cash transaction reporting. The objectives of Recommendation 11 are broad and require an analysis of complex, unusually large transaction including unusual patterns that will contribute for obliged entities to be more effective in the identification of suspicious transactions. It is for this purpose that large and complex transactions need to be understood, analysed and documented. Moreover the retention of the findings of the analysis is a requirement separate from the record keeping obligations under Recommendation 10.

644. Criterion 11.1 requires financial institutions to pay special attention to all complex, unusually large transactions, and all unusual patterns of transactions that have no apparent economic purpose. There are no such specific obligations under the old LPML although the industry and some authorities claim that this is covered by the requirements under Article 13 of the old LPML for obliged entities to report all, single or connected, cash transactions of 30,000 KM or more. Criterion 11.1 is more appropriately addressed for the banking and the insurance sectors. The relevant Decisions on Minimum Standards of the respective Banking Agencies provide for banks to monitor unusual transactions that do not fit the customer's business profile. As such the evaluators were directed to Articles 12 and 14 of these Decisions which, although not specifically providing for the obligations under Criterion 11.1 yet the objectives of the criterion are still met. Similarly, under Articles 15 and 17 of the Book of

Rules for the insurance sector, there are provisions meeting the objectives of Criterion 11.1 However there are no obligations in this regard for the other sectors of the financial system..

645. Criterion 11.2 further requires financial institutions to examine the background and purpose of these transactions and to set their findings in writing. There are no such obligations under the old LPML, the Banking Decisions on Minimum Standards or any other law that was brought to the attention of the evaluators. Even if the evaluators – for the sake of argument – had to accept that the reporting of transactions over 30,000 KM (even though transactions under Recommendation 11 are often not cash-based) fulfils this criterion, yet the requirements under Article 13 of the old LPML, now Article 30 under the new law, do not even provide for institutions to keep the written documentation expected under this criterion. The evaluators have been informed by some parts of the BiH authorities that there are other provisions which require financial institutions to retain copies of their documents. In the opinion of the evaluators these provisions are too generic and do not therefore meet the requirements of the criterion.

646. Since there is no obligation to maintain a written documentation of the findings of the examination of such transactions, it naturally follows that there are no obligations to keep such records or to make them available to the relevant competent authorities.

647. The new AML Law remains silent on the requirements for meeting the essential criteria for Recommendation 11 and therefore the evaluators conclude that the findings of the on-site visit remain a concern.

Recommendation 21 – Business relationships

648. Recommendation 21, partly incorporating Recommendation 11, requires that financial institutions give special attention to business relationships and transactions not only with other financial institutions but also with legal and natural persons from or in countries that do not apply sufficient AML/CFT measures – (Criterion 21.1).

649. Article 7(10) of the old LPML requires obliged entities or persons to terminate or to decline to enter into a business relationship or to execute a transaction with or on behalf of a bank incorporated in a jurisdiction in which it has no physical presence. This is a very limited obligation and does not entirely address the criterion. The focus of Article 7(10) is the physical presence of the bank and not the sufficient application of AML/CFT measures in its country of location. Moreover it only addresses banks and not other financial institutions or legal/natural persons as is required under the Recommendation. In addition there are no specific measures for financial institutions to be advised of concerns in the AML/CFT systems in other countries. It should be noted however that in terms of Article 34 of the old LPML as applied for Article 7(8)(2), the Minister for Security, through the old Book of Rules on Data and Information, has published a list of those countries that meet internationally accepted AML/CFT standards (Articles 50-51 of the Book of Rules).

650. Criterion 21.2 requires that if those transactions have no apparent economic or lawful purpose then, inter alia, the procedures for Recommendation 11 should be applied. As already explained although there are some provisions in place for the banking and the insurance sectors that meet part of the obligations under Recommendation 11, yet this does not cover the whole financial sector or DNFBPs.

651. The new AML Law does not transpose Article 7(10) of the LPML and therefore the evaluators conclude that under the new law none of the criteria for Recommendation 21 would be met.

3.6.2 Recommendations and comments

652. It appears that the objective of Recommendation 11 is not totally understood or even recognised. Although under the Decisions on Minimum Standards of the respective Banking Agencies there are some minor and indirect references to some of the obligations under this Recommendation, and in particular Article 15, yet these are more formulated as part of the ongoing monitoring of higher risk accounts. Furthermore, Article 15 does not cover the requirements that should be in place in accordance with the criteria for Recommendation 11. Moreover there are no provisions for the rest of the financial sector in this regard. In the course of the evaluation the evaluators were constantly informed by the industry that all transactions are examined for the purposes of Article 13 of the old LPML and that written findings are retained in the form of the reports filed. The evaluators are not of the view that this fulfils Recommendation 11 effectively. The situation remains the same under the new AML Law.

653. It is therefore recommended that Recommendation 11 be specifically addressed through a revision of the new AML legislation and an eventual consequent revision of the Banking Decisions for Minimum Standards.

654. It is also recommended that a specific obligation be included for financial institutions to give special attention to business relationships and transactions with financial institutions and other legal/natural persons from countries that have inadequate AML/CFT measures in place. Such an obligation should go beyond the ongoing monitoring of accounts.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**NC**	• No specific obligation to monitor and examine large, unusual or complex transactions for the rest of the sectors beyond the banking and insurance sectors. • No obligation to examine the background and purpose and to keep a written statement of findings. • No obligation to make such statements available to competent authorities. • Lack of awareness and understanding of the obligations under the Recommendation and hence lack of effectiveness.
R.21	**NC**	• No specific obligation to terminate or to decline business relationship or to undertake a transaction with legal/natural persons from countries not sufficiently applying AML/CFT measures. • No specific obligation to monitor and examine such transactions further to the banking and insurance sectors, or to keep a written statement of findings and to make these statements available to the authorities for the whole sectors.

3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13 and Special Recommendation IV

655. The basic obligation to report suspicious transactions is found in Article 13 of the old LPML. Article 14 of the same law then requires obliged entities and persons to inform the FID immediately when suspicion has arisen and before the transaction is completed. Article 14 further requires that all information should be forwarded to the FID within three days of the completion of the transaction. The reporting obligation covers suspicion of both money laundering and terrorist financing. The provisions of both articles have now been transposed into Article 30 of the new AML Law.

656. According to Article 30 of the new AML Law this obligation extends to covering attempted transactions as well.

657. The requirement to report suspicious transactions applies regardless of whether they are thought, among other things, to involve tax matters, whereas tax offences are predicate offences in the BiH and perceived by all as money laundering.

658. Discussions with the industry strongly indicate that there is a high level of misunderstanding and lack of awareness in reporting. Most of the financial sector appear to be placing more attention to reporting cash transactions of 30,000 KM or over under Article 13 of the old LPML (now Article 30 under the new AML Law) rather than the examination of the transactions to identify suspicious ones and report accordingly. It is worth mentioning also that, under Article 47 of the Law on Banks of the FBiH and Article 101 of the Law on Banks for RS, banks are required to report all transactions (cash and non-cash) that are equal to 30,000 KM or over – thus creating a conflicting obligation for the sector which, in the view of the evaluators, could be impacting negatively on the reporting of suspicious transactions. Moreover, even where there is an examination process, this appears to be a mechanical one in relation to the indicators for suspicious transactions. Indeed, statistics indicate that only 28, 87 and 68 STRs were filed for 2006, 2007 and 2008 respectively.

Table 12. Table overview of reported types of transactions in 2008 and 2007

Type of transaction	2007	2008	Index 2008/2007
Suspicious	87	68	-21.84%
Cash	102,601	99,089	-3.42%
Connected cash	154,770	188,353	21.70%
Non-cash	861	721	-16.26%
Total	258,319	288,231	11.58%

659. It appears that this argument is further supported by what appears to be the interpretation given by the industry to Article 17 of the old LPML, now transposed to Article 47 under the new AML Law. Article 17 empowers the FID to demand all information it requires - 'If the FID suspects money laundering or funding of terrorist activities in connection with a

transaction or a person ….'. It follows that the industry, therefore, is more inclined to make a 'cash' transaction report as opposed to an STR, on the assumption that the FID will then examine them for possible suspicion. The more so since, as advised by some parts of the sector, the FID has requested that even non-cash transactions of 30,000 KM or more are to be reported and, as already stated above, the obligations imposed on banks by the respective Laws on Banks of the FBiH and the RS. The problem gets worse since the FID informed the evaluators that it does not examine all cash transactions reports – thus some suspicious transaction could pass through unnoticed.

660. In Article 3.2 of the new AML Law a definition has now been added to "suspicious transaction" to read:

> *"Suspicious transaction" is any transaction for which a person under obligation or competent body evaluates that, in relation with transaction, there are grounds for suspicion of committing a criminal act of money laundering or financing of terrorist activities or that transaction includes assets which result from illegal activities. Suspicious transactions also include transactions which depart from normal models of the clients' activities, as well as each complex and unusually large transaction that has no evident economic, business or legal purpose.*

This should hopefully send the correct message to the obligated persons emphasising their duty to detect and report suspicious transactions, and not rely on the FID to do so.

661. Under Article 18 of the old LPML, now Article 48 of the new AML Law, the FID is empowered to issue a written order temporarily suspending a transaction for 5 working days at most. The FID shall withdraw such suspension if there are no longer reasons for suspicion and shall inform the obliged entities accordingly. The industry expressed concern over this matter both as to the length of the suspension period and the fact the FID rarely, if ever, informs the persons/entities concerned that the suspension has been lifted. The industry believes that this is putting it in an awkward position that could possibly lead to the obliged entity or person concerned in inadvertently 'tipping off' the customer for lack of reasons why a transaction has not been processed. Article 49 of the new AML Law has addressed this problem and now states:

> *Should FID, after issuing the order for temporary suspension of transaction/s within the deadline foreseen by article 48, paragraph 1 of this Law, determine that there is no further suspicion on money laundry or financing of terrorist activities, it will without delay notify the liable parties who then can immediately perform the transaction. If FID does not take actions described in the paragraph 1 of this Article, the liable party can immediately perform the transaction.*

662. During the on-site visit, the evaluators were advised that banks report STRs not only to the FID but to local authorities as well. The entity level police confirmed this by suggesting that STR information is obtained by them not from the FID but through a court order to the banks or bank supervisors. In further discussions with the BiH representatives they assured the evaluators that STRs are exclusively reported only to the FID, and that entity level police may obtain bank records through court orders submitted to the banks.

663. Nevertheless the entity level legislation still includes contradicting and confusing obligations which might send the wrong message to the obligated entities. Article 47 of the Law on Banks of FBiH reads:

> *The Supervisory Board, Management, and all employees shall have a duty to automatically report promptly to the Financial Police or its successor and the Federation Banking Agency all transactions that are 30,000 KM or greater as well as any other*

transactions or any other activity of the bank which he knows or can reasonably expect will violate the provisions of paragraphs 1, 2, or 3 of this Article and to provide such information as the Financial Police or its successor or the Agency shall request. Providing information pursuant to this Article shall not be regarded as a disclosure of professional secrets.

664. Similarly Article 101 of the Law on Banks of RS reads:

The Supervisory Board, Management, and all employees shall have a duty to automatically report promptly to the Ministry of Finance – Prevention of Money Laundry Department and the Republic Banking Agency all transactions that are 30,000 KM or greater as well as any other transactions or any other activity of the bank which he knows or can reasonably expect will violate the provisions of paragraphs 1, 2, or 3 of this Article and to provide such information as the Prevention of Money Laundry Department, Tax Administration, or the Agency shall request. Providing information pursuant to this Article shall not be regarded as a disclosure of professional secrets.

665. Such reporting, using Form 6, is in practice done by the banks on a monthly basis. The Banking Agencies assured the evaluators that Form 6 was created by the Banking Agencies of the FBiH and Republic of Srpska to serve only for analysis of the activities which banks undertake in order to report to the FID, and to make decisions of a need to supervise banks. The banks perform all reporting activities, according to the provisions of the Law on Prevention of Money Laundering, towards the FID, which is the only body authorised to undertake activities (action). Form No. 6 is not a report of individual transactions by and to customers of banks, but rather it is a summary (statistics) report. No similar provisions for the insurance and the securities sectors were brought to the attention of the evaluators, although the Securities Commission of the Republic of Srpska confirmed that it has a right under the Law on the Securities Markets to ask for any type of documentation or information held by those entities it supervises. Similarly under Article 14, the Securities Commission of FBiH has the right to seek any information and documentation from the entity which it supervises.

666. Though the BiH authorities have assured the evaluators there is no separate additional reporting of STRs other than to FID, nevertheless, the information received by the evaluators, and the existing contradicting provisions in the entity level legislation have left the evaluators concerned as to the possible undermining of the effectiveness of the STR regime and of the functions of the FID.

Recommendation 14 - Safe Harbour Provisions

667. Criterion 14.1 requires that financial institutions and their directors, officers and employees should be protected by law from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU. This protection should be available even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

668. In this respect, Article 30(2) of the AML Law stipulates as follows:

(2) A person under obligation or its staff shall not be liable for damage caused to a client or to a third person or held criminally liable due to their submission of information, data or documentation to the FID or due to the implementation of the FID's order to temporarily suspend a transaction or for complying with the instructions issued in connection with the said order in accordance with the provisions of this Law or in accordance with regulations passed on the basis of this Law.

669. The definition of the term "person under obligation", that can be found in Article 3(2) of the AML Law, clearly extends to all banks, financial institutions and other legal or natural persons falling under the scope of the measures for detecting and preventing money laundering and funding terrorist activities according to the said law. Article 30(2) covers both these "persons" and their "staff" which term, however, does not seem to be broad enough to equally encompass 'directors' and other 'temporary' employees not considered as permanent staff. Finally, the protection is general and it could be challenged to what extent it would cover situations where it was not known precisely what the underlying criminal activity was that raised the suspicion for reporting.

670. Apart from these issues, the provision is in line with the requirements of Recommendation 14 above. Furthermore, Article 63(2) of the new AML Law (Exceptions to the Principle of Secrecy), while retaining the same rule, even goes beyond it when providing that the obliged person or personnel shall not be subject to criminal or civil procedures for forwarding information, data or documentation to FID and other acts as above, which provision appears to adequately serve as a shelter from any sort of civil lawsuits.

671. Specific protection is provided against liability for breach of banking or similar secrecy rules, by virtue of Article 30(1) of the AML Law:

> *(1) When forwarding information, data and documentation to the FID according to this Law, the obligation to protect bank, business and official secrecy shall not apply to a person under obligation, authorities of Bosnia and Herzegovina, the Federation, the RS and the District, an organisation with public authorisation, a prosecutor, a court and their staff unless stipulated otherwise in this law.*

672. Similar regulations can be found in Article 63(1) of the new AML Law with the only main difference that it refers to "*the secrecy of banking, business, official, lawyer, notary or other professional secret*".

673. In the course of the on-site visit meeting with the financial sector authorities and the industry itself the evaluators were informed that the authorities and the industry feel that they are adequately covered by the provisions of the AML Law and that indeed there have been no cases where the protection of Article 30 (or Article 63 in the new law) had to be applied. The evaluators however are of the view that the fact that these provisions have never been used in practice does not indicate the adequacy of the provision which, indeed do not fully meet the essential criteria under the FATF recommendations.

Recommendation 14 - Tipping off

674. Pursuant to Criterion 14.2 financial institutions and their directors, officers and employees should be prohibited by law from disclosing the fact that an STR or related information is being reported or provided to the FIU. This requirement is addressed by Article 29 of the AML Law, according to which:

> *(1) A person under obligation and its staff shall not reveal to a client or third person the forwarding to the FID of the information, data or documentation about a client or transaction or that the FID has in accordance with the provisions of Article 18 of this Law temporarily suspended a transaction or given instructions to a person under obligation.*
>
> *(2) Information about a request from the FID or about forwarding information, data or documentation to the FID and about the temporary suspension of a transaction or about the instructions referred to in paragraph 1 of this Article shall be official secrets.*

(3) The FID shall decide on the lifting of the classification of the official secrecy.

675. Although this provision appears to be flexible enough to adequately meet most aspects of Criterion 14.2 some remarks need to be made at this point.

676. As for the definition of the term "person under obligation" reference is made again to Article 3(2) of the old LPML (Article 3 Paragraph 19 of the new AML Law). The evaluators are of the opinion that the provision of Article 29 (similarly to Article 30 as quoted above) do not completely cover essential criterion 14.2 as it only provides for a prohibition to persons under obligation and their staff. The requirement under the criterion is broader and hence Article 29 may leave loopholes in the law where information could be leaked out without breaching the law.

677. Unlike other violations of regulations, the infringement of the above prohibition is not sanctioned by the AML Law itself (cf. Chapter VIII – Penalty Provisions) but by the Criminal Code as a criminal offence. It is not entirely clear, though, which of the competing Codes needs to be applied.

678. It is clear that paragraph (2) above declares all information as being relevant in this respect to be official secrets. One would, therefore, automatically conclude that commission of the act described in paragraph (1) would automatically establish a criminal offence of disclosure of an official secret, as is the case in many other jurisdictions,.

679. This was the situation in Bosnia and Herzegovina until the year 2006. The CC-BiH in its original form provided for both a definition of "official secret" and criminal sanctions for the infringement of the rules of official secrecy. According to the provisions being in force that time, *"an official secret is construed as to include information or documents that have been designated as official secret by virtue of a law of Bosnia and Herzegovina, a regulation of Bosnia and Herzegovina or a general enactment of the competent institution of Bosnia and Herzegovina made on the basis of law"* (Article 1 paragraph 22) which condition was obviously met in this case, and disclosure of an official secret was provided for as a separate offence in Article 225.

680. This was the case until 2006 when a law amending the CC-BiH ("Official Gazette of BiH" 53/06) deleted both the definition of "official secret" and the separate criminal offence in Article 225 and introduced into the criminal substantive law of Bosnia and Herzegovina the unified concept of "secrecy". Accordingly, the amended (and still valid) Article 1(22) provided a definition for "secret data" in general, which term "*means a fact or instrument which contains information pertaining to the areas of public security, defence, foreign affairs and interests, intelligence and security activities or interests of Bosnia and Herzegovina, communication and other systems important for state interests, judiciary, projects and plans significant for defence and intelligence-security activities, scientific, research, technological, economic and financial business significant for the safe functioning of the institutions of Bosnia and Herzegovina or security structures at all levels of the state organisation of Bosnia and Herzegovina which is designated as secret by virtue of a law, other regulation or general enactment of the competent body made on the basis of the law, or which is classified pursuant to the provisions of the law and regulations on protection of secret data. The term also includes secret data of another state, international or regional organisation."*

681. As of 2006, the disclosure of secret data is a new autonomous criminal offence in CC-BiH Article 164 (which article formerly catered for the disclosure of a state secret). According to paragraph (2) of this very detailed and comprehensive offence, an imprisonment for a term between 6 months and 5 years shall be imposed on

"...whoever, with an aim to make an unauthorised use of secret data, avails himself unlawfully of secret data or who communicates, conveys or in any other way makes accessible to another such secret data without a permit; and on whoever communicates, conveys or in any other way makes accessible to another or mediates in communicating, conveying or in other way making accessible to another a fact or instrument which contains information and which he knows to constitute secret data and which he obtained the possession of in an illegal manner."

682. As the state-level criminal substantive law abandoned the term "official secret" (apparently including it into the more generic notion of "secret data") the disclosure of anything labelled as "official secret" was, in the evaluators' view, no longer a criminal offence. Certainly, the Criminal Codes of the Entities and Brčko District continued to contain criminal offences of disclosure of official secret, but this sort of secrecy refers to data so designated by virtue of the respective non-state level legislation and therefore no such provisions could be applicable to the infringement of Article 29(2) of the state-level AML Law.

683. The confusion in legal terminology was finally remedied by the new AML Law the Article 62 of which is already adapted to the generic notion of "secret data" instead of "official secret" as follows:

Article 62

Protection of Secret Data

(1) The liable persons and their employees, including the management, supervisors, other executives and other personnel who have access to secret data must not reveal to the client or third persons the fact that the information, data or documentation about the client or transaction were forwarded to FID nor that the FID in accordance to article 48 of this Law has temporarily suspended transaction or instructed the obliged person to take an action.

(2) Information about FID requests, information, data or documentation forwarded to FID, temporary suspension of a transaction or instruction given in accordance to paragraph (1) of this Article shall be treated as a secret.

(3) FID, other authorised person or prosecutor cannot give information, data and documentation collected in accordance to this Law to the subject to which it pertains.

(4) FID shall decide on lifting of secrecy mark of the data.

684. Although the new law uses the term "liable person" instead of "person under obligation" both terms appear to have the same coverage. It is more important that the new provision has some improvements such as the more accurate definition of what was referred to in the previous law as "staff". According to the new Article 62 the "tipping off" provisions clearly cover the entire management, supervisors and other executives too. These new provisions cover the concerns raised by the evaluators in the course of the on-site visit. Another significant amendment is that FID staff, other authorised persons and even prosecutors are expressly prohibited from disclosing information to the subject to whom it pertains, though this is clearly beyond the scope of recommendation 14 (and, in the evaluators' view, this conduct had already been properly sanctioned by the new CC-BiH Article 164).

685. Article 62 appears to be limiting the prohibition to those persons 'who have access to secret data". The evaluators see this provision as a loophole in the new law. If a person does not officially have access to secret data but accidentally or otherwise comes across such data, that person could not be prohibited by the new law in disclosing that information.

686. Evaluators were informed during the on-site visit that there had been no prosecution for "tipping off" in Bosnia and Herzegovina pursuant to either CC-BiH Article 225 or, since the year 2006, the new Article 164 as quoted above.

687. In the course of the on-site evaluation visit, the evaluators could sense some concern over this prohibition in some areas. The concerns expressed were not on the legal provisions *per se* but more in relation to possible breaches. In particular these comments concerned the fact that, in some sectors the relevant competent authorities were receiving information from the industry itself – as required by the competent authorities themselves – on information reported to the FID. Concerns were expressed on possible leakages. However, when the evaluators counterchecked these claims with the relevant mentioned authorities the evaluators were informed that although some competent authorities were receiving such information, this was not detailed and it was only used for regulatory purposes. Some authorities however did inform that they would release such information only under a court order. As already stated under Recommendation 13 the evaluators are of the view that, even if information is released under court orders, the process is still undermining the authority of the FID at State level. Consequently the evaluators question the soundness of the system in this regard.

688. The BiH authorities have confirmed that there is no possibility of information leakage by relevant competent authorities. Relevant competent authorities only receive statistical data and information on a monthly basis for regulatory purposes (Form 6). No confidential data and information on specific clients or transaction can be found in this form.

689. Moreover the industry expressed concern that in circumstances where the FID would have suspended a transaction – maximum period 5 days – they often find themselves in situations of almost breaching the law by "tipping off" the customer as they receive no timely feedback from the FID.

Additional elements

690. Additional criterion 14.3 deals with the confidentiality aspect of staff of financial institutions by the FIU. In the case of BiH both Article 22 of the old LPML and now Article 64 of the new AML Law require that the FID does not disclose the personal information and data on the obliged person or its employees who had conveyed the data to the FID when the FID itself is forwarding information on suspicious transaction to the Prosecutor's Office.

Recommendation 19- Other forms of reporting

691. BiH has implemented a system where financial institutions and other obligated entities report all transactions in currency above a fixed threshold to a national central agency with a computerised data base.

692. In accordance with Article 30.1 b & c of the new AML Law, persons under obligation are obliged to report to the FID not only STRs but also the following:

b. Cash transaction the value of which amounts or exceeds the amount of 30,000 KM;

c. Connected cash transactions the overall value of which amounts or exceeds the amount of 30,000 KM

693. This reporting obligation is important as BiH is still primarily a cash based economy. This is particularly pertinent as Article 29 requires that persons which are not persons under obligation, who perform activities of sale of goods and services in BiH, may not accept cash

payment if it exceeds 30,000 KM from their purchasers or third parties in cases of sale of individual goods and services.

694. Although the reports are input to a computerised database, it is not clear whether these reports are efficiently maintained on the database (see under additional elements below). This does give rise to concerns about the effectiveness of the monitoring system.

Table 13. Number of reported transactions including the amount of money reported for 2008.

Person Under Obligation	Number of transactions in 2008	Amount of money in KM for 2008
Banks	278,395	13,215,626,907
Post offices	209	8,134,961
Stock exchanges	1,284	421,247,675
Notaries	1,471	202,819,755
Brokers	2,354	306,011,373
Indirect Tax Administration	831	2,758,821,458
Gaming houses	148	10,266,627
Registry of Securities	755	111,124,031
Car sale companies	200	14,734,696
Off shore zone	1,391	165,148,091
Western Union (Tenfor)	1,127	1,276,891
Lotteries	46	613,710
Micro/credit organisations	2	60,000
Privatisation agencies	13	5,292,615
Insurance	3	104,695
Lawyers	1	78,233
Exchange offices	1	70,108
Other persons under obligation/total (excluding banks)	9,836	4,005,804,927

Person Under Obligation	Number of transactions in 2008	Amount of money in KM for 2008
Total	288,231	17,221,431,834

Recommendation 25 – Feedback (EC 25.2)

695. Criterion 25.2 requires that competent authorities, and particularly the FIU, should provide financial institutions and DNFBPs with adequate feedback related to STRs.

696. The industry in general expressed disappointment at the fact that it receives no feedback from any competent authority, and in particular the FID as the agency receiving the STRs and CTRs. It appears that the only feedback is generic in nature through the Annual Report of the FID. This could be however due to the fact that the FID had no legal authority to provide specific, or to that matter, general feedback. The new AML Law (Article 30(3)) now requires the FID to provide specific feedback to an obliged person in the form of information on the results of data analysis resulting from STRs filed by that person. The FID is not obliged to provide such specific feedback if it considers that by providing such feedback it might harm the investigative process. This is a fair provision which safeguards the investigatory arm of the FID. The provision of general feedback however remains uncovered by legislative provisions.

Special Recommendation IV

697. Obliged entities are required by law to report STRs to the FID when they suspect or have reasonable grounds to suspect that a transaction if as suspicion of terror financing exists.

698. Section 30 of the new AML Law requires the reporting of

a. Any attempted and completed transaction done for a person or a client if there exists a suspicion of money laundering and funding of terrorist activities;

699. Section 3 defines "Suspicious activity" as following:

a) "Suspicious transaction" is any transaction for which a person under obligation or competent body evaluates that, in relation with transaction, there are grounds for suspicion of committing a criminal act of money laundering or financing of terrorist activities or that transaction includes assets which result from illegal activities. Suspicious transactions also include transactions which depart from normal models of the clients' activities, as well as each complex and unusually large transaction that has no evident economic, business or legal purpose.

700. It therefore appears that all transactions involving funds which are related to financing of terrorist activities are required to be reported, even when the source of the funds are not illicit.

701. It was however noted that there are conflicting definitions in the Criminal Code as are set out in Section 2.2 above. Overall the evaluators were satisfied that the dedfinition in the new AML Law was sufficient and that this in itself did not give rise to any concerns regarding reporting of suspicions of FT.

Table 14: Suspicious Transaction Reports Received by SIPA

	2006		2007		2008	
Reporting entities	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**
Banks	28	2	87	2	68	2
Other Financial institutions	0	0	0	0	0	0
DNFBPs	0	0	0	0	0	0

702. As demonstrated by this data few STRs regarding terror financing have in fact been reported and even then, only by banks.

703. The evaluators were concerned that deficiencies identified in SRII with regard to the criminalisation of FT (see under Section 2.2 above) could have a potential impact on the reporting of suspicions relating to the collection and provision of funds.

3.7.2 Recommendations and comments

Recommendation 13

704. Financial institutions are required by law to file suspicious transaction reports regardless of the amount. The reporting requirement includes both attempted and performed transactions.

705. The evaluators were however, concerned about the low level of transactions reported, particularly as all STRs received were from banks with none received from the insurance and securities sectors. It was noted that there was a high level of misunderstanding together with a lack of awareness within financial institutions concerning the reporting obligations. The evaluators recommend that a programme is undertaken with financial institutions to raise awareness of the STR regime. This programme should emphasise the difference between large transaction reports and suspicious transaction reports.

706. It was also noted that in Republic Srpska STRs were submitted to the Banking Agency rather than to SIPA. It is strongly recommended that all STRs be reported direct to SIPA and not via an intermediate agency.

707. Furthermore there appear to be conflicting reporting requirements between the requirements of the New AML Law and the Law on Banks in Republic Srpska and FBiH. The evaluators therefore recommend that the Law on Banks in Republic Srpska and FBiH should be amended to remove any conflicting reporting requirements

Special Recommendation IV

708. As stated above, there is a requirement in the new AML Law to report suspicions of financing of terrorist activities. However, the concerns over the general effectiveness of the regime under Recommendation 13 extend to Special Recommendation IV.

709. During discussions concerning Article 3.2 of the new AML Law there appeared to be some confusion concerning the meaning and context of the word “odnosno”. The authorities have provided an official translation, which was accepted by the evaluators. Nevertheless, the evaluators remain of the opinion that the word “odnosno” may lend itself to a number of different interpretations. The evaluators therefore recommend that appropriate clarification be

made to clarify that suspicion of terrorist financing may arise in cases where funds are not derived from criminal activity.

710. It was, however noted that some reports had been received on suspicious transactions relating to terrorist financing had been received.

Recommendation 14

711. The provisions in the new AML Law, which have enhanced those of the previous law, cover some elements of the essential criteria for Recommendation 14. However the evaluators have two main concerns. First on the application of the protection to all directors, managements and officers of a 'person under obligation'. Second on the use of the words "who have access to secret data" as they could create a loophole in the law where information can be disclosed without breach of the legislation. The evaluators therefore *recommend a revision of the new provisions to cover such eventualities.*

712. Moreover the evaluators express concern on the effectiveness of these provisions in practice. First on the basis of the industry concern that the lack of response from the FID on suspended transactions could lead them to 'tipping off'. Second the possible breaches of the law as a result of reporting to other authorities other than the FID.

Recommendation 19

713. With respect to Recommendation 19 the evaluators consider that the cash reporting regime is effective. It is, however, recommended that the computerised database be reviewed to ensure that all large cash transaction reports are properly input. Furthermore a computerised exceptions reporting system should be developed to replace the current manual review by FID analysts.

Recommendation 25

714. With respect to Recommendation 25 (Criterion 25.2 – feedback) the evaluators welcome the new provisions with a mandatory obligation to provide feedback in the new law. FID should provide further general and specific feedback to financial institutions and DNFBPs incorporating, *inter alia*, statistics on the number of STRs, information on current ML techniques and trends, as well as information on the decisions and results of the analysis of STRs carried out by the FID. The provision of feedback is normally a positive factor that is conducive to encourage more reporting whilst enhancing the quality of reports.

715. FID has taken important steps in limiting the "exemption list" of obliged entities and has engaged itself in educating the banking sector. However, no guidance has been provided to the non-banking sector on their AML CFT obligations. The evaluators recommend that the FID, in conjunction with the relevant supervisory bodies develop guidance for all financial institutions and DNFBPs and ensure that an adequate awareness raising campaign is in place.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**LC**	• Low level of STRs and no STRs were received from non-banking financial institutions (effectiveness issue). • Conflicting STR reporting requirements could have an impact on the effectiveness of the system of reporting.
R.14	**LC**	• Protection from criminal and civil liability not extended to directors,

		and officers of obliged entities; • Loopholes in the new legislation for the prohibition of tipping off • Effectiveness
R.19	**C**	
R.25	**PC**	(in relation to E.C. 25.2 on feedback) • There is no mandatory obligation to provide general feedback. • Lack of provision of meaningful feedback. • Possible impact on effectiveness.
SR.IV	**LC**	• General low levels of STRs raise concerns about the effectiveness of implementation. • Conflicting STR reporting requirements could have an impact on the effectiveness of the system of reporting. • The existing deficiencies related to the criminalisation of FT could have an impact on the reporting of suspicions of FT.

3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15 – Internal controls

Generally

716. Recommendation 15 requires financial institutions to develop internal policies and procedures to prevent money laundering or terrorist financing; to appoint a compliance officer; to have an internal audit function and to screen employees at recruitment stage. The old LPML is basically silent on most of these obligations with some being addressed through other rules or regulations. However, Section V of the new AML Law provides for more obligations of 'persons' under obligation' on the aspects of internal controls and compliance.

717. Criterion 15.1 requires that financial institutions have in place the appropriate internal controls as defined above. Although not specifically meeting the requirements under criterion 15.1, it is worth mentioning that for the banking sector, further to the provisions of Article 47 and Article 101 of the Laws on Banks respectively for FBiH and RS, the relevant Decisions on Minimum Standards provide for a broader requirement in this regard. Under Article 2 of the Decisions banks are required to have in place a written programme for the implementation of internal procedures for the prevention of the risk of money laundering and terrorist financing. The programme shall also include the implementation of adequate control procedures to ensure compliance thereto. The essential elements of the programme include:

1. Policy on customer suitability;
2. Policy on customer identification
3. Policy on permanent monitoring of accounts and transactions; and
4. Policy on managing the risk of money laundering and terrorism financing

718. During the evaluation discussions, both Banking Agencies assured the evaluators that banks have established such programmes and that these are subject to on-site examinations.

This was also confirmed by those banks met by the evaluators. The evaluators however could not establish to what extent these programmes are being communicated to all employees. But again assurances forthcoming from both Banking Agencies indicate that this is done through internal training programmes, although internal training programmes.

719. The evaluators have not come across or been made aware of any similar requirements for the rest of the financial sector.

720. Article 36 of the new AML Law now requires all "persons under obligation" to "ensure a regular internal control and auditing of the duties conducted in prevention and detection of money laundering and funding of terrorist activities." In the evaluators opinion this does not necessarily mean that "persons under obligation" are to develop internal control procedures and an audit function.

721. Criterion 15.1 further requires financial institutions to develop appropriate compliance management arrangements. This includes the designation of an AML/CFT compliance officer at management level and who should have full, timely and unencumbered access to related data and information.

722. Article 15 of the old LPML requires the appointment of an 'authorised person' and the nomination of one or more deputies of that authorised person. Article 15 further requires obliged entities and persons to conduct internal control over the performance of all obligations under the Law. Article 15 however exempts obliged entities with four or less employees from the appointment of an authorised person and from conducting internal controls as prescribed by the LPML itself. Apart from the fact that this creates a serious loophole in the system, an interpretation of this article concludes that natural persons undertaking any of the activities under Article 3 of the LPML would also be automatically exempted. This poses serious concerns on the applicability of the AML Law to such obliged entities and persons – see particularly comments re DNFBPs in Section 4.2. In its preamble to Recommendation 15 the FATF Methodology does acknowledge that the type and extent of measures to be taken for each of the essential criteria should be appropriate having regard to the risk of money laundering and terrorist financing and the size of the business. This does not mean the total exclusion of the obligation but the degree of its applicability. Understandably it is not expected for small entities or sole practitioners to have an independent audit function or an independent reporting officer, yet some degree of measure needs to be in place to fulfil these obligations.

723. On the positive side, Article 21 of the relevant Banking Decisions on Minimum Standards carries forward the obligation under Article 15 of the old LPML for the nomination of an 'authorised person' by indicating his responsibilities and his access rights to the customer monitoring systems. There are however no similar provisions for the other parts of the financial sector or for DNFBPs.

724. This matter is now more comprehensively addressed under Articles 32 – 34 of the new AML Law, although some shortcomings as identified above remain. The provisions of the previous Article 15 have been transposed into Article 32 of the new law. The identified concerns on the appointment of the 'authorised person' as identified above therefore remain. On the positive side, however, Article 33 of the new AML Law now establishes certain conditions or criteria that 'persons under obligation'' have to fulfil in the appointment of the 'authorised person' and his deputies. Thus, an 'authorised person' is expected to:

- Occupy a senior position and possess command;
- Possess a clean conduct record;
- Be adequately qualified, experienced and skills to carry out the job;

- Be knowledgeable on the nature of business of the 'person under obligation''.

Moreover Article 34 of the new AML Law now details the tasks and responsibilities of the 'authorised person' more comprehensively. Tasks are broad ranging from establishing internal system to identify and detect money laundering or funding of terrorism activities to co-ordinating such activities, drawing up guidance and the preparation of professional internal training programmes.

725. Criterion 15.2 obliges financial institutions to maintain an adequately resourced and independent audit function. The old LPML is silent on the need for an internal audit function both for the financial sector and other obliged entities. Indeed the new AML Law, as indicated above, does not require 'persons under obligation'' to have an internal independent and adequately resourced audit function but, under Article 36 the law only requires a 'persons under obligation'' to ensure a regular auditing of the duties related to money laundering and the funding of terrorist financing. Consequently, as explained below, it is only through the respective laws and/or other regulations that such an obligation could be identified.

726. The respective Laws on Banks of the FBiH and RS require the establishment of an Audit Board appointed by the Supervisory Board. Amongst other responsibilities, the Audit Board supervises the internal audit activities. Moreover the relevant Banking Decisions on Minimum Standards for both the Federation and the Republic establish the responsibilities of internal auditors in banks in ensuring compliance with internal controls and internal programmes for preventing money laundering and the financing of terrorism. It is the responsibility of the Supervisory Board of each bank to ensure that the internal audit function is adequately and technically resourced. The evaluators were informed by the respective Banking Agencies, and the banks they met, that the internal audit function and its structure are given high importance by management and that these are maintained by all banks. The evaluators however did not encounter or were made aware of similar provisions, legal or otherwise, for the other parts of the financial sector or for DNFBPs.

727. Under Criterion 15.3 financial institutions are expected to establish ongoing employee training programmes. Article 15 of the old LPML requires the obliged entities and persons to provide professional training to all employees. Article 15 has been transposed to Article 35 of the new AML Law, imposing a new obligation on 'persons under obligation'' to draw up an annual training programme. For the banking sector this is further supported by Articles 26 of the Decisions on Minimum Standards for banks. In practice banks and other financial institutions confirmed that they organise internal training as necessary. However, there is a general feeling that when the industry looks up to the authorities for training (particular reference was made to the FID), this is often not forthcoming.

728. Finally, criterion 15.4 requires screening procedures to be in place to ensure high standards when hiring employees. It appears that for the entire financial sector there are legislative or other provisions for screening persons holding prominent positions. Article 2 of the relevant Banking Decisions on Minimum Standards of the FBiH and RS respectively requires banks to ensure that high ethical and professional standards exist within their employees. The evaluators however did not come across nor were they made aware of any documents or provisions that establish the requirement of screening procedures to be followed by institutions when hiring employees. The new AML Law remains silent on this aspect and hence the position as identified in the course of the on-site visit remains the same.

Additional elements

729. Article 33 of the new AML Law requires that the 'authorised person' is part of the 'high' management category. In establishing the tasks of the 'authorised person' Article 34 does not make any references to the independence or right of access to all information available to the

'person under obligation''. The tasks allocated to the authorised person however do indirectly infer that in fulfilling them the authorised person must possess a certain level of independence. In the course of the on-site visit the evaluators have been informed, both by the authorities and the industry, that they have never encountered problems in the operations of the functions of the authorised person in fulfilling their responsibilities.

Recommendation 22 – Foreign branches and subsidiaries

730. Recommendation 22 requires financial institutions to ensure that:

1. Foreign branches and foreign majority owned subsidiaries observe AML/CFT measures consistent with those of the home country; to the extent possible and in particular in those countries that do not apply sufficient AML/CFT measures;
2. Where standards between home/host country differ the higher of the two should apply;
3. Where this is not possible, then the home supervisor should be informed.

731. The Laws on Banks of FBiH, RS and Brčko District do not prohibit banks from opening branches or acquiring subsidiaries in other countries. The Guidelines for Licensing of Banks of the Banking Agency of the Federation specifically allows this through Article 45 but foreign branches or subsidiaries can only be opened or acquired with the authorisation of the Agency. Similar provisions apply under Chapter 4 of the Instruction for Licensing of the Banking Agency of the Republic of Srpska. That said however, the evaluators have been informed that currently no bank has any branch or owns any subsidiary outside of Bosnia and Herzegovina.

732. As already detailed in this Report, Article 2 of the Decisions on Minimum Standards of both the Federation of BiH and the Republic of Srpska obliges banks to have internal controls and procedures in place for preventing the risk of money laundering and the financing of terrorism. Article 2 specifically requires banks to fully implement the provisions of internal controls and procedures at their branches and subsidiaries abroad.

733. The evaluators did not come across nor were they made aware of any similar provisions for the insurance and securities sectors.

734. Although there are no provisions in the old LPML or any other regulations covering the other obligations under Recommendation 22, Article 8 of the new AML Law now obliges 'persons under obligation'' to apply the provisions of the law both to their domestic and foreign branches and subsidiaries. 'persons under obligation'' are further obliged to apply "intensified measures of identification and tracking" (enhanced due diligence) over their foreign branches and subsidiaries to the extent allowed by the host country and particularly where host countries do not apply adequate preventive measures. Article 8 partially meets criterion 22.1 in so far as criterion 22.1.1 is concerned. However there are no provisions in the law covering the rest of the essential criteria for recommendation 22 as regards the application of the higher standard where requirements differ and the obligation on the ' person under obligation'' to inform the home authorities where such requirement cannot be applied.

Additional elements

735. There are no specific provisions in the laws or regulations for those institutions subject to the Basle Core Principles to consistently apply CDD measures at group level. Both the old and the new AML Law is silent on this matter and indeed there do not appear to be gateways for sharing of information on customers at a group level.

3.8.2 Recommendation and comments

Recommendation 15

736. Some of the obligations arising out of the provisions of Recommendation 15 are addressed either at the new AML Law or, at least for the banking sector, through the relevant Decisions on Minimum Standards at Entity level. Some shortcomings however remain. It is recommended that these be addressed as follows:

1. Revising Article 32(2) of the new AML Law in relation to full exemptions from appointing an authorised person and from maintaining internal control by obliged entities (persons under obligation) with four or less employees – and interpretatively, obliged natural persons;
2. Ensure that competent authorities, and in particular the FID, are more receptive to requests for training by the industry;
3. Ensure adequate screening procedures are in place and effectively applied when hiring people, if need be through mandatory obligations;
4. Ensure that the obligations under Recommendation 15 are applied to the entire financial sector (effectiveness issue).

Recommendation 22

737. Requirements for Recommendation 22 are only partially addressed through the Banking Decisions on Minimum Standards – more specifically only to a minor extent through Article 2 – and through the new Article 8 of the new AML Law. However there are no provisions covering the main requisites of the Recommendation. It is highly recommended that this matter be better addressed in principle through the new legislation and, more technically, through guidance issued by the relevant competent authorities.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• Exemptions to small obliged entities (and possibly natural persons) from appointing a compliance officer and applying internal controls. • Lack of industry training. • No adequate procedures for screening at recruitment stage. • Effectiveness.
R.22	**PC**	• Requirement for parts of the financial sector other than banks to apply AML/CFT measures to their establishments abroad introduced recently and hence effectiveness cannot be measured. • No requirement to apply the higher standard where standards differ. • No obligation for financial institutions to inform home supervisor when a foreign branch or subsidiary is unable to apply standards.

3.9 Shell banks (Recommendation 18)

3.9.1 Description and analysis

738. Article 3 Paragraph l2 of the new AML Law provides the definition of shell bank as "a foreign credit institution or another institution that does the same business as registered in the country where it does not perform any activity and is not linked to any financial group which is a subject to supervision aimed to detecting and preventing of money laundering or terrorism financing". However the definition, particularly the reference to "a foreign credit institution" and to the "supervision aimed at detecting and preventing of ML or TF", fails to carry the full meaning and essence of the respective FATF requirement, which establishes shell banks as those having no physical presence in the country of incorporation, and unaffiliated with a regulated financial services group subject to effective consolidated supervision.

739. Moreover, the Law does not contain a direct prohibition of the approval of establishment or acceptance or continued operation of shell banks.

740. Article 7 of the Law on Banks of FBiH and Article 8 of the Law on Banks of RS define the procedures for bank licensing in the respective entities. None of these legislative acts clearly defines a requirement for the physical presence of a bank. The same Laws of FBiH and RS define the procedures for opening branches or representative offices of banks with headquarters outside of FBiH and RS, again, without reference to the need for a physical presence. These legislative acts also do not contain any requirement that the bank to be established is affiliated with a regulated financial services group subject to effective consolidated supervision.

741. Nevertheless, the cumulative effect of the requirements for establishment of a bank seems to imply the need for a physical presence. Thus, Articles 16, 28 and 36 of the Law on Banks of FBiH[69] and Articles 18, 31 and 84 of the Law on Banks of RS[70] require that a bank address is specified in the charter of the bank, that the change in the address is approved by the Banking Agency, and that the Banking Agency may refuse the request of a bank to establish a unit if the staff, premises, and equipment of the proposed office do not meet regulatory requirements stipulated by the Agency. The authorities, in turn, advised that the current legal framework does not in any circumstances allow a bank to open without a physical presence in BiH.

742. With regard to entering into or continuing correspondent relationships with shell banks, Article 21 of the new AML Law defines that before establishing correspondent relations banks should obtain evidence that the respondent institution does not have or allow business with shell banks. Article 28 further requires banks to refrain from starting or continuing business relations with shell banks or with those financial institutions which permit their accounts to be used by shell banks.

[69] Articles 16, 28, and 36 read as follows: "A separate register shall be kept by the Agency and it shall record for each registered bank the name, headquarter, and branch office addresses"; "Bank's charter must specify bank's corporate name and address"; and "The Agency can reject the request of a bank to establish a branch or representative office on the following grounds: 1) the staff, premises and equipment of the proposed office do not meet regulatory requirements established by the Agency".

[70] Articles 18, 31, and 84 read as follows: "The Agency shall maintain a separate register and enter for each registered bank the name, addresses of the bank and its units and keep documents"; "Bank shall apply for the Agency's approval on the following: 3) change in the bank title and address"; and "The Agency may refuse the request of a bank to establish a unit on the following grounds: 1) the staff, premises and equipment of the proposed office do not meet regulatory requirements stipulated by the Banking Agency".

743. Article 10, Paragraph 3.7 of the Decision on Minimum Standards for Banks' Activities on Prevention of Money Laundering and Terrorism Financing (hereinafter: the Decision on Minimum Standards) states that in the process of establishing correspondent relationships with other banks, especially with banks abroad, banks are required to gather all necessary information on their correspondent banks, including the location of the bank, efforts of correspondent bank in area of prevention of money laundering and prevention of terrorist financing, as well as adequate customer acceptance policies and know-your-customer policies etc, in order to have a full knowledge of the nature of operations of their correspondent banks. These provisions may be taken as ones aimed at understanding whether the correspondent institution is a shell bank or not.

3.9.2 Recommendations and comments

744. The following steps should be taken to bring about compliance with Recommendation 18:

1. Bring the definition of "shell bank" into full compliance with the FATF Methodology.

2. Legislatively provide for an explicit prohibition of establishing and/or continuing operation of shell banks in BiH.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**LC**	• The definition of "shell bank" not fully compliant with the FATF Recommendations.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs / Role, functions, duties and powers (including sanctions) (R. 23, 29, 17 and 25)

3.10.1 Description and analysis

Recommendation 23 – Regulation and supervision

745. Prudential regulation and supervision of financial institutions is implemented at entity level based on laws, rules, and regulations, which are mainly identical in FBiH and in RS. The banking sector is supervised by the respective Banking Agencies, the insurance sector – by the Insurance Agencies, and the securities market – by the Security Commissions.

746. In chapter XI of the new AML Law, Articles 68-71, regulate the competencies of the bodies implementing supervision in the AML/CFT field, including those of the FID. As such, Article 68.2 establishes that the supervision over the implementation of the provisions of the new AML Law in respect of liable persons, which are not supervised by special agencies and bodies, shall be conducted by the FID. Pursuant to Article 68.3 of the new AML Law, the FID and the supervising bodies shall cooperate in supervising, within their individual competencies, for the implementation of the provisions of the Law.

747. The bodies with vested responsibility for supervising AML/CFT compliance in the financial sector are:

- The FID pursuant to Article 68 of the new AML Law;

- The Banking Agencies of FBiH and of RS, as the supervisory bodies for banks, leasing companies and microcredit organisations, pursuant to Articles 4(b) and 4(e) of the respective entity level Laws on the Banking Agency;

- The Insurance Agencies of FBiH and of RS, as the supervisory bodies for insurance companies and intermediaries, pursuant to Articles 5-7 of the respective entity level Laws on Insurance, as well as Articles 11-15 of the Law on Intermediaries in Private Insurance of FBiH[71] and Articles 19-25 of the Law on Intermediaries of RS;

- The Securities Commissions of FBiH, of RS, and of BD, as the supervisory bodies for brokerage companies, stock exchange, fund management companies, investment funds, mutual funds, as well as for banks licensed by the Commissions for doing custody and broker-dealer business, pursuant to Article 12 of the Law on Securities Commission of FBiH, Article 260 of the Law on Securities Market of RS, and Article 65 of the Law on Securities Market of BD.

748. Unlike the previous AML Law, which provided only for cooperation between the FID and various supervisory bodies, Article 68 of the new AML Law establishes that:

- The supervision over the work of the persons under obligation in relation to the implementation of this Law and other laws which regulate application of measures for prevention of money laundering and financing of terrorist activities shall be conducted by the special agencies and bodies pursuant to the provisions of this and special laws regulating the work of certain liable parties and authorised agencies and bodies.

- The supervision over the implementation of the provisions of this Law at the person under obligation, whose work is not supervised by special agencies and bodies, shall be conducted by FID.

749. Hence, although the new AML Law provides for the power of relevant supervisory bodies to oversee implementation of the Law, in certain cases this appears to be solely a general entitlement since the respective sectoral laws not always establish specific powers of such bodies to take concrete actions aimed at ensuring compliance with AML/CFT requirements.

Financial Intelligence Department

750. According to Article 69 of the new AML Law, if the supervising bodies discover a violation referred to in Articles 72 and 73 of the new AML Law or of provisions of other laws, which govern the operation of obligors, they shall order the implementation of appropriate control measures and shall, without delay, notify the FID in writing about the violations discovered (see also comments under Recommendation 17). Article 70.1, in turn, states that the FID shall monitor implementation of the provisions of the Law by gathering and comparing data, information and documentation received on basis of the provisions of the Law.

751. Article 70.2 of the Law prescribes that, should the FID discover a violation of the provisions of the Law, it may:

- Request a person under obligation to remove irregularities under condition that consequences for violation of the Law can be removed afterwards;

[71] There is also a state level Insurance Agency, which does not have supervisory powers (see the section "Insurance Agencies" below).

- Propose other supervisory bodies to, under their competency, undertake adequate control measures;
- File the request to the authorised body to initiate violation proceedings.

Banking Agencies

752. Pursuant to Articles 4(b) and 4(e) of the respective entity level Laws on the Banking Agency, the Banking Agencies carry out supervision and general regulation of activities of banks and micro-credit organisations[72]. Article 51 of the Law on Banks of FBiH and Article 106 of the Law on Banks of RS establish that banks, as well as any branch of a bank headquartered accordingly outside FBiH and RS shall be subject to all supervisory activities by the Agency, and shall admit and cooperate fully with the examiners of the Agency and the auditors appointed by the Agency.

753. Among applicable legislative acts relevant for prudential regulation and supervision purposes, the only ones referring to AML/CFT issues are the Laws on Banks of FBiH and of RS. Thus, Article 47 of the Law on Banks of FBiH and Article 101 of the Law on Banks of RS establish requirements for the identification of clients, the reporting of CTR-s, and the responsibilities of bank management relating to blocking of various types of accounts, the establishment of internal control and communication procedures in banks in order to detect and prevent transactions involving criminal activities, money laundering, or supporting terrorism (see also comments under Recommendation 17).

Insurance Agencies

754. The role of the state level Insurance Agency of BiH is to harmonise the insurance laws and rules between the entities and Brčko District, to coordinate representation of the country in international organisations dealing with insurance, and to ensure continuous cooperation among insurance supervision agencies in the entities and in Brčko District in order to resolve litigation between these supervisory agencies related to the uniform interpretation of the insurance legislation at entity and Brčko District levels by issuing written declarations and opinions[73].

755. At entity level, regulation and supervision of insurance business is conducted by the Insurance Agencies of FBiH and of RS. The respective Laws on Insurance Companies of FBiH and of RS (hereinafter: Law on Insurance) provide for the responsibilities of these bodies, as well as for the incorporation, activities, supervision, and termination of activities of insurance companies.

756. Article 5-6 of the respective Laws on Insurance establish the competence of the Insurance Agencies of FBiH and of RS in supervising activities of insurance business, the subjects and methods of supervision etc. Supervision of insurance intermediaries is prescribed by Article 11-15 of the Law on Intermediaries in Private Insurance of FBiH and by Article 19-25 of the Law on Intermediaries of RS.

[72] According Articles 4 (g), (i), (j) and (l) of the respective entity level Laws on the Banking Agency, the role of the Central Bank of BiH in the field of AML/CFT is limited to cooperation with entity level Banking Agencies to support anti-terrorist measures, including the blocking of customer accounts and forwarding the information on pertinent issues.
[73] Article 2 of the Law of Insurance Agency of BiH provides for the objectives and tasks of the Insurance Agency.

Securities Commissions

757. The Securities Commissions of FBiH, of RS and BD are permanent and independent legal persons, established for the purpose of regulating and controlling the issuance and trade of securities.

758. According to Article 14b of the Law on Securities Commission of FBiH, Article 263 of the Law on Securities Market of RS, and Article 49 of the Law on Securities Market of BD, the respective Commission shall perform supervision by analysing and inspecting financial and other reports, business documentation, and other data and records, which the persons under supervision are obliged to keep or deliver to the Commission, including the inspection by means of controlling business operations within the permises of supervised entities.

Recommendation 29 – Supervisory powers

Banks

759. Pursuant to Articles 4(b) and 4(e) of the Laws on the Banking Agency of FBiH and of RS, the Banking Agencies are entitled to carry out supervision and general regulation of activities of banks and micro-credit organisations.

760. According to Article 3 of the Decision on Bank Supervision, from among other aspects of banking activity, the supervisor also monitors and determines:

- Bank founding and business operation, compliance of bank's internal documents with the laws, and

- Adequacy of internal control procedures for identifying and preventing transactions related to criminal activities, money laundering, or activities that support terrorism.

761. Article 51 of the Law on Banks of FBiH and Article 106 of the Law on Banks of RS establish the obligation of banks to admit and cooperate fully with the controllers of the Agency and the auditors appointed by the Agency.

762. The Authorities of FBiH provided the evaluators with the Manual for Examination of Banks' Compliance with Minimum Standards for Prevention Money Laundering and Terrorism Financing (hereinafter: the AML Supervision Manual), which regulates the whole process of on-site examinations in banks respective to checking AML/CFT compliance.

763. Regarding the supervisory power to compel production of or obtain access to records, documents, or information relevant to monitoring AML/CFT compliance, Article 26 of the Laws on Banking Agency of FBiH and of RS establishes that banks and micro-credit organisations are obliged to provide the Agency with access to the complete documentation so that the activities in the Agency's authority can be performed. The authorities are adamant that the "complete documentation", as defined by the law, refers to and without failure comprises all information maintained by liable persons, including that related to accounts or other business relationships.

764. Pursuant to Articles 67 and 125 of the Laws on Banks of FBiH and of RS, the Banking Agencies shall take one of the following measures with regard to a bank or to the members of its supervisory board or management, employees, persons that have significant ownership interest, or to any related entity:

- Send a written warning;

- Send an ordering letter;
- Declare orders and measures to remove irregularities;
- Introduce receivership;
- Revoke operating license of the bank.

765. The sanctions for non-compliance with Article 47 of the Law on Banks of FBiH and with Article 101 of the Law an Banks of RS, which prohibit banks from being involved in ML/FT activities and require them to implement AML/CFT measures, are defined by Article 65.23 and by Article 123.23, accordingly; these articles provide for fines imposed on responsible officials and on the persons who actually committed the violation in the bank.

Insurance companies

766. The legislation regulating the insurance market, as provided to the assessment team, does not contain provisions empowering Insurance Agencies to monitor and ensure compliance of insurance companies with the AML/CFT requirements (c. 29.1), or to take enforcement measures and sanction the institutions/ their management for the failure to comply with or to properly implement the AML/CFT framework (c.29.4).

767. Pursuant to Article 8 of Laws on Insurance Companies of FBiH and of RS, the Insurance Agencies of FBiH and of RS are authorised to control the business books and documents of the company with or without prior notice. On the other hand, Article 14 of the same Laws obliges insurance companies to provide all information to the respective Insurance Agencies.

768. Pursuant to Article 8 of the Laws on Insurance Companies of FBiH and of RS, the Insurance Agencies of FBiH and of RS have a general power:

- To order the company to cease to engage in any activity against the provisions of the Law on Insurance Companies;
- To order other measures related to the business management of the company if it deems them necessary to ensure that the company conducts its business subject to the regulatory objectives;
- Besides the scope of competence, to demand the company to implement any measures it deems necessary to fulfil regulatory objectives.

769. Nonetheless, these requirements are defined for prudential supervision of insurance companies and cannot be applied for the enforcement of compliance with the AML/CFT framework.

Securities Market

770. Article 12 of the Law on Securities Commission of FBiH, Article 260 of the Law on Securities Market of RS, and Article 65 of the Law on Securities Market of BD defines the regulatory and supervisory power of the Securities Commissions with regard to the participants of the securities market. Article 14 of the Law on the Securities Commission of FBiH, Article 263 of the Law on Securities Market of RS and Article 67 of the Law on the Securities of BD, defines that supervised persons shall give access to authorised officials of the Commissions to their premises, provide appropriate rooms and personnel, and deliver and present for inspection the required papers and documentation, make statements or declarations and ensure all other conditions have been met necessary for supervision. Article 261 further

requires obligors to deliver all information and documents that the Commissions require from them while carrying out their authorisations and responsibilities, in the manner and within the deadlines determined by the Commissions.

771. Articles 87, 88, 178, 236, and 267 of the Laws on Securities Market provide for the Commissions power to take certain measures against capital market participants and their senior management for non-compliance with applicable legislation, including the AML/CFT requirements. Among such measures, the Commissions may:

- Admonish the institution;
- Give a public reprimand;
- Revoke approval for appointment of a director and issue the order for initiation of procedure for appointment of a new person to that position;
- Give an order to temporary ban the performance of certain activities or all the activities the license to perform transactions related to – for the period up to six months;
- Give an order for temporary ban to dispose of funds on accounts and securities on account as well other assets – for the period of up to three months,
- Revoke the license to conduct transactions with securities.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

772. Supervision of financial institutions for ensuring AML/CFT compliance is to be implemented by the FID and by the respective sectoral supervisory bodies. However, supervisory powers of the FID are limited to, first, monitoring activities of obligors by means of gathering and comparing the data received from obligors in accordance with the new AML Law and, second, demanding removal of violations identified in the activities of the obligors; however, the legislation fails to clearly define mechanisms for enforcing such demands.

773. In addition to the general entitlement of exercising supervision over implementation of the new AML Law, various sectoral laws differently establish supervisory, enforcement, and sanctioning powers of the supervisory bodies in respect of obligor financial institutions and businesses so as to ensure their compliance with the legislative framework in general and with the AML/CFT requirements in particular. As such, the Laws on Banks directly refer to the issue of combating money laundering and terrorism financing, and the Laws on Banking Agencies respectively provide for the supervisory and enforcement powers of the Banking Agencies to ensure AML/CFT compliance. Furthermore, the Laws on Securities indirectly provide for similar powers of the Securities Commissions (see also comments under Recommendation 17).

774. Sectoral laws regulating activities in the insurance market fail to provide for adequate powers of supervisors to monitor and ensure compliance with AML/CFT requirements and to take enforcement measures and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.

775. The authorities assert that “a number of requirements during the employment procedure have to be met in order to be assigned to a position within the FID”; however, the assessment team has not been provided any documentary evidence to support this assertion. Confidentiality requirements are met through the security clearance procedures which the staff should undergo for getting access to classified information in accordance with the Law on Secret Data Protection.

776. The assessment team was not provided any information on the structure, funding, staffing, and technical resources available for and dedicated to supervision of implementation of the national AML/CFT requirements by DNFBPs. Furthermore, there was no data available on the professional standards (including confidentiality and integrity requirements), and required expertise/skills of the staff at these supervisory bodies presumably involved in the supervision of DNFBPs.

777. Lack of training is a major problem throughout all supervisory bodies, which may significantly impair their capacity to supervise and ensure adequate implementation of the national AML/CFT framework.

Recommendation 17 – Sanctions

778. Criterion 17.1 requires countries to ensure that effective, proportionate and dissuasive criminal, civil or administrative sanctions are available to deal with obliged entities or persons.

779. As explained in this Report in the introduction to Section 3 under 'Laws on Banks' there appears to be a certain degree of ambiguity and uncertainty in the application of sanctions for AML/CFT breaches. This results from the provisions of Article 47 and Article 101 of the Laws on Banks of FBiH and RS respectively which are to a large degree replicating some provisions of the main AML Law – both the old and the new law. As far as the evaluators could establish, such ambiguities do not exist in the case of the insurance and the securities sectors.

780. As shown in Table 15 below the same offences can be sanctioned under different laws with, however, sharp divergences in the penalties that can be applied – now reduced under the new AML Law. During the evaluation interviews the evaluators were informed that in practice sanctions have been imposed by the Banking Agencies but no sanctions have been imposed by the FID. This indicates that sanctions imposed through the Laws on Banks, for offences that are also covered and punishable under the AML Law – both old and new - as the primary AML Law, are precluding the imposition of sanctions under the AML Law itself. Criterion 17.2 requires countries to designate an authority or authorities to apply sanctions depending on the nature of the offence, which according to the AML Law – both old and new - should be the FID.

781. Article 36 of the old LPML, now transposed to Article 69 of the new AML Law, requires supervisory authorities to notify the FID in writing if they discover a violation as referred to in Articles 39 and 40 of the old Law – now being Articles 72 and 73 of the new Law. According to the Law, such notification shall include details of the offender, details of the suspected violation or minor offence and details of any control measures ordered by the supervisory body. The evaluators interpret 'control measures' as referring to 'prudential corrective measures' taken by the Banking Agency as opposed to the 'imposition of sanctions' as determined by both the AML Laws. The FID supported this interpretation.

Table 15 – Comparison of Sanctions under the LPML at State level and the Laws on Banks at Entities evel

STATE: New AML Law		**FBIH – Law on Banks**		**RS – Law on Banks**	
Offence	**Penalty**	**Offence**	**Penalty**	**Offence**	**Penalty**
Article 72: identification; opening of	20,000 KM - 200,000 KM (for legal person).	Article 47: internal controls to	Article 65: 1,000 KM – 10,000 KM	Article 101: internal controls to	Article 123: 5,000 KM – 17,000 KM

secret accounts; relations with shell banks; submission of information; suspension of transaction; record keeping.	2,000 KM – 15,000 KM for Article 39 30 KM – 20,000 KM for Article 72 (responsible person of legal person) 5,000 KM – 15,000 KM for Article 39 30 KM – 20,000 KM for Article 72 (natural person)	detect suspicious transaction; identification procedures including beneficial owner; reporting of cash and suspicious transactions; failure to apply an account blocking order.	(for bank) 200 KM – 10,000 KM (responsible person and offender)	detect suspicious transaction; identification procedures including beneficial owner; reporting of cash and suspicious transactions; failure to apply an account blocking order.	(bank) 1,000 KM – 1,700 KM (responsible person and offender)
Article 73: Obtain supporting identification documents; re-identify foreign legal persons; submission of requested information; ensure internal controls; appointment of authorised person; provide training information retention	10,000 KM - 100,000 KM for both Articles (if legal person) 1,000 KM – 5,000 KM for both articles (responsible person of legal person) 2,000 KM - 20,000 KM for Article 40 2,000 KM – 10,000 KM for Article 73 (natural person)	[as above]	[as above]	[as above]	[as above]

782. As an example, the following Articles of the new AML Law are not covered by the sanctioning regime; that is, Articles 72 and 73 of the Law do not provide for any sanctions for the violation of the following requirements of the Law:

- Article 5 on the assessment of risks to be performed by obligors;
- Article 8 on the implementation of the Law in all territorial divisions of obligors;
- Article 18 on the regular monitoring of clients' business activities;
- Article 22 Paragraph 1 on the establishment of a procedure for the identification of PEP-s;

- Article 23 on the rules of client identification without their physical presence;
- Article 26 on the conditions of wire transfers;
- Article 33 on the minimal requirements with regard to compliance officers of obligors;

783. Criterion 17.2 requires countries to designate an authority or authorities to apply sanctions depending on the nature of the offence. Hence, Article 68 defines that various supervisory agencies are responsible for overseeing implementation of the AML/CFT requirements by the respective obligors, whereas the FID shall exercise this overseeing function in respect of the obligors, which are not supervised by any competent body. However, as already mentioned above, there is a certain ambiguity as to which agency (FID and/or various supervisors) shall impose the sanctions stipulated by the new AML Law.

784. Article 69 Paragraph 1 of the new AML Law further establishes that when a supervisory body detects an offense defined by the articles 72 and 73 of this Law or other Laws that regulate work of a person under obligation, it shall order use of adequate control measures and shall be obliged to inform FID in writing about detected offenses without any delay. The evaluators interpret 'control measures' as referring to 'prudential corrective measures' taken by the Banking Agency as opposed to the imposition of sanctions. The FID supported this interpretation.

785. Under Article 70 of the new AML Law, upon discovery of a violation the FID may request the offender to rectify the violation; propose to the supervisory body to implement appropriate control measures (see evaluators interpretation above) within its supervisory competencies or request the relevant competent authority to initiate minor offence proceedings. Should the FID initiate an offence proceeding itself, it informs the competent supervisory body (Article 71).

786. This is not what is happening in practice, at least in the case of offences by banks where it is the relevant Banking Agency that initiates the proceedings out of its own initiative under the Laws on Banks respectively for FBiH and RS. Hence, offenders are never sanctioned at State level under the new AML Law. In this regard, the discrepancies or inconsistency in the sanction amounts assume even more importance.

787. As required under criterion 17.3 and as indicated in Table 15, sanctions are applied against the obliged entity or person and against the responsible persons. However, because of the differences that exist in the penalties under the different laws as indicated in Table 15, the evaluators express concern on the extent that these sanctions are effective, proportionate and dissuasive.

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

788. Applicable sectoral laws and regulations contain provisions regulating market entry by means of becoming the holder or beneficial owner of a significant or controlling interest; furthermore, there are procedures for the appointment to management positions in financial institutions and for "fit and proper" tests of management members.

789. For the ease of reference and in order to avoid double effort, this section provides licensing and "fit and proper" analysis for the financial institutions covered by the Core Principles[74], whereas the relevant analysis on other financial institutions is presented under Criteria 23.5 and 23.7.

[74] As defined by the FATF Assessment Methodology, the term "financial institutions covered by the Core Principles" broadly speaking refers to: (1) banking and other deposit-taking business, (2) insurers and insurance intermediaries, and (3) collective investment schemes and market intermediaries.

Banks

790. As established by the Laws on Banks of FBiH and of RS, the licensing procedure for banks is a two-phase process, incorporating the first phase of the decision made by the Banking Agencies within 60 days from the date of receipt of an application for a banking license, and the second phase of the registration of the bank in the court register within 30 days from the Agency's issuance of the banking license. There is no preliminary approval for founding a bank, and the license is granted on basis of a strictly defined and comprehensive set of documents and information to be provided by the interested persons. The relevant documents and information submitted by the founders of the proposed bank include, *inter alia*, the founding agreement, the draft articles of association, data on qualifications, experience, and business reputation of nominated members of the bank's board of directors and executive board, the types of activities and the structural organisation of the proposed bank, the list of the owners of the bank etc.

791. Articles 9-17, 23, 31a-1, 32a, and 67 of the Law on Banks of FBiH and Articles 8-21, 25, 54, 69, and 125 of the Law on Banks of RS, reflect on the rules and procedures for the establishment of a bank, the refusal of request for the establishment, the powers and responsibilities of the Banking Agencies in the process of the establishment, the requirements with respect to the supervisory board and management of the bank, including the requirement for appropriate qualifications, experience, and clean criminal record ("fit and proper"), as well as the conditions for holding or acquiring significant ownership/ interest in the bank.

Insurance Market

792. Articles 26-29 of the Laws on Insurance Companies of FBiH and of RS, and Articles 35 and 34 of, accordingly, the same Laws describe the licensing requirements, with the application for issuing a license accompanied by the necessary documents to be provided as prescribed by a relevant decision, as well as the conditions for the rejection of the application for license, and the conditions for the withdrawal of license.

793. Pursuant to Articles 61 and 62 of the Law on Insurance Companies of FBiH and to Articles 60 and 61 of the Law on Insurance Companies of RS, general and executive managers in the insurance company must be persons of high respect and moral, satisfactory qualifications, and management experience. There is also a prohibition for the persons with criminal background to directly or indirectly hold a qualified share in the insurance company or to be nominated for executive or other types of management positions.

794. The authorities also advised that there is a Book of Rules dealing with issues such as granting and withdrawing approval for the appointment to prominent positions within an insurance company, including the conditions and standards to be met by such persons.

Securities Market

795. Article 63 of the Law on Securities Market of RS establishes that the authorised participants of the securities market shall be legal entities and natural persons licensed by the Commission to perform transactions with securities; such participants being stock exchange intermediaries, brokers, investment advisors, and investment managers. Then, Article 12 of the Law on Securities Commission of FBiH establishes that the Securities Commission shall issue, suspend and revoke licenses for conducting of intermediary activities in securities trading. And finally, pursuant to Article 32 of the Law on Securities of BD, market intermediary operations in BD may be carried out exclusively by legal persons authorised by the Securities Commission and registered with the competent court. Various articles of the mentioned Laws define the procedure for the authorised participants to obtain a license from the respective Commissions.

796. Pursuant to Article 67 of the Law on Securities of RS, shareholders of a broker-dealer company may not be persons having committed an offence against the economy, payment operations, and contrary to their official duties. For stock exchanges and for the Registry of Issuers of Securities (hereinafter: the Registry) the requirement of prohibiting criminals from becoming significant interest holder is met because – pursuant to Articles 167 and 203 – only banks, stock exchange intermediaries and certain state bodies may be shareholders of these entities. However, the assessment team was not referred to the respective provisions of the legislation of FBiH and of BD, which would require a clean criminal record of shareholders of securities market intermediaries.

797. Articles 94, 159, and 202 of the Law on Securities Market of RS specify that the members of the managing and supervisory boards and the directors of broker-dealer companies, stock exchanges, and the Registry may not be persons sentenced for criminal acts against economy and payment operations, and against their official duties, whereas Articles 110, 157, and 201 of the Law require that these persons have an appropriate educational and professional background. Article 91 of the Law on Securities Market of FBiH establishes similar clean criminal record and professional qualification requirements for the directors of market intermediaries. Article 45-47 of the Law on Securities of BD sets out professional qualification requirements for market intermediaries, particularly for brokers, investment advisers, and investment managers. However, the provided legislation does not mandate a clean criminal record of the managers of market intermediaries in BD.

798. Furthermore, Articles 26 of the Laws on Investment Funds of FBiH, of RS, and of BD define a requirement of a clean criminal record for the members and shareholders of investment funds. Article 68 of the Law on Investment Funds of FBiH, Article 70 of the Law of Investment Funds of RS and Article 70 of the Law on Investment Funds of BD establish similar requirements for the management of investment funds. However, the respective legislation of RS, of FBiH, and of BD, as provided to the assessment team, does not set out requirements for the professional qualifications and expertise of the directors and senior management of investment funds.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

799. Article 4 Paragraph 1 Indent (g) of the new AML Law defines currency exchange offices, as well as legal or physical persons performing the transfer of money or value as obligors under the Law. The assessment team was advised that such transactions/operations can be implemented only by banks and the Post Office.

800. Furthermore, the authorities stated that the transfer of money or value can only be done by banks on the basis of relevant contracts, as well as by the Post Office of BiH and by the company Tenfore (which operates in BiH as an agent of Western Union).

801. Thus, the legislation in force does not provide for any licensing or registration requirements in respect of persons involved in the provision of money or value transfer services – particularly the Post Office and the company Tenfore.

802. Moreover, under the current legislation, there is no prohibition or restriction for any legal or natural person to be involved in currency exchange and/or money transfer services, which means that any person may engage in the above-mentioned activities without being duly licensed and registered.

Licensing or Registration of Other Financial Institutions (c. 23.7)

803. Article 4 Paragraph 1 Indent (l)of the new AML Law defines certain financial businesses (types of activities), which might be implemented by institutions (other than those covered by

the Core principles and those discussed under the Criteria 23.5 and 23.6) Particularly, these are legal and natural persons performing the following activities:

- Sale and purchase of claims;
- Safekeeping, investing, administering, managing or advising in the management of property of third persons;
- Issuing, managing and performing operations with debit and credit cards and other means of payment;
- Financial leasing;
- Issuing financial guarantees and other warranties and commitments;
- Lending, crediting, offering and brokering in negotiation of loans.

804. As presented by the authorities, the activities listed above can be performed only and exceptionally by the financial institutions covered by the Core Principles (for example, by banks, investments funds etc.), which are licensed and supervised by the Banking Agencies or the Securities Commission of FBiH and of RS.

805. However, under the current legislation, there is no prohibition or restriction on any legal or natural person being involved in the activities listed above. This means that any person may engage in those activities without being duly licensed and registered. It is, however noted that Article 73 (*Ban on Carrying out a Certain Occupation, Activity or Duty*) of the Criminal Code of BiH provides:

> *(1) The security measure of ban on carrying out a certain occupation, activity or duty may be imposed to a perpetrator who perpetrates a criminal offence with regard to property entrusted or accessible to him by virtue of his occupation, activity or duty, if there is a danger that such role could induce the perpetrator to perpetrate another criminal offence through the abuse of the occupation, activity or duty with regard to the property entrusted or accessible to him.*
>
> *(2) The security measure of ban on carrying out a certain occupation, activity or duty may be imposed for a term which exceeds one but does not exceed ten years, counting from the date the decision becomes final, with the provision that the time spent serving the punishment of imprisonment shall not be credited towards the term of this security measure.*
>
> *(3) As in the case referred to in Article 43 (*Community Service*) paragraph 5 of this Code, the execution of imprisonment may be ordered against the perpetrator of a criminal offence who, while performing community service as a substitute to imprisonment, fails to act in accordance with the ban on carrying out a certain occupation, activity or duty.*
>
> *(4) The perpetrator of a criminal offence who does not act in accordance with the ban on carrying out a certain occupation, activity or duty during a probation period set in a suspended sentence, may be treated pursuant to the provision of Article 63 (*Revocation of Suspended Sentence Caused by Failure to Fulfil Particular Obligations*) of this Code.*

806. Irrespective of these provisions in the Criminal Code of BiH, the evaluators were of the opinion that the ban on carrying out certain occupations does not ensure that the types of activities specified above are adequately subject to licensing as required by the respective criterion.

Recommendation 23&32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Relevance of Prudential Regulations to AML/CFT (c. 23.4); Statistics on On-Site Examinations (c. 32.2(d))

807. Overall, the legislation provides a rather comprehensive framework for regulatory and supervisory measures applied for prudential purposes in respect of financial institutions covered by the Core Principles. All financial institutions under the regulation and supervision of, respectively, the Banking Agencies, the Insurance Agencies, and the Securities Commission are subject to prudential supervision. As such, they are required to maintain adequate risk management systems and a structure ensuring effective internal control. All financial institutions licensed by the mentioned supervisory bodies are designated as obligors under the new AML Law; hence, they are subject to AML/CFT supervision by those bodies.

808. Various sectoral laws establish procedures envisaged for the licensing and prudential supervision of financial institutions. As of the time of the assessment, there were no financial groups operating in BiH. Nevertheless, Article 48 of the Law on Banks of FBiH and Article 103 of the Law on Banks of RS define that the accounts, records and financial statements of a bank shall also reflect the operations and financial condition of its subsidiaries both on an individual and on a consolidated basis.

809. Available supervision tools include off-site surveillance – through distant examination of the reports, other documentation, and information submitted by supervised entities, and on-site inspections – through site visits at their premises. In exercising supervision, the relevant authorities are entitled to access the complete documentation held with the inspected entity so that the activities in their authority can be performed[75].

810. Further assessment of the adequacy of regulatory and supervisory measures is done in consideration of availability of an appropriate supervision methodology, a supervision planning procedure, and factual results of supervision as defined by the Core Principles.

Banks

811. ***Supervision methodology:*** Supervision of banks is carried out by the Banking Agencies in accordance with the Laws on Banks of FBiH and of RS and the Decisions on Bank Supervision of FBiH and of RS. There is also the Manual for Examination of Banks' Compliance with Minimum Standards for Prevention Money Laundering and Terrorism Financing (hereinafter: the AML Supervision Manual) provided by the authorities of FBiH, which regulates the whole process of on-site examination in banks, including the planning of inspection, evaluation of bank's policies, procedures for the implementation of adopted policies, conclusion and follow up processes and sample testing[76]. These documents provide a detailed description of the supervision processes and procedures, including those stipulated for the examination of various aspects of bank activities dealing with AML/CFT, and for the assessment of their pertinent risks, as well as the steps to be taken prior to, in the course, and as a result of on-site inspections in banks.

812. ***Planning of supervision:*** As presented by the authorities, there is an annual supervision plan for banks, which includes both full scope and targeted inspections. The authorities provided examples of supervision plans for the years of 2008 and 2009, which appear to specify (on a quarterly basis) the banks to be supervised during the given year. The plans also provides for the supervisory resources involved in examinations, by defining on a bank-by-bank basis the duration of inspection and the number of inspectors. However, the assessment

[75] For further detail on supervisory access to bank documents and information please see the text under Criterion 29.3.
[76] The evaluators were not provided with equivalent information with regard to the Republic of Srpska.

team was not provided any information on how the risk-based approach in supervision is applied in the planning process.

813. ***Results of supervision:*** Summarised statistics on on-site inspections of banks conducted by the Banking Agencies of FBiH and of RS are presented below. The statistics on supervision for the last years shows that whereas the number of inspections could be considered satisfactory (virtually, all banks have been checked at least once in a year for AML/CFT compliance), and the findings of the inspections appear to uncover the main irregularities in the operations of the banks. The total amount of the pecuniary sanctions, which in fact are the only type of sanctions stipulated by the respective Laws on Banks, appears low when compared with the range and number of irregularities.

Table 16: Summarised Statistics on On-Site Inspections of Banks
Federation of Bosnia and Herzegovina

Year	No of obligors	No of obligors inspected	No of inspections involving AML/CFT	No of inspections dedicated to AML/CFT	Main irregularities identified (in respect of AML/CFT)	Supervisory action taken (in respect of AML/CFT)	Pecuniary sanctions for AML/CFT
2005	24	23	-	23	• Incomplete documentation about customer identification • Request for documentation update • Insufficient monitoring and reporting.	• Orders to eliminate determined illegitimacies and irregularities.	
2006	24	22	-	22	• Incomplete documentation about customer identification • Request for documentation update • Insufficient monitoring and reporting.	• Orders to eliminate determined illegitimacies and irregularities.	
2007	21	18	-	18	• Incomplete documentation about customer identification • Request for documentation update • Insufficient monitoring and reporting.	• Orders to eliminate determined illegitimacies and irregularities.	30.600 KM
2008	21	21	-	21	• Incomplete documentation about customer identification • Request for documentation update • Insufficient monitoring and reporting.	• Orders to eliminate determined illegitimacies and irregularities.	35.000 KM
Total		**84**	**-**	**84**			**65.600 KM**

Republic of Srpska

Year	No of obligors	No of obligors inspected	No of inspections involving AML/CFT	No of inspections dedicated to AML/CFT	Main irregularities identified (in respect of AML/CFT)	Supervisory action taken (in respect of AML/CFT)	Pecuniary sanctions for AML/CFT
2005	9	13	-	13	• Incompletely documented account files	• Orders to remove irregularities	20.000 KM

					• Insufficient account and transaction monitoring • Clients' register with profiles of physical and legal entities not in existence yet • Inadequate identification of accounts at higher levels of risk • Failure to report to relevant authorities on transactions in amounts equal or exceeding KM 30 thousand • Incomplete reporting to bank's management and supervisory board	found by inspections.	
2006	9	13	-	13	• Incompletely documented account files • "Know your client" principle implemented incompletely • Clients' register with profiles of physical and legal entities not in existence yet • Inadequate identification of accounts at higher levels of risk • Failure to report to relevant authorities on transactions in amounts equal or exceeding KM 30 thousand • Incomplete reporting to bank's management and supervisory board • Inadequate training of bank's employees	• Orders to remove irregularities found by inspections.	
2007	10	15	-	15	• Incompletely documented account files • Inadequate classification of clients in appropriate risk categories • Failure to report to relevant authorities on transactions in amounts equal or exceeding KM 30 thousand • "Know your client" principle implemented incompletely	• Orders to remove irregularities found by inspections.	

					• Correspondent relationships with foreign banks established inadequately • Inadequate training of bank's employees • Out-of-date reporting to bank's management and supervisory board		
2008	10	10	-	10	• Incompletely documented account files • Failure to report to relevant authorities on transactions in amounts equal or exceeding KM 30 thousand • Account and transaction monitoring incomplete • Correspondent relationships with foreign banks established inadequately • Internal audit inadequate • Out-of-date reporting to bank's management and supervisory board	• Orders to remove irregularities found by inspections.	
Total		**51**	**-**	**51**			**20.000 KM**

Insurance and Securities Market

814. The evaluators were not provided with any information pertaining to supervisory activities of the Insurance Agencies of FBiH and RS for ensuring AML/CFT compliance; this was particularly the case with regard to the availability and adequacy of supervision methodologies, supervision planning procedures, and factual results of supervision carried out by the mentioned bodies.

815. With regard to the supervision of capital market participants, the information provided by the authorities refers to certain supervision plans developed on a yearly basis, indicating the financial institutions to be inspected during the given year. However, those plans appear to set out supervisory actions related to prudential supervision only and, indeed, fail to incorporate relevant measures for ensuring appropriate risk-based supervision over activities of obliged persons in terms of AML/CFT compliance.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

816. BiH legislation does not define a specific agency or body to supervise activities of natural or legal persons engaged in money/value transfer and exchange activities. According to Article 68.2 of the new AML Law, supervision over the implementation of the provisions of the Law in respect of liable persons, which are not supervised by special agencies and bodies, shall be conducted by the FID. Thus the FID is responsible for supervising activities of the said entities for AML/CFT compliance.

Effectiveness and efficiency (market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6], c. 32.2d], sanctions [c. 17.1-17.3])

817. On-going supervision and monitoring of activities of banks entails the use of supervisory tools such as off-site surveillance and on-site inspections, appropriate supervision methodologies, and some planning of supervisory actions. However, the results of supervision, particularly the statistics on irregularities which were uncovered together with the applied sanctions, did not provide sufficient grounds for the evaluators to conclude that the supervision of AML/CFT compliance by banks is effective and efficient.

818. As to the supervision of insurance businesses, the absence of relevant information did not enable the evaluators to come to a conclusion on the efficiency and effectiveness of the supervisory measures aimed at ensuring compliance with the national AML/CFT requirements..

819. Supervision of the securities sector, although appearing to have some planning procedures in place, is exercised for prudential supervision purposes only and fails to incorporate an appropriate risk-based AML/CFT surveillance component.

820. Although the new AML Law establishes supervisory powers of the FID in respect of the persons engaged in the provision of money transfer and exchange services, there are no mechanisms and tools available for monitoring and ensuring compliance of these persons with national requirements to combat money laundering and terrorist financing. Hence, the evaluators arrived at the conclusion that such compliance is not provided for.

821. When it comes to the sanctioning regime and sanctions available for AML/CFT non-compliance, the duplication and overlap in two different pieces of legislation – the state level AML Law on the one hand and the entity level Laws on Banks of FBiH and of RS on the other hand – establishing sanctions in the form of pecuniary fines for the failure of banks to meet the AML/ CFT requirements would inevitably lead to ambiguities in the application of sanctions under the AML Law and the respective Laws on Banks. Due to this duplicative nature of sanctioning provisions, as well as to the ambiguity as to which laws and which provisions would be applied for sanctioning the obligors, the evaluators were not able to conclude on how proportionate and dissuasive the sanctions established by the applicable legislation are.

822. Furthermore, sectoral laws regulating activities in the insurance market fail to provide for supervisory powers of the respective bodies to ensure that financial institutions adequately comply with the AML/CFT requirements; this refers to the sanctioning power, as well. Moreover, the sanctions provided by the applicable legislation for the insurance market are of pecuniary nature only; that is, neither the new AML Law, nor the respective sectoral laws provide for administrative sanctions (such as replacing and restricting the powers of managers, withdrawal of license etc) for non-compliance with AML/CFT requirements.

823. Finally, certain requirements of the new AML Law are not enforceable; that is, there are no sanctions stipulated in case of the obligors' failure to comply with those requirements.

824. Based on the facts set forth above, the evaluators are of the opinion that no effective and sufficient measures have been taken to ensure compliance by financial institutions with the national AML/CFT requirements.

Recommendation 25 - Guidelines

Guidance for Financial Institutions and DNFBPs (c. 25.1 - Guidance)

825. Based on the previous AML Law, the Minister of Security of BiH[77] in 2004 issued the Book of Rules[78] on Data and Information, which sets out a number of important issues related to the AML/CFT activities of obligors; particularly defining:

- Indicators for recognising suspicious transactions;
- Customer identification in case of non-face-to-face transactions;
- Record keeping rules;
- Identification of connected transactions;
- List of low-risk countries;
- Procedures for reporting to the FID (both CTR and STR);
- Cross-border transactions;
- Correspondent banking;
- Treatment of high-risk clients and transactions.

826. Whereas the contents of the Book of Rules on Data and Information appears to be comprehensive in order to assist obligors to implement and comply with their respective AML/CFT obligations, the meetings with obligors, particularly with the representatives of DNFBPs, indicated that many of them lack a proper understanding of the provisions and practical implementation of the Book of Rules on Data and Information.

Recommendation 30 - Resources

827. As presented by the authorities, the bodies with responsibility for supervising the implementation of the AML/CFT legislation by all obligor financial institutions are the following:

i. The FID as the national financial intelligence unit;

ii. Banking Agencies of FBiH and of RS as the supervisory bodies for banks and micro-credit organisations:

iii. Insurance Agencies of FBiH and of RS as the supervisory bodies for insurance companies and intermediaries;

iv. Securities Commissions of FBiH, of RS, and of BD as the supervisory bodies for brokerage companies, stock exchange, fund management companies, investment funds, mutual funds, as well as for banks licensed by the Commissions for doing custody and broker-dealer business;

828. The bodies responsible for the supervision of financial institutions – that is the Banking Agencies, Insurance Agencies, and Securities Commissions – are independent institutions under the laws regulating activities of these institutions[79]..

829. According to Article 5 of the Law on Banking Agencies of FBiH and of RS, professional activities on behalf of the Agencies can be performed by examiners that have passed the

[77] The FID is a structural division of the State Investigation and Prevention Agency (SIPA) within the Ministry of Security.
[78] The status of the Book of Rules on Data and Information as "other effective means" is discussed at the commencement of Section 3 above.
[79] Namely, Articles 1 and 5 of the Laws on Banks of BiH, FBiH and of RS, Article 5 of Laws on Insurance of BiH, FBiH and of RS, and Article 244 of the Law on Securities Market of RS.

professional expertise exam. The conditions and manner of passing the professional expertise exam are prescribed by the Management Board of the respective Agency. However, the management board of the Banking Agencies have still not adopted the relevant documents.

830. Both the management and the staff of the Banking Agencies are subject to the confidentiality requirements set out by Article 19 of the Laws on Banking Agencies of FBiH and of RS. The same principles are set forth by Article 18 of the Laws on Insurance of FBiH and of RS, and by Article 269 of the Law on Securities Market of RS.

831. Lack of training is a major problem throughout all supervisory bodies, with some relative "advantage" of the Banking Agencies, which seem to be in a better position in terms of the frequency and coverage of training events attended by the staff. The Association of Banks mentioned that they also play an active role in organisation training events; however, no statistical evidence of such engagement was provided to the assessment team.

832. Table 17 below summarises the available statistical data on the training events attended by the staff of supervisory bodies:

Table 17 – Training events for the financial sector

	Year	Number of training events	Staff attendance of training events	Total number of staff*
Banking Agency of FBiH	2005	7	9	**3**
	2006	6	13	**3**
	2007	7	13	**3**
	2008	6	12	**3**
Total		**26**	**47**	
Banking Agency of RS	2005	1	1	3
	2006	4	4	3
	2007	2	4	2
	2008	2	2	2
Total		**9**	**11**	
Securities Commission of FBiH	2005	1	2	20
	2006	1	2	20
	2007	-	-	20
	2008	-	-	20
Total		**2**	**4**	**80**

Table 18: Training and outreach provided by the Banks Association of Bosnia and Herzegovina

Description	Number of participants	State institutions attending	Notes
Compliance Including Customer Due Diligence and	39	Yes	Seminar

Anti-money Laundering Sarajevo, March, 21-23, 2005.			Instructor from Belgium, Certificates circulated after the Seminar
Practical Aspects of Implementation of Laws and Rules of Procedure in Banking Sector, Comments and Recommendations Fojnica, September 28-29.2006.	Approx. 100	Yes	Seminar organised for all institution under obligation upon the Law Certificates circulated after the Seminar
Prevention of Money Laundering Sarajevo, December, 12-14, 2005.	29	Yes	Two instructors from Netherlands
Issues of Practical Implementation of the Law on Prevention of Money Laundering April 4, 2006	40	Yes	Round Table with responsible individuals from banks and the representatives of FIU and authorised agencies
Money Laundering Sarajevo October 24-26, 2009	34	Yes	Seminar Instructor from Luxembourg Certificates circulated
Annual Meeting: Banks and Supervision Bjelašnica November 3, 2006	30	Yes	Round Table at the level of general managers of banks and supervisory authorities (one of topics was implementation of the Law on Prevention of Money Laundering
Issues of practical implementation of the Law on Prevention of Money Laundering March 3, 2007.	40	Yes	Round Table with responsible individuals from banks and the representatives of FIU and authorised agencies
Prevention of Money Laundering Practical Experience. April 19-27.2007	1	No	International Seminar in Luxembourg

Proposals to Advance the Work of Reporting Application Software	N.A.	N.A.	Letter forwarded to the FIU with harmonised proposals of banks
Prevention of Money Laundering Sarajevo March 10-12, 2008.	52	Yes	Seminar Instructor from Belgium
Meeting with the FIU Directors, October 23,2008.	3	Yes	Written information prepared after the meeting and submitted to all banks
Legal Protection of the AML Coordinators and Pressing Issues in Daily Implementation of the Law Sarajevo December 12.2008.	30	Yes	Round Table with responsible individuals from banks and the representatives of FIU and authorised agencies
Prevention of Money Laundering Sarajevo March 30- April 1, 2009	50	Yes	Seminar Instructor from Switzerland Certificates circulated
Regular meeting of the Prevention of Money Laundering Commission	19 meetings	If necessary	

833. Except as specified in Table 18, other supervisory agencies did not provide any statistics on trainings; nor did they refer to the participation of their employees in internal or external training events.

3.10.2 Recommendations and comments

Recommendation 17

834. Establish proportionate and comparable sanctions for non-compliance with AML/CFT requirements throughout the applicable legislation (harmonise the sanctions stipulated by different entity level laws) and remove all ambiguities on the applicability of sanctions under the new AML Law.

835. Amend legislation to provide for the sanctioning powers of the respective supervisory bodies in the insurance market.

836. Ensure that all requirements of the AML Law are enforceable (that is; sanctions are stipulated for non-compliance).

837. Establish administrative sanctions to be applied to the participants of the insurance market for non-compliance with AML/CFT requirements.

838. Review all sanction to ensure that they are effective, proportionate and dissuasive.

Recommendation 23

839. Amend legislation to introduce:

a) a prohibition for criminals and their associates from holding a significant or controlling share in securities market intermediaries in FBiH and in BD;

b) a requirement for a clean criminal record of the managers of market intermediaries in BD; and

c) requirements for professional qualifications and expertise of directors and senior management of investment funds in FBiH, in RS, and in BD.

840. Define licensing/registration procedures for the persons involved in money transfer and exchange services, as well as for the persons exercising professional activities of sale and purchase of claims; safekeeping, investing, administering, managing or advising in the management of property of third persons; issuing, managing and performing operations with debit and credit cards and other means of payment; issuing financial guarantees and other warranties and commitments, and lending, crediting, offering and brokering in negotiation of loans.

841. Steps need to be taken to harmonise the efficiency of monitoring activities in respect of persons involved in money transfer and exchange activities.

842. Provide for efficient, sufficiently frequent, risk-based supervision of financial institutions.

Recommendation 25

843. FID and all other competent authorities need to introduce measures aimed at ensuring that obligors (especially the representatives of DNFBPs) have a proper understanding of their obligations under the AML/CFT framework.

844. As to guidance, whilst the provision of comprehensive and exhaustive lists of indicators for identifying suspicious transactions and persons is commendable, supervisory authorities should ensure that such indicators are not interpreted as being conclusive such that the examination of transactions is only guided accordingly without any flexibility..

Recommendation 29

845. Clearly define the supervisory processes of the FID and establish mechanisms for the enforcement of its decisions regarding removal of irregularities in the operations of persons under obligation.

846. Provide for adequate powers of supervisors in the insurance market to monitor and ensure compliance with AML/CFT requirements and to take enforcement measures and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.

Recommendation 30

847. Provide for an adequate structure, funding, staffing, and technical resources available for supervision of implementation of the national AML/CFT requirements by DNFBPs.

848. Define professional standards (including confidentiality and integrity requirements), and required expertise/skills of the staff of bodies implementing supervision of DNFBPs.

3.10.3 Compliance with Recommendations 17, 23, 29 and 30

	Rating	Summary of factors underlying rating
R.17	**PC**	• Duplication and overlap in the state level AML Law and the entity level Laws on Banks of FBiH and of RS. • Lack of proportionate and comparable sanctions throughout the applicable legislation. • Lack of legislatively provided sanctioning powers of the respective supervisory bodies in the insurance market. • Not all requirements of the AML Law are enforceable. • Lack of administrative sanctions applicable to the participants of the insurance markets.
R.23	**PC**	• No prohibition for criminals and their associates from holding a significant or controlling share in securities market intermediaries in FBiH and in BD. • No requirement for a clean criminal record of the managers of market intermediaries in BD. • No requirements for professional qualifications and expertise of directors and senior management of investment funds • Lack of licensing/registration procedures for persons involved in money transfer and exchange services, as well as for the persons exercising professional activities of sale and purchase of claims; safekeeping, investing, administering, managing or advising in the management of property of third persons; issuing, managing and performing operations with debit and credit cards and other means of payment, crediting, offering and brokering in negotiation of loans. • No effective monitoring of the activities of the persons engaged in the provision of money transfer and exchange services. • Lack of efficient, sufficiently frequent, risk-based supervision of financial institutions.
R.25	**PC**	(in relation to Criterion 25.1 – guidance) • Many of the obligors (especially the representatives of non-bank financial institutions) fail to have a proper understanding of their obligations under the AML/CFT framework • Not all sectors have developed indicators for suspicious transactions. • No specific guidance issued to all sectors of the industry other than the implementing guidance under the Book of Rules. • Impact of the above on the effectiveness of the system.

R.29	**PC**	• Lack of clearly defined supervisory powers of the FID and no mechanisms in place for the enforcement of its decisions regarding removal of irregularities in the operations of obligors. • Lack of adequate powers of supervisors in the insurance market to monitor and ensure compliance with AML/CFT requirements and to take enforcement measures and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and analysis

849. The evaluators have been informed that money or value transfer services in Bosnia and Herzegovina can only be provided by the banks and the Post Office and are governed by the Law on Payment Transactions.

850. In BiH 23 banks, through their 652 branches, have a direct relationship with a major international money transfer service provider. These banks have appointed agents, as does the Post Office, for providing money transfer services. However, the majority of banks have signed agreements with Tenfore Ltd (Cyprus) to provide money transfer services in Bosnia and Herzegovina. These banks cannot appoint sub-agents. Tenfore d.o.o in Bosnia and Herzegovina is the Customer Service Centre for Tenfore Ltd (Cyprus). Tenfore Ltd (Cyprus) represents the same major international money transfer service provider. Tenfore d.o.o has developed an Agent Compliance Manual 'for use by Tenfore employees, all bank employees that are relating in any way in offering the [name of service provider] service'. Tenfore d.o.o has also appointed a Compliance Officer whose responsibilities include compliance monitoring; training for all staff involved in Tenfore activities; proper record keeping and reporting as mandated by the regulators; updating of Compliance Programme; developing a list of indicators for suspicious transactions and ensuring compliance with laws and regulations. Tenfore d.o.o is not a licensed institution in the financial services sector and is not recognised as an obliged entity under the AML Law. It does however appear to be taking a monitoring role for those under contract with it, including in the reporting of suspicious transactions.

851. The Post Office provides money transfer services through a contract signed with one of the banks that has direct arrangements with the international service provider. It operates through about 170 branches and settles daily with the contract-bank through its settlement account. All payments for money transfers are paid in cash. The Post Office is an obliged entity under the AML Law but is not supervised for this purpose. As an obliged entity the Post Office has appointed a Compliance Officer who monitors all transactions that are suspected to involve money laundering or the financing of terrorism and who reports accordingly to the FID in terms of Articles 13 and 14 of the old LPML – now transposed to Articles 30 and 31 of the new AML Law. The Post Office claims to have the entire infrastructure in place, including that for the monitoring of connected transactions. To this end, its internal procedures require customer identification for payments of 5,000 KM and over.

852. Criterion SR VI.1 requires the designations of one or more competent authorities to register or license natural or legal persons that perform money or value transfer services. Such competent authorities shall be responsible for ensuring compliance with licensing and/or registration requirements.

853. In Bosnia and Herzegovina it is only banks that are allowed to provide money transfer services. Consequently, since banks are already licensable entities under the regulation and supervision of the Banking Agencies of FBiH and RS respectively, Bosnia and Herzegovina does not require a separate licensing regime. As explained above, however, banks that have direct contractual agreements to act as agents for an international money transfer service provider can appoint sub-agents. Indeed the Law on Payment Transactions (Article 14) provides for this possibility while requiring that the agent must be authorised to perform payment operations. It is not clear how this applies to the Post Office which, as an obliged entity, is not apparently licensed and supervised for AML compliance. This also applies to any other entities that are appointed as agents.

854. Criterion SR VI.2 requires that all money or value transfer service operations be subject to the applicable FATF 40+9 Recommendations. According to Article 3 of the old LPML (now Article 4 of the new AML Law) banks and Post Offices are obliged entities. Article 3 further recognises as obliged entities or persons those legal and natural persons performing transfer of money or value. Tenfore d.o.o is not however considered as an obliged entity since, as informed, Tenfore d.o.o does not handle clients' transactions directly.

855. Since in Bosnia and Herzegovina money or value transfer services can only be provided by banks and banks are subject to AML compliance monitoring by the relevant Banking Agencies, there are adequate systems in place for monitoring compliance as part of the overall supervisory regime of the banking sector by the relevant Banking Agencies at the Entities level. As stated, however, there do not appear to be any systems in place to monitor the Post Office (Criterion SR VI.3).

856. Criterion SR VI.4 requires authorised money or value transfer operators to maintain a list of their agents. There are no requirements to this effect although, as stated earlier in the Report, banks under contract with Tenfore Ltd (Cyprus) are not authorised to appoint agents. However according to the 'Agent Compliance Manual' of Tenfore d.o.o (Section 1) it is stated that 'In addition to the Tenfore Compliance Programme for the entire network of over 600 locations, each bank runs their own compliance programme according to the law of Bosnia and Herzegovina'. The 'over 600 locations' referred to are with reference to the contracting banks' branches.

857. Money or value transfer operators should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions in accordance with criterion SR VI.5. As obliged entities under the both the old and the new AML Law, banks (in providing money or value transfer services), the Post Office and any legal or natural person performing transfers of money or value are subject to sanctions as provided for by the LPML under Articles 39 and 40 – transposed to Articles 72 and 73 under the new AML Law. In the case of banks, however, these are subject to further sanctions in terms of the Law on Banks – but see Section 3.10 above in relation to Recommendation 17.

3.11.2 Recommendations and comments

858. Money or value transfer operations are exclusively provided by banks most of whom have contractual agreements with Tenfore Ltd (Cyprus). Tenfore d.o.o in Bosnia and Herzegovina is not a licensed or supervised entity. Money or value transfer services are also provided by the Post Office which, however, does not appear to be a licensed and supervised entity.

859. In the light of the foregoing it is recommended that the provision of money or value transfer services be reviewed particularly to ensure that the Post Office or any other agents appointed outside the banking system are subject to supervision. Moreover the Bosnia and Herzegovina authorities may wish to examine the operations of Tenfore d.o.o within the context of the obligations of the obliged entities under Article 3 of the old LPML – now

Article 4 under the new AML Law. Indeed, through the 'Agent Compliance Manual', the company already seems to be imposing upon itself certain AML obligations, in particular in reporting and providing information to the FID. This is a positive initiative on the part of Tenfore d.o.o., however if there is a need for Tenfore d.o.o. to impose such obligations this need should be officially formalised through the new AML Law.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	• Money transfer services provided by Post Office needs to be supervised by the relevant authorities; • Need to re-assess position of Tenfore d.o.o vis-à-vis it relationship with the FID and the new AML Law; • Need to clarify position re sanctions for banks in the light of the new AML Law and the Laws on Banks.

4. PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

860. Article 3 of the old LPML, now transposed into Article 4 under the new law, establishes the range of obliged entities and persons (referred to as 'persons under obligation' in the new law) that are subject to the obligations under the Law. According to the old LPML, apart from the financial sector, the following (Table 19) are subject to the AML Law as 'designated non-financial businesses and professions' (DNFBPs).

861. As indicated in Table 19 below, with some minor exceptions, DNFBPs as defined in the Glossary to the FATF Methodology are broadly covered by Article 3 of the old LPML – Article 4 of the new AML Law. However:

- There are no indications in the old LPML or any other law that 'internet' casinos are covered – under the new law under Article 4 there is a reference to 'internet games and games on other telecommunications means' but the evaluators do not interpret this to include internet casinos, and in any case the law only provides measures for land-based physical casinos and gaming houses;

- Public Notaries are indicated as a separate profession from the legal profession and thus the obligations under the old LPML positively apply to any activity they undertake. But the evaluators have been informed that the main activity in this profession entails all the operations covered by the FATF Methodology Glossary for 'Lawyers and Notaries' – the situation is however changed under the new law since Article 39 now specifies the circumstances under which a notary public, like lawyers, becomes subject to the AML/CFT obligations;

- The accountancy and audit profession is also shown as a separate profession and would thus again positively cover all the operations of this profession as encouraged by the FATF Methodology. However, the operations for 'accountants' as defined and covered under the Glossary do not necessarily fall within the operations of this profession in Bosnia and Herzegovina. In particular because in accordance with Article 4(2) of the old LPML, this profession is obliged under the Law when 'performing an audit function or performing accountancy services on behalf of a client'. It follows therefore that the accountancy profession is not within the scope of coverage as required under the FATF Methodology – the situation is unchanged under the new law;

- Trust and company service providers are not included as the concept of trusts and trust and company service providers is not known in Bosnia and Herzegovina. Public Notaries however do undertake certain related operations, for example when acting as a formation agent of legal persons. Public Notaries are already an obliged profession *qua* Public Notaries under the old LPML. The situation has changed under the new AML Law. Article 3 of the new law defines a 'person providing entrepreneurial services (trust)' as a trust and company service provider. Indeed it is not understood why the definition includes the word "trust" when the BiH authorities claim that the concept of 'trusts' is unknown in the country.

Table 19 – Comparative FATF/LPML Designated Non-Financial Businesses and Professions

FATF Methodology (Glossary)	BiH LPML – Art 3 (old) as revised in Art 4(new)
Casinos (which also includes internet casinos)	Casinos, gaming houses and other organisations of games of change and special lottery games
Real Estate Agents	Real Estate Agencies
Dealers in precious metals Dealers in precious stones	Trade in precious metals and stones and products made from these materials
Lawyers, notaries, other independent legal professionals and accountants • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • creation, operation or management of companies; • creation, operation or management of legal persons or arrangements and buying and selling of business entities.	Public notaries, lawyers, law firms and their staff when acting for or on behalf of clients; • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • creation, operation or management of companies; • creation, operation or management of legal persons or arrangements and buying and selling of business entities.
(see above)	Public notaries, lawyers, accountants, auditors and legal or natural persons performing accounting services and tax counselling services
Trust and company service providers provide any of the following services to third parties: • acting as a formation agent of legal persons • acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; • providing a registered office • acting as (or arranging for another person to act as) a trustee of an express trust; • acting as (or arranging for another person to act as a nominee shareholder for another person.	Persons providing entrepreneurial services (trust) whose activity is to provide third parties with the following services: • establishment of legal person • to perform board management duties or enable other person to perform such duties; • to provide legal person with registered seat or rental business mailing address; • to perform duties or enable another person to perform duties of manager; • to use, or enable another person to use shares which belong to another in order to exercise right of suffrage.
	Other DNFBPS in Article 3 now Article 4 (new)
	• Pawn brokers Offices • Privatisation Offices • Travel Agencies (excluded under the new law) • Legal and natural persons distributing money or property for humanitarian, charitable, religious, educational or social purposes • Organising and executing auctions; • Trading with works of art, boats, vehicles and aircraft.

862. On the other hand, as also indicated in Table 19, Article 3 of the old LPML – transposed into Article 4 of the new law - extends the scope of coverage of the AML/CFT preventive measures to other businesses and profession which, in the opinion of the BiH Authorities could be vulnerable areas for money laundering and the financing of terrorism. It must be mentioned that further to the list in Table 19, the AML preventive measures are also extended to the Post Office which, for the purposes of this Report, is included under Section 3 – Financial Sector. *Per se* this is a commendable initiative on the part of the Authorities of Bosnia and Herzegovina. [80]

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

Application of Recommendation 5 – Customer Due Diligence Procedures

863. In general the analysis of Recommendation 5 and the findings and comments under Section 3 of this Report for financial institutions also apply to DNFBPs in applying the implementation of Recommendation 5. Some exceptions or differences, which will be examined in the following paragraphs, however exist.

864. There are no provisions for customer due diligence to be applied specifically by DNFBPs in the old LPML. But Articles 7 and 8 provide some guidance to certain sectors as it does for the financial sector. While the provisions of Articles 7 and 8 of the old LPML have been retained in the new AML Law, the situation has however somewhat changed under the new AML Law which now includes Section VI governing the duties and tasks of the legal and accountancy professions.

Casinos

865. Article 7(7) of the old LPML requires casinos, gaming houses and other organisers of games of chance and special lottery games to identify (not full CDD procedures) a customer when conducting a transaction of 5,000 KM or more. This obligation has been retained under Article 14(7) of the new AML Law which further requires that the identity is 'checked' – or verified. Article 8(1)(3) of the old law on the other hand, in establishing the identification records required, states that, as a minimum, for casinos, this should include the name, surname, permanent address, date and place of birth and the personal identity number of the natural person who enters the establishment of a casino, gaming house or other concessionaire for special lottery games. This obligation has again been retained in the new law under Article 44(1)(c). It appears therefore that, for casinos, the procedures under the law require identification both at the establishment of a business relationship (entrance) and at transaction level (5,000 KM)

866. The evaluators met with the representatives of the only casino licensed in FBiH.[81] It was confirmed that the casino does not provide for gaming through the internet – in any case both the old and the new AML Law do not recognise internet casinos as an obliged activity. Hence the customer identification procedures are applied at the physical level to individual natural persons. The casino representatives claim that due to the size of the organisation employees eventually know all guests – almost implying an element of complacency in the application of the identification procedures. The procedure for a first time guest is a simple registration process where, through the use of a photograph document, the casino captures all data and

[80] See comments and analysis of Recommendation 12, 16, 20 and 24.

[81] It is understood that a large foreign owned international casino will be established in the Brčko District.

issues an 'entrance' card which in future must be presented on each visit to allow entrance. The identification procedures for exchanging money into playing tokens and vice-versa require the production of the 'entrance' card for amounts exceeding 5,000 KM. All transactions are recorded to check for accumulation of amounts. Payments are effected in cash (KM or Euro) against identification and no winning certificates are provided. The casino however does not apply a risk-based approach nor does it check identification against 'designated' lists.

Real estate agents and dealers in precious metals and dealers in precious stones

867. The evaluators did not meet with representatives of real estate agents. However from the discussions with some of the authorities the Team concludes that there is little being done in this area on customer identification. It appears, as detailed below, that in the case of real estate agents, not even lawyers or public notaries are of the opinion that they should be obliged under the AML Law and hence the *only* identification that is done is that required to carry out the transaction or complete the contract as is required by the law specific to their profession. This is a clear indication of the non-applicability of the law where the authorities are not taking any action.

Dealers in precious metals and precious stones and persons trading in works of art, vessels, vehicles and aircraft

868. The evaluators did not meet with representatives of dealers in precious metals and/or stones or other high value traders. The old LPML did not provide for any specific customer due diligence procedures for this sector of DNFBPs. Consequently dealers are obliged under the general obligation of identification of customers for transactions of 30,000 KM or more – but there is no indication whether the payment has to be in cash or otherwise for the identification procedures to be applied.

869. The new AML Law, in retaining dealers as obliged persons and subject to undertaking identification procedures as defined above, has however introduced provisions on 'Cash Payment Restrictions' under Article 29. Article 29 prohibits any other person or legal entity in Bosnia and Herzegovina that is not a 'person under obligation'' under Article 4 of the new AML Law and who is in the business of trading or providing services from accepting payments in cash for the amount of 30,000 KM or over. Although through this provision a number of trading entities and persons will be automatically excluded from the provisions of the law, yet the evaluators express doubt as to the extent of compliance monitoring that the authorities can exercise in this regard.

870. The situation is similar for persons trading in works of art, vessels, vehicles and aircraft who, in terms of Article 14(6) of the new AML Law are obliged under the general obligation of identification of customers for transactions of 30,000 KM or more. The evaluators that during 2009, car dealers submitted 53 CTRs to the Financial Intelligence Department.

871. There are serious concerns on the extent of awareness, applicability and effectiveness of the implementation of the law within this sector.

Notaries and Lawyers

872. When meeting the legal profession, including public notaries, through the Chamber of Lawyers and the Chamber of Notaries for both FBiH and RS it became clear that both professions are strongly opposed to being subjected to the provisions of the AML Law. The Chamber of Notaries of the RS, for example, stated that since the notary service started operating a year before, about 100,000 contracts on real estate had been completed. For these

purposes, the notary primarily identifies clients as required under the Law on Notaries and not as required under the AML Law – the argument being that the specific law applied to the profession and not the general law at State level on the prevention of money laundering. According to the FID, notaries have submitted 1670 CTRs within the first 9 months of 2009.

873. The new AML Law under its specific Section VI in relation to the legal and accountancy professions stipulates the procedures that are to be applied by these professions for the identification and monitoring of clients. Article 40 requires the identification of the client or his legal representative or authorised person and the beneficial owner in accordance with the general provisions of the law, including that any missing data is to be collected directly through a written statement of the client or his representative. There does not appear to be an obligation, however, to verify the latter. Moreover, the new law provides that such identification procedures and monitoring of a client are to be applied to 'a degree and extent corresponding to their scope of work.'. The evaluators cannot understand this provision when the law itself is already establishing when – see Article 39 – and how – see Article 40 – the legal profession is to apply the identification procedures established by the law. Moreover, despite the new legal provisions, the evaluators remain concerned on the awareness and effectiveness of the implementation of the law in the legal profession.

Auditors and accountants

874. The evaluators also met with the Union of Accountants, Auditors and Financial Professionals (such as tax advisors) of FBiH and the Union of Accountants and Auditors of RS. Through these meetings the evaluators could not establish the degree of implementation of the customer identification obligations under the AML Law by the accountancy/auditing profession. Neither Union appears to fully understand or acknowledge the customer identification procedures to be applied by this profession under the AML Law and, much less, the concept of the beneficial ownership. There is definitely no awareness or knowledge by the Unions as to whether or not accountants do in practice apply customer identification procedures as required by the AML Law.

875. As defined above for the legal profession, Article 40 of the new law now defines the specific customer identification obligations under the law. Notwithstanding the new legal provisions, however, the concerns expressed by the evaluators in this report on the lack of awareness and effectiveness of implementation of the law, as for the legal profession, also remain.

876. The evaluators also met with the Office for Auditing Institutions in FBiH and the Office for Public Sector Auditing of RS. From the discussions held the evaluators conclude that the role of both offices within the public sector auditing does not call for customer identification procedures. In fact these offices are not recognised as obliged entities under the AML Law.

Privatisation agencies

877. The evaluators further met with representatives of the Privatisation Agency of FBiH, the Investment Development Bank of the RS and the Privatisation Directorate of the Brčko District.

878. The Privatisation Agency of FBiH, which is a recognised obliged entity under Article 3 of the old LPML – now Article 4 under the new law - was established in 1997 under its specific law. It is responsible to implement the Law on the Privatisation of Entities through the privatisation of entities in which the State owns more than 50%. The Agency is identified as an obliged entity under the AML Law and has its internal Committee for Money Laundering responsible for ensuring compliance with the Law. The evaluators have been informed that the Agency applies strict identification procedures. However it was explained that identification

procedures are done through references that are provided through tax documentation, such as the income statement of the buyer. There does not appear to be any procedure in place for the identification of the beneficial owner if the purchaser is another legal entity. The evaluators conclude that the identification procedures do not respect or reflect those required by the AML Law but rather a 'test assessment' on the financial viability of the purchaser, the business plan and related tax payments.

879. The Investment Development Bank took over the privatisation function for the Republic of Srpska to the extent that it controls and monitors government capital. Since all contracts are done directly between the Government and the investor with payments in settlement going through the banking system, the Investment Development Bank is of the opinion that customer identification has to be done by the banks. Hence the Investment Development Bank has no internal customer identification procedures for the privatisation process. The Investment Development bank claims it does not consider itself as an obliged entity under Article 3 of the old LPML – now Article 4 under the new AML Law. FID are clears that the Investment Development bank is a person under obligation.

880. The Privatisation Office, now forming part of the Office of Public Asset Management of the Brčko District is an obliged entity under Article 3 of the old LPML. It remains so under the new legislation (Article 4). The Privatisation Office is responsible for the privatisation of State entities in the District. Although the Directorate claims to have internal procedures for customer identification it appears that, similar to the FBIH Privatisation Agency, such procedures are only in the form of an assessment of financial viability, business plans and tax payments. Moreover, the Brčko District Privatisation Office informed the evaluators that it has no procedures in place to examine whether the investor (buyer) has any criminal records. The concept of beneficial ownership and the obligation for identification in the case where the buyer is another legal entity does not appear to exist or acknowledged.

Application of Recommendation 6 – Politically Exposed Persons

881. As already stated under Section 3 of this Report, Politically Exposed Persons (PEPs) are not recognised under the old LPML. PEPs are only very partially addressed for the banking sector through the Decisions on Minimum Standards of the respective Banking Agencies of the Federation of BiH and the Republic of Srpska. Hence, under the old LPML there are no provisions for DNFBPs on their treatment of PEPs as customers/clients. None of the DNFBPs met by the evaluators had in place any internal customer identification risk based procedures and hence the concept of PEPs is not known or recognised in the activities of DNFBPs.

882. With the introduction of a risk-based approach for customer due diligence under the new AML Law, and with the identification of PEPs, as defined in the law, as a sector that calls for intensified identification and monitoring procedures – enhanced customer due diligence - DNFBPs will be required to establish internal control procedures that are risk based in identifying high risk clients, such as PEPs, and that provide to the application of enhanced identification and monitoring procedures. However, till then, the concerns expressed by the evaluators as detailed above remain.

Application of Recommendation 8 – Threats from new or developing technology

883. As explained in Section 3 there are no provisions for obliged persons to examine and assess threats to money laundering or terrorist financing arising out of new or developing technology. DNFBPs met by the evaluators showed no concern on this matter as, according to them, this is a matter that does not concern the way they operate. Indeed, the evaluators opine that the DNFBPs that they met did not appear to be fully aware of, or conversant with the issue of the implications of new technology in their activities. Moreover, whereas Article 12 of the old LPML allows non-face-to-face identification of a client, DNFBPs met by the

evaluators informed that they do not have foreign clients and hence their customers are all identified physically. Moreover, no business is done electronically.

884. As already indicated under Section 3 of the report, the new AML Law now recognises non-face-to-face business as one of the sectors under 'intensified identification and monitoring of clients'. In this respect, the concerns of the evaluators on the situation with DNFBPs in this regard assume even higher degrees as the lack of awareness and initiative on the part of the DNFBPs in this regard will have negative implications on the effectiveness of the system.

Application of Recommendation 9 – Third Party reliance and introduced business

885. As explained under Section 3, the old LPML is basically silent on third party reliance and introduced businesses. DNFBPs met by the evaluators claim that for them this is not an issue as their customers are mainly residents of Bosnia and Herzegovina and that the nature of their activity calls for a direct customer relationship and not through third parties. There do not however seem to be any procedures to be followed by DNFBPs if, for example, a client is introduced by a bank. Some sectors of the DNFBPs hold that they would still undertake a physical identification process – although the evaluators were not given any convincing arguments that this is the case.

886. As explained in Section 3 of the report, Article 17 of the new AML Law now provides for the identification and monitoring of the clients through third parties in circumstances as defined by the FATF Methodology. The evaluators express concern on the extent that DNFBPs are prepared to assume such responsibilities.

Application of Recommendation 10 – Record keeping

887. There are no specific statutory or other provisions governing record keeping for DNFBPs other than those through Article 31 of the old LPML, as now transposed under Article 65 of the new AML Law. Indeed DNFBPs met by the evaluators hold that they retain records in accordance with the laws governing their profession. The evaluators could not however confirm or otherwise whether the obligations under these other laws respect the provisions of the AML Law. Hence all weaknesses identified for the financial sector in this regard would likewise apply for DNFBPs.

Application of Recommendation 11- Complex, Unusual, Large Transactions

888. As explained under Section 3 for the financial sector, there is no specific requirement in both the old and the new AML Law or any other rules or regulations for obliged entities and persons to pay special attention to complex, unusual large transactions, to analyse them and to keep records accordingly. As for the financial sector, DNFBPs claim that such requirements are met through their reporting obligations under Article 13 (now Article 30) of the AML Law for cash transactions that are equal to 30,000 KM or more. The evaluators reiterate that the obligations under Recommendation 11 go beyond the CTR process, which, by its very definition, only covers cash transactions and demands totally different procedures. Consequently, all the weaknesses identified for the financial sector under Recommendation 11 would apply for DNFBPs.

Application of Recommendation 17 - Sanctions[82]

889. As explained under Section 3, the old LPML provides for the punishment of two categories of minor offences by obliged persons. Fines for minor offences under Article 39 (Articles 72 & 73 of the new AML Law) committed by a self-employed natural person subject to the AML Law range from 5,000 KM to 20,000 KM whilst for those committed under Article 40 range from 2,000 KM to 20,000 KM. There are no other provisions in other laws that provide sanctions for offences related to preventive measures for money laundering or the financing of terrorism by DNFBPs. The new AML Law has retained these two categories of minor offences by obliged persons under Articles 72 and 73.

4.1.2 Recommendations and comments

890. The concerns expressed and weaknesses identified regarding Recommendation 5 for the financial sector also apply for DNFBPs. There are however additional weaknesses and shortcomings identified for DNFBPs although with some exceptions. The casino seems to be the only DNFBP that has identification procedures in place in accordance with the AML Law. As already stated, the legal, notary and accountancy professions are more guided by their governing laws as opposed to the AML Law. The Privatisation Agencies of both Entities, on the other hand, appear to have some conflict as to the identification requirements under the AML Law and the financial 'fit and proper' assessment of an investor in State entities. It is highly recommended that the relevant authorities embark on a state wide programme of AML/CFT awareness within the whole DNFBPs sector, the more so because of the coming into force of the new legislation which now imposes specific requirements on the whole DNFBPs sector in general and to particular elements more specifically.

891. As already indicated for the financial sector, although the concept of PEPs under intensified identification procedures is addressed through legal provisions and hence also for DNFBPs, in practice the issue of PEPs is not addressed by DNFBPs as there is a complete lack of awareness of the risks involved. It is therefore again recommended to introduce an awareness and understanding training campaign accordingly throughout the whole sector of DNFBPs as is also required for some elements of the financial sector.

892. There is a need for increased awareness of threats from new or developing technologies among DNFBPs, although, as claimed, their activities are mostly related to a one-to-one customer relationship. Developments in technology on the way of carrying out certain activities could however pose certain threats.

893. Although DNFBPs met by the evaluators claim that they do not undertake non-face-to-face business, the enhanced obligations under the new AML Law call for more awareness of the procedures to be applied in such circumstances throughout the whole sector.

894. There is a need for the DNFBPs to be made more aware of the threats to money laundering and the financing of terrorism arising out of large complex transactions that may not have economic reasons. The need to analyse and understand such transactions cannot be over emphasised. It is again highly recommended to introduce statutory obligations to this effect for all obligors.

895. Record keeping procedures in the AML Law need to be revisited and clarified in accordance with the requirements under Recommendation 10.

896. Although most DNFBPs have informed that they undertake business on a one-to-one basis and they identify their clients directly, yet there is a need to clarify the position on third party

[82] Refer to Table 7 in Section 3 of the Report.

reliance and introduced business for customer due diligence particularly since the new AML Law now specifically provides for third party reliance for certain parts of the identification process applied.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**NC**	• Weaknesses identified for the financial sector under Rec. 5 apply. • Lack of awareness on and understanding of customer identification obligations under Recommendation 5. • Scope of AML/CFT measures for the accountancy profession does not cover situations contemplated by the FATF Recommendations. • Strong resistance of legal profession, including public notaries, to accept obligations under the AML Law and comply therewith – effectiveness issue. • Lack of awareness with most of the DNFBPs sector in relation to the concept of PEPs and the higher risks posed; • Lack of mandatory provisions to monitor threats arising from technological developments; • Need to clarify record keeping obligations as explained for the financial sector under Recommendation 10; • Same weaknesses as identified for financial sector for Recommendation 11 (large complex transactions) apply; • General lack of awareness of obligations under the AML Law and hence lack of effectiveness.

4.2 Suspicious transaction reporting (R. 16)

(Applying R.13 - 15 and 21)

4.2.1 Description and analysis

897. DNFBPs are in principle subject to the same reporting obligations and the maintenance of internal controls as for the financial sector. Hence, and in order to ensure compliance with the AML Law, DNFBPs are required to develop effective internal controls to prevent money laundering and the financing of terrorism, including the identification and reporting of transactions suspected to involve money laundering or of being related to the financing of terrorism. DNFBPs are required to report suspicious transactions whilst being protected for breach of professional secrecy.

898. The old LPML, in recognising the legal privilege for the legal profession, under Article 4(3) - (now article 42 under the new AML Law) - states, *inter alia*, that the obligations imposed by the Law on the legal and the accountancy professions do not apply if the information is received by them as a result of judicial proceedings or in the course of ascertaining the legal position of a client.

899. Despite these legal provisions the legal profession and Public Notaries claim that the reporting obligations under Article 13 of the old LPML (now Article 30 of the new law) go against the secrecy and protection of their profession under the respective laws governing their profession.

900. Under Article 27 of the old LPML obliged entities and persons are required to cooperate with their relevant supervisory bodies to draw-up the lists of indicators for recognising suspicious transactions. The lists of indicators are to be submitted to the FID. It appears that such lists have only been drawn up in isolated cases. In the course of the discussions, the evaluators have repeatedly been informed by most elements of DNFBPs that they have often sought the assistance and guidance of the FID in this regards but none was forthcoming. Moreover, whereas the old Book of Rules on Data and Information issued in terms of the old LPML does provide a number of indicators for suspicious transactions, these are more specific to the financial sector. Hence the majority of DNFBPs appear not to have drawn up their respective lists of indicators as required by the AML Law. This has a negative effect on the implementation of the AML Law and in particular on the reporting obligations. Under Article 37 of the new AML Law the onus of responsibility has now been more clearly placed on 'persons under obligation'' who shall draw lists of indicators for their profession in cooperation with the FID and the relevant supervisory bodies.

901. As described under Section 3 for Recommendation 13, there are conflicting reporting practices. The problems identified for Recommendation 13 remain for DNFBPs – possibly even to a higher degree. Although the list of obliged entities and persons has been extended beyond the FATF requirements, there does not appear to be complete awareness of obligations under the AML Law by most DNFBPs.

Application of Recommendation 13 – Reporting of Suspicious Transactions

902. As explained in this Report, for identification purposes, it appears that the accountancy profession may not be within the scope of coverage of the old LPML preventive measures for activities as detailed under the FATF Methodology. However, as explained further in this section, the new AML Law seems to be addressing this shortcoming for reporting purposes only. It still follows therefore that it becomes debatable whether an accountant or an auditor would be able to file an STR if there is suspicion in handling a related transaction under the circumstances as detailed under Article 39 of the new law (those circumstances as detailed under the FATF Recommendations for the accountancy and legal professions). Otherwise all other DNFBPs as identified under both the old and the new law and as shown in Table 19 in this Section of the report are subject to the reporting obligation.

903. Both the old and the new AML Law do not make any distinction in the reporting obligations for the financial sector and for DNFBPs. Hence both sectors have the same obligations and therefore the weaknesses identified for the financial sector would apply to DNFBPs in general. The new law however now includes a specific Section VI dealing with the responsibilities of the legal and accountancy profession under the law. These provisions will be highlighted in the course of the following paragraphs in assessing the compliance of the individual sectors within the DNFBPs in their reporting obligations.

904. To recapitulate, under Article 13 of the old LPML – now transposed into Article 30 of the new law – the law imposes an obligation to report suspicious transactions, and cash transactions equal to or exceeding 30,000 KM whether carried out through one or a series of connected transactions.

905. Criterion 16.1 requires that DNFBPs be obliged to comply with the essential criteria under Recommendation 13 in their reporting obligations to the FID under the law. The following paragraphs will be assessing the situation in BiH in this regard.

Casinos

906. Since both the old and the new AML Law do not provide for the reporting obligation specifically for casinos, then it may be concluded that casinos are obliged to file a report with the FID for any transaction of whatever amount that is considered as suspicious together with the cash reporting obligation of single or aggregated cash transactions amounting to 30,000 KM or over. Indeed in the course of the discussions with the casino representatives this conclusion was confirmed. The evaluators were informed that cash reportable transactions would include both inward (playing) and outward (winnings) of exchange of tokens (chips) into cash. It is worth mentioning however that although the evaluators have been informed that in BiH there are no internet casinos, yet the law itself only addresses land based casinos with physical presence.

Dealers in precious metals and precious stones and persons trading in works of art, vessels, vehicles and aircraft

907. Both the old and the new law are again silent on any specific provisions on reporting obligations for this sector of DNFBPs. It follows therefore that the general reporting obligations would apply. It is worth nothing however that no reports have ever been filed by this sector with the FID and hence the actual awareness of this reporting obligation by these obliged entities / persons is very much questionable.

Notaries, Lawyers, Auditors and Accountants

908. Unlike the old LPML, the new AML Law now includes Section VI which specifically addresses the obligations of the legal and accountancy professions under the law. Criterion 16.2 requires certain obligations where these professions are allowed to report through SROs. Under the AML Law of BiH both professions are required to report directly to the FID and hence essential criterion 16.2 is not applicable.

909. Article 39 of the new AML Law establishes the circumstances under which the obligations under the law would apply to the legal profession. Without going into the detail, suffice it here to confirm that these circumstances reflect those detailed by the FATF Recommendations. Article 41 then imposes the obligation on the legal profession in the circumstances as established under Article 39, to report immediately to the FID in accordance with the provisions of Article 30 of the new law when there is a detection that there are reasons to suspect money laundering or financing of terrorism. Moreover, Article 41(2) imposes an additional reporting obligation each time a client requests an advice in reference to money laundering or the funding of terrorist financing. Such reporting obligation is to be fulfilled within three working days from the day the client requests such advice. Article 42 of the new law further obliges the legal profession in reporting cash transactions as defined under Article 30 of the new law, whilst Article 43 calls for the development of indicators of suspicious transactions in cooperation with the FID.

910. Although the provisions of Article 39 of the new AML Law address the legal profession only and hence, as already detailed above, the accountancy profession may not be subject to the identification procedures under circumstances described under Article 39, yet Article 41 is applicable also to the accountancy profession. It follows therefore that accountants, auditors and other persons providing accounting or tax advisory services are obliged to file a report with the FID if, under the circumstances defined under Article 39, they suspect a transaction to be related to money laundering or the financing of terrorism. For the accountancy profession this creates an ambiguous situation where, under the circumstances as defined under Article 39 the accountancy profession may not be obliged to identify clients, yet under

the same circumstances there is a reporting obligation. Otherwise the accountancy profession is also subject to the provisions of Articles 42 and 43 of the new law.

911. As under the old LPML the accountancy profession already appeared not to be covered under the scope of the law in circumstances as defined under the FATF Recommendations the evaluators had tried to clarify the matter with the relevant associations but unfortunately no meaningful replies were forthcoming. Hence most of the concerns with regards to the accountancy profession remain.

912. As already explained earlier in the report, the legal profession in particular, held that lawyers and notaries public should not be subject to the reporting obligation as this would jeopardise their legal privilege. The evaluators are of the opinion that this is not the case as legal privilege was adequately covered through Article 4(3) of the old LPML. This article has now been transposed under Article 42 of the new AML Law. Such exception is in line with the provisions under the FATF Recommendations. However the evaluators note that whereas Article 4(3) of the old law provided for this exception "unless the person under obligation and entities know or should know that the client is seeking legal advice for the purposes of money laundering or the funding of terrorist activities", which is a fair and acceptable exception, the provisions under Article 42 for such an exception now state "unless if there are reasons to suspect a money laundering or funding of terrorist activities in relation to a client".

Real estate agents

913. As already explained above the old law does not make any distinction in the applications of the obligations to obliged entities, although the new law includes specific provisions for the legal and accountancy professions as also explained. It follows therefore that, as for other sectors of the DNFBPs, the real estate sector is required to report to the FID in accordance with the provisions of Article 13 of the old LPML, now transposed under Article 30 of the new AML Law.

914. As explained above, the evaluators did not meet with representatives of this sector but, through the discussions with the authorities and other relevant sectors, it appears that the real estate sector lacks awareness of the situation with an added concern that whereas the real estate agents seem to rely on the notary public to meet the obligations under the law, the latter professions do not believe it should be caught under the AML Law and hence does not apply the law. It falls that there is a lacuna on reliance here resulting in the non implementation of the law. This is confirmed by the lack of reports filed by both sectors.

Trust and company service providers

915. The old LPML did not recognise 'trust and company service providers' as obliged entities for two main reasons as was explained to the evaluators in the course of the evaluation on site visit. First, BiH does not recognise the concept of 'trust' and has not signed the Hague Convention and hence there cannot be service providers to a scope that does not exist. Second, company services are provided by the legal or the accountancy professions both of which are already subject to the obligations under the AML Law.

916. It appears that there has been a rethink of the situation since the new AML Law now recognises 'persons providing entrepreneurial services (trust)' as 'persons under obligation'' for the purposes of the new law. The full definition of such persons is conducive to concluding that, irrespective of the title used, such persons represent at least company service providers. The evaluators however note that in the definition of such persons the law includes the word "(trust)" when the BiH authorities claim that the concept of 'trust' is unknown and not recognised under the country's legislation. Moreover, the evaluators question any relationship between the use of the word '(trust)' and item (5) of the definition "to use or

enable another person to use shares which belong to another in order to exercise right of suffrage".

Other DNFBPs

917. All other DNFBPs subject to the obligations under the AML Law are obliged to report to the FID in accordance with Article 30 of the new AML Law within the time stipulated by the law. Such obligations already existed under the old LPML.

Application of Recommendation 14 – Protection for disclosure and tipping-off

918. Recommendation 14 consists of two main criteria. First criterions 14.1 providing for the 'safe-harbour' for obliged persons and their permanent and temporary staff from criminal and civil liability when reporting to the FIU in accordance with the law. As detailed in Section 3 this is to an extent addressed by Article 30 of the old LPML – now transposed to Article 63 of the new AML Law. Second is criterion 14.2 imposing a prohibition on obliged entities and their permanent and temporary staff from disclosing that information has been sent or is to be sent to the FIU. In BiH this was addressed by Article 29 of the old LPML – now transposed to Article 62 of the new law. However, both the old and the new AML Law do not provide and specific lower or higher obligations in this regard for DNFBPs.

919. A remotely related exception in the both the old and the new law is the protection given to the legal and accountancy professions from reporting a suspicion of money laundering or the financing of terrorism when the person practicing that profession obtains information in the course of ascertaining the legal position of his client or during representation of that client in the course of a court proceeding.

920. Otherwise, the evaluators note that the concerns expressed under the analysis of Recommendation 14 for the financial sector in Section 3 of this report would likewise apply to DNFBPs.

Application of Recommendation 15 – Development of AML/CFT Internal Programme

921. As detailed in Section 3 the old LPML does not specifically require obliged entities and persons to develop an internal control programme to prevent money laundering and the financing of terrorism. This may only be indirectly inferred as under Article 15 the Law requires such programmes when obliging entities and persons to appoint an 'authorised person' and his deputies who shall be responsible for reporting to the FID and to perform other duties prescribed by the AML Law. The new AML Law is now more specific in requiring under Article 36 that a 'person under obligation'' ensures a regular internal control and auditing of the duties conducted in preventive measures. As the law does not distinguish between 'persons under obligation'' then it can be safely concluded that the situation for DNFBPs in this regard remains similar as that for financial institutions under Section 3.

922. Article 15(2) of the old LPML further requires obliged entities and persons to provide professional training for all their employees, to conduct internal control over the performance of these duties and to prepare the lists of indicators for recognising suspicious transactions. Although this obligation remains under the new AML Law with direct emphasis under Article 35, the evaluators have serious concerns to what extent DNFBPs in general are complying with these obligations, in particular since no meaningful information was forthcoming during the evaluation discussions.

923. Very few DNFBPs met by the evaluators have confirmed the appointment of an 'authorised' person and the development of an internal control programme – mainly the casino and Privatisation Agencies. As stated it remains unclear and doubtful whether other

DNFBPs not met by the evaluators have done so. There does not appear to be any monitoring or control by any authority, including the FID, to ensure that DNFBPs are in practice complying with these provisions.

924. This could be the result of Article 15(3) of the old LPML – now transposed into Article 32(2) of the new AML Law, which specifies that:

> 'Notwithstanding paragraphs 1 and 2 of this Article, those persons under obligation with four or less employees shall not be required to appoint an authorised person and shall not be required to conduct internal control as prescribed in this Law.'

925. The evaluators express concern on the interpretation and application of Article 15(3) of the old LPML - transposed into Article 32(2) of the new AML Law - as this could have negative implications on the system, and in particular in relation to DNFBPs. Whereas the FATF Recommendations state that the requirements for Recommendation 15 should "be appropriate having regard go the risk of money laundering and terrorist financing and the size of the business", basically including the rule of proportionality, yet the BiH AML Law fully and outright exempts small entities, and possibly sole professionals, from appointing an authorised person and from conducting and implementing internal controls in accordance with the law. The evaluators interpret Article 15(3) of the old law (now Article 32(2) under the new law) not only to apply to those legal or natural persons that have four or less employees but also to those who, consequently, have no employees at all. Most DNFBPs – law firms, accountancy firms and others – appear to normally employ few staff but, most importantly, the majority of DNFBPs are individual natural persons. Hence it follows that a high number of DNFBPs could be excluded by Law from appointing an 'authorised' person, from conducting internal control and from preparing the list of indicators for identifying suspicious transactions.

926. In this regard it is worth noting that under Section VI, Article 42 of the new AML Law there is a specific requirement for the legal and accountancy profession to appoint authorised persons and deputies of authorised persons, and to carry out internal audit on enforcement of tasks on prevention of money laundering and terrorist activities funding. This provision seems to support the conclusion reached by the evaluators that for some sectors the law lifts completely the obligation to appoint an authorised person and to conduct and implement internal controls as prescribed by the law itself.

927. As to the application of appropriate recruitment screening procedures, as for the financial sector, the evaluators were given no meaningful information as to how this is applied in practice. It is only the casino that informed that such procedures are applied. It has been informed that as it appears that most DNFBPs are individual natural persons hence recruitment procedures do not apply.

928. Most of the DNFBPs that were met by the evaluators informed that they were given little training. Some claim that requests for training have been filed with the FID but very often this was not forthcoming. It is evident that there is a complete lack of awareness in most areas in the DNFBPs sector and hence a training and awareness campaign throughout becomes crucial for the proper implementation of the AML Law. As the new law has now imposed a stricter obligation on 'person under obligation'' to provide training there may be a need for an overarching training programme to be developed by the relevant competent authorities, and in particular the FID.

Application of Recommendation 17 - Sanctions[83]

929. Sanctions for failure to report in accordance with Articles 13 and 14 of the old LPML – now transposed to Articles 30 and 31 of the new law - are governed by Article 39 of the old law (being Article 72 of the new law) which, for a legal person ranges between 20,000 KM to 200,000 KM and for a natural person between 5,000 KM to 20,000 KM. Under the new law (Article 72) such fines for a natural person have been revised with the range now being between 30 KM and 20,000 KM. Article 40 of the old LPML – now Article 73 of the new law - further provides for other minor offences related to failure to undertake internal controls; the preparation of lists of indicators for suspicious transactions; the appointment of an authorised person or his deputy(ies); the provision of training and failure to keep information according to the Law. Under the old law sanctions for these failures range from KM 10,000 to KM 100,000 for legal persons and from 2,000 KM to 20,000 KM for natural persons. Under the new law these have been revised downwards for natural persons with a range between 2,000 KM and 10,000 KM.

930. Moreover, certain weaknesses as identified in the financial sector and as described under Section 3 also apply for DNFBPs.

931. In the course of the evaluation it transpired that a number of DNFBPs are not in fact in compliance with their obligations – in particular in the development of lists of indicators and internal controls. Article 41 of the old LPML for example requires the drawing up of lists of indicators within 6 months of the coming into force of the law – six months following 4 May 2004. Notwithstanding it does not appear that any authority or the FID has taken any action to impose any penalties as provided by the law and as defined above.

Application of Recommendation 21 – Relationship

932. Article 7(10) of the old LPML requires obliged entities and persons to terminate or to decline to enter into a business relationship or to execute a transaction with or on behalf of a bank incorporated in a jurisdiction in which it has no physical presence. As explained under Section 3 of the Report this is a very limited obligation that does not meet the requirements for Recommendation 21. As stated under Section 3 the new law has not transposed Article 7(10) of the old law and hence none of the essential criteria for Recommendation 21 is met. It follows therefore that all weaknesses identified for the financial sector apply for DNFBPs. Moreover, in the course of the evaluation it was apparent that, despite the fact that most DNFBPs claim not to be involved in cross-border activities, DNFBPs are not aware of these obligations; hence there are no procedures in place should the eventuality occur that they have to handle such transactions. DNFBPs claim that such obligations are not applicable to their profession.

933. The evaluators express serious concerns on the position taken since certain professions, in particular the legal, notary and accountancy professions, are likely to encounter and handle transactions emerging from foreign countries that may not be applying the relevant AML standards to an acceptable degree.

4.2.2 Recommendations and comments

934. The application of the relevant FATF Recommendations to the non-financial sector – DNFBPs – appears to be lower in relation to the financial sector with some areas even lower than others. There are concerns that some of the main sectors, in particular the legal and notary professions, closely followed by the accountancy profession, appear to be reluctant to

[83] Refer to Table 11 in Section 3 of the Report.

totally accept their obligations under the AML Law, in protection of the relevant laws governing their respective professions.

935. There appears to be a strong need to review Article 15 of the old LPML – now Article 32 under the new AML Law - to clarify in particular paragraph (3) and its application regarding the appointment of the 'authorised person' and the application of internal controls as required under the law for obliged small entities and natural persons – considering further that these provisions have been retained in the new law with specific provisions in this regard to the legal and accountancy professions. It is recommended that the Law be clarified and that the FID carries out a monitoring exercise on its application and, where necessary, imposes the relevant sanctions as provided by the Law.

936. There appears to be a general lack of awareness of the provisions of the AML Law and its applicability throughout DNFBPs. Whilst acknowledging that implementing the full AML obligations over the entire sector of DNFBPs, in particular in some sections such as persons dealing in specific precious goods, may prove to be difficult especially since it is only now that the AML Law provides for a risk based approach, and then this is only with respect to identification and monitoring of client purposes it is highly recommended that DNFBPs are made more aware of their important role in the AML/CFT regime through guidelines and training thus ensuring that, in understanding their role better, DNFBPs acknowledge and implement their AML obligation further.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors underlying rating
R.16	**NC**	• Overall lack of awareness of AML/CFT obligations in general throughout most DNFBPs with some resistance in certain areas. • Concern over the exclusion of applicability of certain provisions of the Law to small firms of DNFBPs and possibly natural persons. • Lack of training. • No adequate procedures for screening at recruitment stage. • No specific obligation to terminate or decline business relationships with legal and natural persons from countries that do not apply adequate AML/CFT measures. • No specific obligation to monitor, examine and record findings for large, unusual, complex transactions and to make such findings available to the authorities. • Need to clarify position regarding 'trust' service providers. • Lack of effectiveness

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

937. Article 4 of the new AML Law defines the following DNFBPs as obligors:

- Casinos, gambling houses and other organisers of games of chance and special lottery games, particularly betting, slot machines, internet games and games on other telecommunication means;
- Public notaries;
- Lawyers, accountants, and auditors and legal or natural persons performing accounting services and tax counselling services;
- Trust and company service providers;
- Real estate agencies;
- Privatisation agencies;
- Pawnbroker offices;
- Persons organising and executing auctions;
- Traders in works of art, vessels, vehicles and aircraft;
- Traders in precious metals, stones, and products made of these materials.

Casinos

938. Pursuant to the Act on Games of Chance of FBiH and of RS, the Ministries of Finance of the respective entities are the state bodies with vested powers for the licensing and supervision of the implementation of provisions of the said laws. Further, the Tax Administration of BD is the competent authority for supervising the implementation of the provisions of the Law on Games of Chance of BD. However, the assessment team was not provided any information on the legal basis for these bodies at either state or entity (or BD) level to supervise implementation of AML/CFT requirements by casinos.

939. According to Article 4 of the new AML Law, casinos, gaming houses and other organisers of games of chance and special lottery games, particularly betting, slot machines, internet games and games on other telecommunication means are designated as obligors. Pursuant to Article 68 Paragraph 3 of the Law, the FID and the supervising bodies should cooperate in supervising, within their individual competencies, the implementation of the provisions of this Law. There are also designated sanctions applicable to all obligors (including casinos) for non-compliance with the requirements of the Law.

940. The provisions of the previous AML Law were not effectively implemented, because, as already mentioned above, the respective supervisory bodies, the entity level Ministries of Finance and the Tax Administration of BD – had no mandate and tools for supervising implementation of AML/CFT requirements. Article 68 of the new AML Law has extended the scope of supervisory authority in that it states that:

(1) The supervision over the work of the persons under obligation in relation to the implementation of this Law and other laws which regulate application of measures for prevention of money laundering and financing of terrorist activities shall be conducted by the special agencies and bodies pursuant to the provisions of this and special laws regulating the work of certain liable parties and authorised agencies and bodies.

(2) The supervision over the implementation of the provisions of this Law at the person under obligation' whose work is not supervised by special agencies and bodies, shall be conducted by FID.

As the new AML Law was enacted after the on-site visit it was not possible for the evaluators to assess the effectiveness of these provisions.

941. The licensing and other relevant procedures established for casinos do not provide for the banning of individuals with criminal backgrounds from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function in, or being/becoming an operator of a casino.

Notaries, lawyers, auditors and accountants

942. As provided by the authorities, the Chambers of Lawyers, the Chambers of Notaries, and the Associations of Accountants and Auditors at entity level are the registering and supervising bodies for respectively, the lawyers, accountants, auditors, and public notaries. However, the legislation provided to the evaluators does not provide the powers of the respective SROs in relation to the obligations set forth in the new AML Law, and no systems and mechanisms are established for ensuring compliance of the obligors with the national AML/CFT framework.

Other DNFBPs

943. The new AML Law has added as a person under obligation trust and company service providers. As this obligor was added after the on-site visit it has not been possible for the evaluators to assess the effectiveness of the AML/CFT regime which now applies to them.

Supervisory authorities

944. The assessment team was not provided with any information on the designated authority to monitor and ensure compliance of trust and company service providers, pawnbroker offices, persons organising and executing auctions, traders in works of art, vessels, vehicles and aircraft real and traders in precious metals and stones with the national AML/CFT requirements.

Effectiveness and efficiency

945. The assessment team was not provided any information on the legal basis for the designated authorities – that is the entity level Ministries of Finance and the Tax Administration of BD – to supervise implementation of AML/CFT requirements by casinos. This, in turn, means that the sanctions defined with regard casinos for non-compliance with the requirements of the new AML Law cannot be effectively applied.

946. The licensing and other relevant procedures established for casinos do not provide for banning individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function in, or being/becoming an operator of a casino.

947. The Chambers of Lawyers, the Chambers of Notaries, and the Associations of Accountants and Auditors at entity level do not have legislatively provided powers for supervising implementation of the obligations set forth in the new AML Law, and no systems and mechanisms are established for them to ensure compliance of the obligors with the national AML/CFT framework.

948. There is no specifically designated authority to monitor and ensure compliance of real estate agencies and traders in precious metals and stones with the national AML/CFT requirements, which means that, pursuant to Article 68.2 of the new AML Law, the FID is the relevant agency to supervise these entities for AML/CFT compliance. However, the FID does not have any mechanisms and tools available for monitoring and ensuring compliance of the said persons with national requirements to combat money laundering and terrorist financing.

949. Many of the obligors – especially the representatives of DNFBPs – lack a proper understanding of their obligations under the AML/CFT framework. Moreover, the competent authorities have never provided guidance incorporating description of AML techniques and methods, which would give obligors assistance in better understanding and introducing measures aimed at effective implementation of the AML/CFT framework.

Guidance and Feedback

950. As previously noted, based on the previous AML Law, the Minister of Security of BiH[84] issued The Book of Rules[85] on Data and Information in 2004 which sets out a number of important issues related to the AML/CFT activities of obligors. Whereas the contents of the Book of Rules on Data and Information appears to be comprehensive in order to assist obligors to implement and comply with their respective AML/CFT obligations, the meetings with obligors, particularly with the representatives of DNFBPs, indicated that many of them lack a proper understanding of the provisions and practical implementation of the Book of Rules on Data and Information. Moreover not all sectors have completed their list of indicators for suspicious transactions as is required under the Law, As also noted under Section 3 there is only some general feedback through the FID Annual Report but this needs to be enhanced. Specific feedback is not provided although the new law now makes it mandatory on the FID to provide such feedback to the person under obligation who would have filed the report.

4.3.2 Recommendations and comments

951. Legislation should be introduced to:

- define the basis for entity level Ministries of Finance and for the Tax Administration of BD to supervise implementation of AML/CFT requirements by casinos.

- prohibit individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding management functions in or being/becoming an operator of a casino.

- define the powers of the Chambers of Lawyers, the Chambers of Notaries, and the Associations of Accountants and Auditors at entity level to supervise implementation of the obligations set forth in the new AML Law; establish systems and mechanisms for them to ensure compliance of the respective obligors with the national AML/CFT requirements.

952. An authority should be designated to monitor and ensure compliance of real estate agencies and traders in precious metals and stones with the national AML/CFT requirements.

[84] The FID is a structural division of the State Investigation and Prevention Agency (SIPA) within the Ministry of Security.
[85] The status of the Book of Rules on Data and Information as "other effective means" is discussed at the commencement of Section 3 above.

953. FID and all other competent authorities need to introduce measures aimed at ensuring that obligors DNFBPs have a proper understanding of their obligations under the AML/CFT framework.

954. FID should provide general and specific feedback to DNFBPs incorporating, *inter alia*, statistics on the number of STR-s, information on current ML techniques and trends, as well as information on the decisions and results of the analysis of STR-carried out by the FID.

4.3.3 Compliance with Recommendations 24 and 25 (criterion 25.1, DNFBPs)

	Rating	Summary of factors underlying rating
R.24	**NC**	• Lack of legislatively defined basis for entity level Ministries of Finance and for the Tax Administration of BD to supervise implementation of AML/CFT requirements by casinos • Sanctions defined with regard casinos for non-compliance with the requirements of the AML Law can not be effectively applied. (*Applying Recommendation 17*) • No prohibition for individuals with criminal background to acquire or become the beneficial owner of a significant or controlling interest, hold a management function in or be an operator of a casino. • Lack of legislatively provided powers for the Chambers of Lawyers, the Chambers of Notaries, and the Associations of Accountants and Auditors at entity level to supervise implementation of the obligations set forth in the AML LAW; no systems and mechanisms for them to ensure compliance of the respective obligors with the national AML/CFT requirements.
R.25	**PC**	• Many of the obligors (especially the representatives of DNFBPs) fail to have a proper understanding of their obligations under the AML/CFT framework • Not all sectors have developed indicators for suspicious transactions. • No specific guidance issued to all sectors of the industry other than the implementing guidance under the Book of Rules. • No general and specific feedback to DNFBPs. • Impact of the above on the effectiveness of the system.

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

955. Recommendation 20 has a twofold requirement. First criterion 20.1 requires countries to apply the key and main recommendations to non-financial businesses and professions other than the recognised DNFBPs that are at risk of being misused for money laundering or terrorist financing.

956. As detailed in Table 19 in this Report it appears that Bosnia and Herzegovina has carried out an assessment in this regard and has extended the scope of coverage of the statutory AML/CFT preventive measures accordingly. In brief these include:

- Pawn Brokers Offices;
- Privatisation Agencies;
- Travel Agencies – now removed under the new AML Law;
- Legal and natural persons distributing money or property for humanitarian, charitable, religious, educational or social purposes;
- Organising and executing auctions; and
- Trading with works of art, boats, vehicles and aircraft.

In the case of gaming, further to casinos, the AML LAW, whilst not covering internet casinos, includes under the scope of coverage gaming houses and other organisations of games of chance and special lottery games. As explained earlier in the Report, however, the evaluators express concern on the implementation process, and hence effectiveness, in almost all additional DNFBPs.

957. There are however no empowering provisions in the AML LAW (both the old and the new law) for any appropriate authority or Ministry to extend the application of the Law to other entities that eventually could be, or risk of being, misused for money laundering or the financing of terrorism. The evaluators have been advised that should this eventuality arise the law would be amended accordingly.

958. Second criterion 20.2 requires countries to take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering and terrorist financing.

959. The economy in Bosnia and Herzegovina remains predominantly cash based. The highest currency note is for 200 KM (€100) which, for the purposes of money laundering may not be considered a large denomination. Currency in circulation stood at 8.8% of GDP as at December 2008 with GDP per capita being 6,531 KM. By way of comparison the figures for 2003 stood at 12% and 3,785 KM respectively. Moreover the Central Bank is developing a payment system that is meant to reduce cash settlements. The cash element in M1 has gone down from 51% in 2003 to 38.4% in 2008. The Central Bank has also informed that it has embarked in promoting a direct credits system which will also contribute to the reduction of the use of cash. Notwithstanding, there is no documented overarching strategy by the Central Bank to reduce cash and to introduce more modern and secure techniques to replace cash settlements that the evaluators could examine.

960. The use of credit and debit cards is limited. It appears that the use of cards is more focussed towards those with a higher living standard than the average GDP per capita. In BiH the number of debit and credit cards issued amounts to 1,612,219 covering 42% of population. For banks with their head offices in the Federation of BiH the number of debit/credit cards issued amounts to 1,348,541 while that for banks with their head offices in the Republic of Srpska stood at 263,678. Since no banks have their head offices in the District no cards have been issued in the District.

961. The Post Office, as explained in Section 3 of the Report, provides a system for effecting payments electronically. The evaluators have been informed that most payments effected through the system are for small amounts representing settlement of fees (university and

others) and bills (such as utility bills). Hence the provision of electronic means of payment through the Post Office remains low although encouraging.

962. As also explained under Section 3 of the Report the use of internet banking is low and limited and is still under development. Internet banking mainly consists of payments through the internal payment system. Data provided by the Central Bank shows that 29 out of 31 banks provide internet banking. Clients to internet banking to date are 14,114 legal entities and 17,836 physical persons.

4.4.2 Recommendations and comments

963. The scope of coverage of preventive measures under both the old and the new AML LAW has been extended to other businesses and professions beyond the FATF definition of DNFBPs. This is a positive initiative on the part of the authorities of Bosnia and Herzegovina. Unfortunately monitoring of the implementation of requirements and compliance thereto is almost inexistent and hence the evaluators express concerns on the effectiveness of this extension when there is no effective monitoring mechanisms in place to assess implementation.

964. Notwithstanding the measures taken and being taken by the Central Bank, there is a need to intensify the drive to reduce the use of cash and develop further the use of more modern and secure electronic means of settlement. The evaluators welcome the measures taken under the new AML Law through Article 29 limiting cash payments to persons and entities other than those under Article 4 of the Law to €15,000. However, the evaluators do not consider this to be an overarching policy for setting up the strategy for reducing the use of cash. In this regard it is recommended that the Central Bank develop and document an overarching strategy to reduce the use of cash.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**LC**	• No documented strategy to reduce the use of cash. • There are strong concerns on the effectiveness of the extended scope of the law particularly as there are no means of monitoring the added DNFBPs.

5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis[86]

965. The registration of business entities is governed by the relevant three pieces of apparently harmonised Laws on Registration of Business Entities in FBiH, RS and Brčko District, supplemented by the respective Books of Rules. Registration is done at the competent Registration Courts at each Entity/District level with FBiH providing for registration at 10 courts, one for each canton and is based on the principle of an obligation, (i.e. all business entities are obliged, prior to commencement of intended economic activity) to register at the competent Registration Court.. The Republic of Srpska has established a number of business information centres in several municipalities to assist potential economic societies, entrepreneurs and investors. The laws provide standardised criteria for classification of economic societies in four types: limited liability company, shareholders company, partnerships and limited partnerships.

966. Unlike the registration system of NPOs, the legal framework regulating the registration of business entities establishes a clear mechanism ensuring a uniform procedure of registration of business entities on the territory of BiH. The application for registration can be submitted to any registration court, irrelevant of the location of the seat of the entity and if the application is submitted to a non-competent registration court, the last shall without delay, *ex officio*, forward the application to the competent registration court. The Register consists of the Main Book of Register and Compendium of Documents. The Main Book of Register is a book of data that is kept in both printed and electronic form, while the Compendium of Documents is maintained in printed form and may be kept in electronic form. The electronic version of the Main Book of Register forms the electronic database for the territory of the Entities and Brčko District.

967. The decision on the business registration must be issued within five working days from the day of submission of the complete application. It is valid on the whole territory of BiH, regardless of the location of registration and should be published in the relevant Official Gazette. There is a clear legal obligation for the registration courts to ensure that the final entry in the Main Book is available to all registration courts as well to all electronic databases in BiH, immediately after the subject is entered into the Register. Also, the courts of registration are required to deliver the decision on registration of the foundation or status changes in the business entity[87] to the:

- Tax authority, according to the seat of the entity/ Indirect Tax Authority;
- Municipality, according to the seat of the entity;
- Entities and BD statistics office and chambers of commerce;
- Pension and disability fund, according to the seat of the entity;
- Competent customs authorities, according to the seat of entity; and
- Other regulatory authorities.

[86] A more detailed analysis/overview of commercial laws and mechanisms governing legal persons and arrangements is found under Section 1.4 of the Report.

[87] According to the Framework Law, it should be delivered the electronic copy of the decision on registration, while the entities and BD laws just state the obligation to deliver the decisions.

968. Likewise, State, Entities and Brčko District authorities must have access to data entered into the Main Registry Book via telecommunication network or through IT media. The registration courts shall also ensure, without requiring of proving the legal interest, access to data from the Main Book of Registry that is kept in electronic form, regardless of whether the court in question has completed the registration of a particular subject. Access to data from the Compendium of Documents requires that the legal interest is proved.

969. The Ministries of Justice of the Entities and the Judicial Commission of Brčko District are obliged to ensure technical functionality, maintenance, immediate delivery of electronic data from the Main Books and proper functioning of the system, but the laws do not specify the existence of a single electronic register and the authorities did not advise on the practical implementation of the existing registration mechanism. However, according to the Second Evaluation Round Report of Greco adopted at its 41 Plenary in Strasbourg (16-19 February 2009), in reply to a recommendation to *establish an inter-linked system for the registration of legal persons that is able to provide information in a timely and reliable manner*, the authorities of BiH have advised that there is a "single electronic ledger" of the Business Registry and that since January 2008, commercial courts of BiH are uploading the registration data into the electronic ledger.[88] In this context, it appears that the inter-linked system has started to be implemented only recently and consequently, there is a risk that this could have led to weak transfer/exchange of information between registration courts, double registration of business entities and low level of access to information of the relevant competent authorities. Also, the RS authorities advised that there is ongoing work on the adoption of a package of laws on electronic signature, electronic business activities and electronic documents for the purpose of faster and higher quality start of work of economic entities, which means that the electronic registration system is not fully operational.

970. At all levels, the general data about business entities that are registered in the Main Book of Register through the relevant Courts are as follows:

(a) title and address of main office i.e. names/addresses of all founders/members;

(b) object of registration;

(c) date, day and hour of receipt of application;

(d) title and address of main office of company being registers;

(e) abbreviated name and logo of company to be registered

(f) unique identification number and tax ID number of company to be registered;

(g) form/type of company to be registered;

(h) full name, reference number and date of founding documents of company to be registered;

(i) title, reference number and date of founding documents of company to be registered;

[88] BiH's reply included in the Second Evaluation Round Report of Greco adopted at its 41 Plenary in Strasbourg (16-19 February 2009): *'The authorities of Bosnia and Herzegovina highlight that an inter-linked system for the registration of legal persons is now in place as a corollary of the different legislative measures adopted at the different levels of Government to harmonise business registration procedures and to allow for the sharing of information on legal persons in a swift manner. Since January 2008, commercial courts in Bosnia and Herzegovina have started to upload registration data into the electronic ledger of the Business Registry. Likewise, courts of jurisdiction (other than commercial courts), tax administrations and statistics agencies are connected to the single electronic registration system.'*

(j) full name, surname and position of authorised representative of company to be registered;

(k) powers and limitation of the authorised representative;

(l) amount of initial registered capital;

(m) cash amount of capital paid;

(n) value of capital in assets and property rights;

(o) percentage share in cash, property rights and assets of capital for each individual founder;

(p) business activity.

971. The respective Laws further provide for documents required for the general entry of business entities in the main Book of Register. These provisions are further complemented by details on documents required for particular forms of business entities, such as:[89]

- shareholding company;
- bank or other financial organisation;
- shareholding insurance company;
- company with limited liability;
- partnership and limited partnership companies;
- public company, including its privatisation;
- company with public seal of approval;
- business association;
- co-operative and co-operative association.

972. The registration courts are responsible for the validity of data that they entered into the Register. For these purposes, the registration courts require, *inter alia*, such documents as ID card, passport or excerpt from the relevant registry confirming the identity of the founder of foreign or domestic physical or legal entity; ID card, passport or appropriate receipt from the relevant internal affairs authority confirming the identity of the applicant for the domestic and foreign physical person; excerpt from the relevant public registry establishing ownership in capital in terms of assets and rights, (i.e. application for entry into relevant public registry and competent court expert's findings establishing the value of capital in terms of assets and rights). In case where the application is filed in electronic form or sent by e-mail, the decision on registration shall not be issued until the moment of verification of the identity of the applicant or founder. The laws enable the registration court to hold hearings in cases of questioning the authenticity of the provided data, the legality of the procedure pursuant to which the document was adopted or legality of a legal action to be entered and to carry out additional verifications if questions the existence of some facts. Despite the verification powers in place, in practice, as advised by the representatives of the registration courts whom the evaluators met, it appears that the control carried out by courts is limited to a formal check to ensure the required documents are submitted and if they are legalised by the relevant authority, for example a notary. This approach can facilitate the practice of setting up fictitious companies. There is no express requirement for the courts to carry out the identification of the beneficial owners. The new Law on the prevention of Money Laundering

[89] See Section IV and V of the respective laws.

and Financing of Terrorist Activities gives a definition of the "real owner of a legal entity"[90] and "real owner of a foreign legal entity"[91], but there is no express requirement for the courts to carry out the identification of the beneficial owners.

973. Furthermore, in response to an additional recommendation by GRECO *to strengthen the controlling functions of the courts in change of the registration of legal persons with regard to the identity of the founders of legal persons as well as other pertinent information necessary for registration* the authorities again stated:

'The authorities of Bosnia and Herzegovina stress that legislation, at State and Entity levels, require the identity of the founders of legal persons as well as other pertinent information necessary for registration. In this connection, applicants are to submit proof of their identity and certification from the competent authorities on clean criminal records; registration courts are empowered to carry out additional checks, as necessary. Moreover, the controlling functions of registration courts have been strengthened upon completion of the so-called Citizen Identification Protection System (CIPS), which has set in place a centralised identification and registration system of physical persons (responsibility in this area has thus been transferred from Entity to State level), including by developing a unified Bosnian identification card.'

974. As to the latter the evaluators would reiterate their previous comments that what is being stated does not indicate that the changes in shareholding ownership, and in particular for shareholding companies, is being done in a timely manner, if done at all.

975. The Registry of Securities also keeps a register of business entities that are 'shareholders companies' and which it updates periodically with registered changes in shareholders on the Stock Exchange.

976. As to changes in ownership, in the course of the evaluation the evaluators were informed that changes to ownership in shareholding companies are only automatically updated by the Registry of Securities. For similar changes for shareholding companies and other entities at the Books of the Courts of Registration, these are only registered at the initiative of the entity. However, Article 38 (for partnership company) and Article 39 (for other companies) of the Laws on Registration of Business Entities of RS and FBiH, impose an obligation to provide relevant documentation upon change in ownership for registration.[92] Furthermore, Article 67 of the Laws (FBiH and RS) imposes an obligation for the registered business entities to declare all amendments of data significant for legal transactions, including change in ownership, to the competent registration court within 30 days from the day amendments have taken place.

977. Criterion 33.2 requires competent authorities to be able to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial owner and control of

[90] Article 3, letter n) of the Law on the prevention of money laundering and financing of terrorist activities: "Real owner of an economic company, that is, of another legal person is: - a natural person who, directly or indirectly, holds 20% or more of business shares, right of suffrage or other rights, based on which it participates in management, i.e. participates in the property of the legal person with 20% or more shares, or has a dominant status in property management of the legal person; - a natural person who indirectly provides funds for the economic company and on that basis is entitled to participate in decision making by managerial bodies of the economic company on financing and business dealings".

[91] Article 3, letter n) of the Law on the prevention of money laundering and financing of terrorist activities: " Real owner of a foreign legal person, which receives, manages or distributes the property for certain purposes is: – a natural person who directly or indirectly utilizes more than 20% of property being managed, under the condition that the future users are defined; - a natural person or group of persons in whose interest the legal person was founded or dealing the business, under the condition that the person or group of persons is definable; - a natural person who directly or indirectly manages more than 20% of foreign legal person with no limitations".

[92] The reference to the relevant articles of the BD Law on Registration of Business Entities was not made as the full text of the law is not available.

legal persons. As stated above, according to the Laws on Registration of Business Entities, the authorities of the State, Entities and Brčko District must have access to data entered into the Main Book of Registry via telecommunication network or through IT media.

978. Article 10 of the new AML Law requires obliged entities to obtain information on legal persons, including establishing of the real owner directly from the court registry or another public registry. In case where a foreign legal person, other than international governmental organisations, carries out transactions, the obliged entities must undertake, at least once a year, repeated identification. Furthermore, Article 15 of the new AML Law requires that if complete data about the real owner cannot be obtained from the court or other public records, the obliged entities have to collect the missing data by checking the original or verified documents and business records attached by legal representative or his/her authorised person or get them from written statements by legal representative or his/her authorised person. In the course of the discussions during the evaluation the evaluators were informed by the industry that information on legal persons is always obtained through the Court Register as the Register on Securities does not provide them with the necessary information on shareholding companies. The evaluators were however informed that, on the one hand, as already stated, the Court Register is not always updated with changes in shareholding and, on the other hand, that the ownership information in the Register of Securities is publicly available on the internet. It therefore remains unclear whether adequate, accurate and current information on beneficial ownership and control of legal persons is available to the industry in a timely manner.

979. Bosnia and Herzegovina prohibits the issue of bearer shares by corporate bodies. According to the Law on Securities Market of RS (Article 5) and Law on Securities of FBiH (Article 6), one of the compulsory elements of a security, which should be included in the Registrar, is the data about the owner/purchaser of the security. There are however no prohibitions for other legal entities, domestic or foreign, to be shareholders in a company. The evaluators were not given satisfactory replies as to whether a foreign company with bearer shares can be a shareholder in a legal person registered in Bosnia and Herzegovina.

5.1.2 Recommendations and comments

980. It is only in the new AML Law that the BiH legal framework attempts to provide a definition of beneficial ownership. However there is no express requirement for the registration courts, while registering a business entity, to identify and keep data on the beneficial ownership and control of legal persons. Thus, it is recommended that such provisions should be in place in order to ensure direct access to updated and accurate data which reflects the real situation, as ensured by Article 15 of the new AML Law.

981. It remains unclear whether the shareholding information for all legal persons is updated in a timely manner at the Main Book of Registration at the Courts, in particular since the industry claims to make full use of the Court Registry in identifying the ownership and control structure of their clients that are legal persons. It appears that there is no recourse by the industry to the Registry of Securities for shareholding companies. Hence the unavailability of adequate and timely information poses certain concerns. Obliged entities may not be able to complete the identification process satisfactorily for legal persons, whilst competent authorities may not be able to fulfil their responsibilities in investigating cases or co-operating both domestically and internationally as they do not have the means of verifying ownership of a legal person. It is recommended that the updating of the Main Book of Registration at the Courts is done in a timely manner for all legal persons including shareholding companies with effective, proportionate and dissuasive sanctions for late filing. It is further recommended that the industry applies Articles 10 and 15 of the new AML Law better and verifies information through other public registers such as the Register of Securities.

982. There are concerns regarding the viability of the inter-linked electronic database of the Main Book of Register as the data started to be uploaded only in January 2008 and there are still legislative initiatives concerning the electronic signature, business, etc. Thus it is recommended that all necessary measures be undertaken in order for the inter-linked (single) electronic registry to become fully operational.

983. It remains unclear whether foreign legal person that allow bearer shareholding can be shareholders in another legal person registered in Bosnia and Herzegovina. It is recommended that the authorities consider clarifying this issue in the relevant company registration procedures.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• Concerns over the viability of the Main Book of Registration at the Courts for and the information contained in it and hence the achievement of adequate transparency concerning the beneficial ownership and control of legal persons. • No timely update of the Books of Registration at competent registration courts for all types of legal persons; • The position of foreign legal persons that allow bearer shares becoming shareholders in domestically registered legal persons needs to be clarified.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and analysis

984. The authorities of Bosnia and Herzegovina have advised that the concept of trusts is not recognised in the country's legislation. Indeed the only forms of legal persons that are recognised under the Law are those defined in Section 5.1 of this Report and therefore no other form of legal arrangements exist. Bosnia and Herzegovina is not a signatory to the Hague Convention.

5.2.2 Recommendations and comments

985. As the concept of trusts is not recognised in legislation, this Recommendation is not applicable to Bosnia and Herzegovina. Notwithstanding, the evaluators cannot therefore understand why, in the definition of a 'person providing entrepreneurial service (trust)' in the new AML Law – presumably referring to the term 'trust and company service providers' under the FATF Recommendation – the term "trust" is used.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	• Bosnia and Herzegovina is not a signatory to the Hague Convention. • The concept of trusts or other similar legal arrangements (other than corporates) is not known under the laws of Bosnia and Herzegovina – although reference to the term 'trust' is used under the new AML Law.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and analysis

986. Article 3, letter o) of the new Law on the prevention of money laundering and financing of terrorist activities defines non-profit organisations as associations, institutions, bureaus and religious communities, founded in accordance with the law, and whose main activity is not to make profit. The establishment and the activity of the non-profit organisations is regulated at the State, Entity and BD level by Laws on Associations and Foundations: the Law on associations and foundations of BiH – *Official Gazette of BiH No. 32 of 28 December 2001 (as amended in July 2008)*, the Law on Associations and Foundations of FBiH – *Official Gazette of FBiH No. 45/02,* the Law on Associations and Foundations of RS – *Official Gazette of the RS No. 52 of October 17, 2001,* the Law on Associations and Foundations of BD - *Official Gazette of BD No. 12/02.*

987. All mentioned laws are, mainly, harmonised and contain similar provisions on the registration requirements for the associations and foundations, establishment, bodies, property, voluntary and involuntary dissolution, sanctions, etc. Different provisions are stated regarding the responsible registration and supervisory bodies and the right of the associations and foundations to carry out their activities on the entire territory of Bosnia and Herzegovina.

988. Religious communities are registered pursuant to the Law on Religious Freedom and the legal status of churches and religious communities in BiH – *BiH Official Gazette No 5/04.*

Review and outreach of the NPO sector

989. The new laws on associations and foundations adopted in 2001 and 2002 aimed at ensuring the respect of freedom of associations. The laws state that the programme and activities of an association or foundation may not contravene to the constitutional order of BiH, FBiH, RS and BD or be directed at its violent destruction, nor may they aim at dissemination of ethnic, racial or religious hatred or any discrimination prohibited by law. However, no review of the adequacy of the relevant laws have been undertaken in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes.

990. The authorities advised that there is not a high risk of terrorism and financing of terrorism in BiH. However, the evaluators were informed about some cases related to financing of terrorism involving 7 humanitarian organisations, funded from Arab countries, which were active on the territory of BiH. The activity of these humanitarian organisations was prohibited and they were dissolved in 2002, but the criminal cases are still pending before the court.

Also, currently, in FBiH, investigations are being carried out in relation to several non-profit organisations in which there are suspicions that they are involved in financing of terrorism.

991. No outreach has been undertaken by the authorities to the NPO sector with a view to protecting the sector from terrorist financing abuse.

Registration and supervision

992. An association may be established by at least three domestic or foreign (who have permitted residence in BiH) physical or legal persons and may be registered only if its inaugural assembly adopts a founding act and statute and appoints the managing body or representative person/persons. A foundation qualified for registration may be established by one or more physical or legal persons and must have an act of establishment, a statute and a managing board (or their substantial equivalents). Associations may establish their unions or other forms of association where their interests are associated at a higher level (higher level associations).

993. The Law on associations and foundations of BiH states that a registered association or foundations may have the status of a public benefit if its activity exceeds the interests of its members and if it is aimed primarily for the benefit of the public, or some segment thereof. Applications to receive this status can be submitted at any time and such status entitles the receipt of tax breaks, customs exemptions and other benefits. The associations and foundations which do not have the status of public benefit may also be subject to tax exemptions. Thus, the public benefit status is not clear in BiH. The law on associations and foundations of FBiH and RS states generally that, within the scope of its statutory activities, an association or foundation may be entrusted by law to perform public competences.

994. The main bodies of the associations are the assembly, which is a mandatory body of an association, and the steering board (BiH)/management board. The managing body of the foundation is the steering board (BiH)/managing board. The statute may envisage other bodies of the associations or foundations.

995. The registration of associations and foundations is voluntary, but they can acquire the status of a legal person from the date they are entered into the registry. Before the amendments of the BiH Law on associations and foundations of July 2008, registration was mandatory in the case of associations and foundations which intended to obtain public benefit or charitable status, which perform public competences of BiH and associations and foundations with any office or activity in BiH which receive grants or other disbursements from or through any governmental institution in BiH in an amount exceeding 5.000 KM per year. These provisions were excluded and the registration is based in all cases on the voluntary principle.

996. Together with the application for registration, the following documents are required to be submitted:

- the memorandum and statute of the association or foundation,
- list of the members of managing bodies,
- decision of the competent body on the appointment of a person authorised to represent the association or foundation.

997. In the case of offices, representative offices and other forms of foreign and international associations or foundations, the application for registration shall be accompanied by:

- proof that the organisation has the status of a legal person in the country of origin;

- a document on its establishment in BiH (state/entity level);
- the name and address of the authorised person as its legal representative in BiH;
- the seat and address of the office in BiH. In FBiH.

998. After registration, foreign and international organisations must additionally obtain approval of the Government..

999. At each level, State, Entity and BD, separate authorities are appointed by laws as responsible bodies for registering and/or keeping the registry of associations and foundations. At the State level, the Ministry of Justice of BiH is responsible for registering the associations and foundations and keeping the Registry Book of Associations and Foundations. In FBiH, the Registry Book of Associations is kept by the Federal Ministry of Justice if the statute of association envisages that the association will operate on the territory of two or more cantons. In case where the statute envisages that the association will operate on the territory of one canton, the Registry Book of the Associations will be kept by the cantonal ministry. At the same time, the Registry Book of all foundations and foreign non-governmental organisations is kept by the Ministry of Justice of FBiH. There is no central registry of associations and foundations at the FBiH level. In RS, the district courts are responsible for registering associations and foundations on which territory the association or foundation have the seat and keeping the Registry Book of associations and foundations, while the Ministry of Administration and Local Self-Governance of the RS maintains the central registry of associations and foundations and the central registry of foreign and international non-governmental organisations. In BD, the Basic court of BD is the responsible body for registration of associations and foundations. Each NPO also has to be registered with the Tax Administration authorities. In cases where they perform activities unrelated to their registered activities, they are subject to tax payments for the profit generated through performance of that activity.

1000. It is not clear how the reciprocal recognition of associations and foundation registered at State, Entity and BD level is applied in practice. This might be a result of unclear legal provisions on the reciprocal freedom of activity of associations and foundation. Additional to that, there are no legal obstacles for an association or foundation to be registered at the same time at two or three levels: cantonal (10 cantons of the FBiH), Entity, BD and state level. All laws specify the prohibition of registration of an association or foundation with essentially the same names, while the existing mechanism allows the registration of the same association or foundation at two or three levels at the same time. There is no single Register of non-profit organisations in BiH.

1001. The BiH Law states in Article 3 that the associations and foundations shall be free to carry out their activities in the entire territory of BiH, regardless of where the seat of the registered entity is. It does not mention any further details on the required level of registration for this right and on the obligation to exchange information on the registered associations and foundations. The evaluators were advised that the registration at the state level entitles an association or foundation to carry out its activity on the entire territory of BiH, but the Entity laws, for example, do not recognise this principle. The Law on associations and foundations of FBiH states reciprocal recognition principle, without any additional administrative requirements, in regards to the associations and foundations registered in RS and the same principle is recognised in the correspondent law of RS in relation to the associations and foundations registered in the FBiH. The FBiH law details the procedure of recognition and provides a registration requirement that is carried out by transferring the information from the decision on registration of the association or foundation registered in the RS into the relevant registry in the FBiH.

1002. According to the statistics provided on the number of active non-profit organisations in Bosnia and Herzegovina, 12,454 non-profit organisations are registered[93], but only 1,006 of them are registered at the state level:

Table 20: Non-Profit Organisations

Level	Central authority registry	Cantonal/Region registry	Number
BiH	Ministry of Justice of BiH	—	1,006
FBiH	Ministry of Justice of FBiH		912
		Una-Sana Canton	1,100
		Tuzla Canton	1,578
		Zenica-Doboj Canton	1,265
		Bosna-Drina Canton	156
		Middle Bosnia Canton	1,065
		Herzegovina-Neretva Canton	1,379
		Western Herzegovina Canton	448
		Sarajevo Canton	1,222
		Herzeg-Bosnia Canton	358
		Posavina Canton	295
RS	Ministry of Administration and Local Self-Governance		—
		Banja Luka Region	227
		Bijeljina Region	7
		Istočno Sarajevo Region	628
		Doboj Region	419
BD	Basic Court of BD		389

1003. The information contained in the registry books is publicly available at all levels. Copies of any document from the application file must be issued within fifteen working days starting with the day request whether directly by the individual or by mail. At the same time, an authorised representative of an association or foundation may request the prohibition of disclosure of certain data entered into the registry if the disclosure could undermine the personal integrity of the founders or members of the associations and foundations. Decisions on registration and dissolution of an association or foundation shall be published in the Official Gazette, pursuant to the level of registration. In BiH, the registration procedure is

[93] There is no available data on the number of non-profit organisations that are registered at more than one level.

performed according to the Rule Book on the Method of keeping a Register of Associations and Foundations of Bosnia and Herzegovina, foreign and international associations and foundations and other non-profit organisations ("Official Gazette of BiH", No: 9/02).

1004. There is a single Register of all churches and religious communities in BiH, which is kept only by the BiH Ministry of Justice in accordance with the Law on religious freedom and legal status of churches and religious communities in BiH. There are 825 registered churches and communities. A new church or religious community can be founded by 300 adult citizens of Bosnia and Herzegovina, regardless of their entity citizenship. The registration procedure is described in more detailed in the Rulebook on Establishing and Keeping of the Single Register of the Churches and Religious Communities, their Associations and Organisational Forms in Bosnia and Herzegovina („Official Gazette of BiH", No: 46/04).

1005. There are no legal provisions which expressly appoint an authority/authorities responsible for the supervision of the activity of associations and foundations. In BiH, the legality and prescribed spending and disposing of the funds of associations and foundations are supervised by the authorised body of the association/foundation defined by the Articles (statute) of Association and by the competent authority. In FBiH and RS, the administrative body whose competence encompasses monitoring the area of activities in which the associations or foundations are engaged is responsible for the supervision of the legality of the work of an association or foundation. The authorities advised that the Tax Administration Authority is the body authorised for inspections of the business of the NPOs. However, these inspections are focused on checking that there are no profit-making activities unrelated to the registered activity of these organisations, in order to automatically treat them as taxpayers. The inspections do not deal with checking the origin of funds or if they are spent according to the purposes stated in the statute of the NPO. The FBiH authorities advised that the Federal Ministry of Justice verify if the funds of an association have been spent in a manner consistent with its purpose and objectives only in cases when the FBiH Government has offered grants to that particular association.

1006. The associations and foundations are required to submit annual reports on their activities and annual financial reports. Mainly, these reports are submitted to the tax authorities at each level. The RS authorities advised that financial reports are also submitted to the Agency for Intermediary, IT and Financial Services, which is an independent body under the RS Government. In the case of associations and foundations entrusted with performing public competences, they shall, at least once a year, submit a report on performance of entrusted public competences to the administrative supervisory body of RS and FBiH. Before the amendments of July 2008 of the BiH law, the associations and foundations which perform public competences of BiH and associations and foundations with any office or activity in BiH which received grants or other disbursements from or through any governmental institution in BiH in an amount exceeding 5.000 KM per year were obliged to submit reports, once a year, to the MoJ of BiH, such reports being required to contain a balance sheet listing the income and expenditures of the association or foundation.

Record keeping

1007. Associations and foundations are obliged to keep their business records in accordance with generally accepted accounting principles and prepare financial reports. However, there is no express legal requirement that would require NPOs to keep for a period of at least 5 years records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.

Sanctions

1008. At each level, harmonised sanctions can be imposed for violation of the legal provision on associations and foundations. A fine for misdemeanour ranging from 300 KM to 3,000 KM can be imposed on an association or foundation which:

- conducts activities not in accordance with the statutory goals of the association or a foundation,
- fails to use its registered names in legal transactions,
- fails to notify the registration court about the change of data to be entered into the registry in the course of 30 days after the change of data has occurred,
- fails to use surplus generated from economic activities in a way prescribed by the laws and the statute.

1009. A fine of at least 100 KM, but not exceeding 1,000 KM can also be imposed against the responsible person in the association or foundation. The Laws do not expressly state the bodies that can impose sanctions, but the BiH authorities advised that at state level, in FBiH and RS, it is the relevant Ministry of Justice and in BD - the District Court.

1010. Associations or foundations shall be prohibited to operate if:

- their goals and activities are contrary to the constitutional order or directed at its violent destruction or aimed at disseminating ethnic, racial, religious or any other hatred or discrimination, and
- if they continue to perform activities for which they have been fined.

1011. In case of violation of the taxation requirements and performing by the NPOs certain activities for profit purposes, the tax administration authorities shall submit such cases to the prosecutor's office.

1012. NPOs are subject to criminal liability as they are covered by the definition of "legal person" given by the Criminal Codes at each level.

1013. The evaluators were advised about 6 reports in 2009 of the Tax Authority of RS and 1 report of the BD Tax Authority, which were related to tax evasion, involving NPOs performing profitable activities, which were submitted to the prosecutor's office. However, based on the received information it is not possible to asses if the sanctions are applied effectively.

Effective information gathering and investigation

1014. The lack of sufficient national cooperation and information exchange between all agencies involved in the investigation of predicate offences, ML and FT cases, at the entities, BD and state level affects the ability of investigating cases involving NPOs' misuse for FT purposes.

1015. No particular mechanism is established for responding to international requests for information regarding NPOs, other than the usual co-operation of the FID within the framework of the Egmont group and MLA, having the Ministry of Justice of BiH as a central authority for sending/receiving the requests..

5.3.2 Recommendations and comments

1016. No review of the adequacy of the relevant laws and no outreach has been undertaken by the authorities in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes. However, considering the existing risk, based on the concrete cases where NPOs have been involved in financing of terrorism activities and current on-going investigations of suspicious NPOs, the authorities should undertake a comprehensive review to assess the adequacy of the national legal framework related to NPOs, identifying the features and types of NPOs (activities, size) that are at risk of being misused for terrorist financing and implement measures to raise awareness of the NPOs about the risks and measures available to protect them against such abuse.

1017. While at each level a mechanism for registering the NPOs is in place, there is no legal impediment for an NPO to be registered at the same time at two or three levels, i.e. in two or three registers. The statistics on the number of the existing NPOs in BiH are not accurate enough, considering the lack of a clear mechanism on the reciprocal recognition of associations and foundation and the possibility that certain NPOs are registered, for example, at the entity and state level and counted twice. The authorities should undertake appropriate measures for avoiding double/triple registration and counting of NPOs and improving the mechanism of reciprocal recognition of associations and foundation.

1018. There is no single Register of non-profit organisations, as is the case with churches and religious communities, and the authorities should consider introducing such a centralised register for the above mentioned purposes. Also, considering the very limited number of NPOs that decide to be registered at the state level, measures should be undertaken in order to clarify the specific of state and entity registration, advantages of state registration, etc.

1019. In order to enhance the effective oversight of NPOs the legal provisions regulating the NPO sector should expressly appoint a competent authority to supervise the activity of NPOs. Inspections of NPOs' activity should not only be carried out for tax purposes, but be focused as well on verification if the funds have been spent in a manner consistent with the purpose and objectives of the NPOs. Furthermore, the NPOs' reports on activity, including the financial reports should be required to be sufficiently detailed in order to cover this information.

1020. There should be express legal provisions requiring that the business records of the NPOs are kept for at least five years.

1021. The national cooperation and information exchange between all agencies involved in the investigation of predicate offences, ML and FT cases, at the entities, BD and state level should be improved.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• No review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes. • Lack of outreach to the NPO sector. • Deficiencies of the registration mechanism.

		• Deficiencies of the supervisory activities and inspections. • No explicit legal requirement for the NPOs to maintain business records for a period of at least five years. • Lack of sufficient national cooperation and information exchange between the national agencies which investigate ML/FT cases. • No particular mechanism established for responding to international requests regarding NPOs.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R.31 & R.32)

6.1.1 Description and analysis

Recommendation 31 – Cooperation and coordination at national level

1022. The legal basis for national cooperation and information exchange between competent authorities in BiH is set in several laws. According to the new Law on the Prevention of Money Laundering and Financing of Terrorist Activities Article 51 (Inter-institutional Cooperation):

> *"FID can request the bodies of Bosnia and Herzegovina, Federation of BiH, Republic of Srpska, Brčko District and other liable parties with public authorisations to provide information, data and documentation needed to execute the duties of FID in accordance with Provisions of this Law.*
>
> *Bodies and Institutions with public authorisations, mentioned under the paragraph 1 of this article are obliged to deliver the data, information and documentation to FID without any compensation and provide the FID with a free access to information, data and documentation…*
>
> *FID can, with the consent of the director, provide bodies and institutions from paragraph 1 of this article, upon justified request, with the data and information related to money laundering and financing of terrorist activities, only if such information and data may be of significance to these bodies and institutions on their decision-making and for investigative purposes."*

1023. Because of the fragmented political structure of BiH, national cooperation is not to be taken for granted. Accordingly several statutes an the entity level include clauses which empower and obligate the competent authorities from other entities or on the state level to assist each other.

1024. Such is Article 2 of the CPC of BiH[94] which defines the term “authorised official” as a person who has appropriate authority "within the State Border Service, the Police bodies of the responsible ministries of interior of the Federation of Bosnia and Herzegovina, Republic of Srpska and the Brčko District, Judicial police and customs bodies, financial police bodies, tax bodies and military police bodies" according to Article 21 of this law legal assistance and official cooperation will be rendered by all courts in the Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District of Bosnia and Herzegovina and they are bound to provide legal assistance to the Court. Furthermore, under the same article, all authorities of the Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District of Bosnia and Herzegovina shall be bound to maintain official cooperation with the Court, the Prosecutor and other bodies participating in criminal proceedings.

1025. According to Article 22 of this law legal assistance and official cooperation will be rendered by the court, without compensation, to requests issued by the Prosecutor to the Prosecutor’s office or other authorities in the Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District of Bosnia and Herzegovina.

[94] Criminal Procedure Code of Bosnia and Herzegovina “Official Gazette” of Bosnia and Herzegovina, 3/03

1026. Similarly, in Brčko District, Article 20 (g) of the CPC of the BD[95] has been amended in 2007 to include investigators of the BiH Prosecutor's Office, as well as the Prosecutors Office of Brcko District of BiH, working under the authorisation of the Prosecutor, to also be considered as "authorised officials" with regard to judicial and official cooperation.

1027. Though the legal framework, as detailed above allows cooperation and coordination between all competent law enforcement authorities vertically and horizontally including SIPA, the supervisors, the customs authority, the tax authority etc. the actual cooperation and exchange of information is limited.

1028. The evaluators were advised that little if any information is disseminated from SIPA to competent authorities at the entity level. Similarly authorities at the entity level seldom exchange information with SIPA. There is no regular exchange of information between the customs authority and the FID, nor between the tax police in the entity level and SIPA.

1029. Similarly, the evaluators were not made aware of any actual information exchange between the supervisors at the entity level and SIPA or other law enforcement competent authorities.

1030. Article 5 of the LPML imposes an obligation on the FID to ensure and supervise the promotion of co-operation between the authorities of Bosnia and Herzegovina, FBiH, RS and the District of Brčko for the prevention of money laundering and funding of terrorist activities. Moreover Article 35 of the LPML further requires the FID and the relevant supervisory bodies to cooperate in supervising, within their individual competencies, the implementation of the provisions of this Law.

1031. The main mechanism in BiH for enhancing cooperation between Policy makers, the FIU, law enforcement and supervisors and other competent authorities has been the establishment of the "Working Group of Institutions of Bosnia and Herzegovina for Prevention of Money Laundering and Financing of Terrorism", as a inter-ministerial and professional body of Council of Ministers of Bosnia and Herzegovina (hereinafter "the working group").

1032. To this end, on 29 July 2008 the Working Group was established as an inter-ministerial and professional body of the Council of Ministers of Bosnia and Herzegovina. The Working Group, which is chaired by the Director of the FID, is composed of representatives of a number of institutions:

- Prosecutor's Office of Bosnia and Herzegovina; (Deputy Chair)
- Ministry of Security of Bosnia and Herzegovina;
- Ministry of Justice of Bosnia and Herzegovina;
- Indirect Taxation Authority of Bosnia and Herzegovina;
- Banking Agency of the Federation of BiH;
- Banking Agency of the Republic of Srpska;
- Central Bank of Bosnia and Herzegovina;
- Tax Authority of the Federation of BiH;
- Tax Authority of the Republic of Srpska;

[95] Law on Criminal Procedure of Brcko District of Bosnia and Herzegovina (revised text) "Official Gazette of Brcko District of BiH, No. 10/03"

- Tax Authority of Brčko District;
- Intelligence Security Agency of Bosnia and Herzegovina;
- Ministry of Interior of the Federation of BiH;
- Ministry of Interior of the Republic of Srpska;
- Securities Commission of the Federation of BiH;
- Securities Commission of the Republic of Srpska.

1033. The terms of reference or tasks of the Working Group are:

(a) To improve overall co-ordination of work among the relevant institutions regarding the prevention of money laundering and terrorism financing;

(b) To create a strategy for prevention and combating of money laundering;

(c) To make proposals for changes and amendments of the existing laws and by-laws in relation to the prevention of money laundering and the financing of terrorism

1034. To date the Working Group has been mainly involved in the drafting of the new AML LAW that, amongst other changes, will transpose the European Union Third Anti-Money Laundering Directive together with the Implementation Directive of the Commission.[96, 97] It does not appear that the Working Group has achieved much progress in creating an AML/CFT strategy.[98]

1035. In the course of the evaluation discussions the evaluators have tried to identify the views of the various entities represented in the Working Groups. There are mixed views. The size of the Group may be too large and thus becomes unwieldy to operate efficiently; some institutions need not be represented; domination by some representatives; no projected agenda with focus to date being only on new legislation. However, all those interviewed agreed on the

[96] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing (OJ L 309,25.11.2005, p15)

[97] Commission Directive 2006/70/EC of 1 August 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and the Council as regards the definition of 'politically exposed persons' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ L 214, 04.08.2006, P29)

[98] The Working Group adopted the "action plan for the implementation of the strategy on prevention of money laundering and financing of terrorist activities" on 30 September 2009.

As detailed in this action plan Strategic objective No3 is to "Ensure comprehensive investigation, prosecution and court proceedings of money laundering, predicate offences and financing of terrorist activities."

The action plan calls for all competent authorities, among other things, to :

1. Prepare a manual on standards concerning investigation of money laundering and financing of terrorist activities and financial investigation related to the evaluation of the amount and type of proceeds and tracing of proceeds of crime.
2. Create a standardised selection procedure for targets of serious crime.
3. Create a standardised procedure for establishing multiagency investigation teams.
4. Create mechanisms for the management of seized and confiscated property and a standardised procedure for the management and realization of seized and cosnfiscated property.
5. Set inter-agency objectives and coordinate enforcement measures to guarantee efficient allocation of public funds and resources

The evaluators commend the creation of an agreed multi-agency action plan. However, the evaluators do not consider that the adopted plan addresses the full scope of issues regarding the low level of national cooperation especially across entities and between the entity level and the state level bodies.

Specifically, no operational mechanisms are in place to ensure the ongoing effective exchange of information between FID and supervisors regarding compliance of reporting entities, or to ensure sufficient ongoing effective exchange of information between competent authorities investigating ML, TF and predicate offences, and tax authorities in the entities, among themselves and between them and the state level bodies (e.g. SIPA (and especially FID), Indirect tax authority etc.).

important role of the Working Group and in fact most would like to see the Group working more efficiency. The Working group meets on a regular basis, on average once every two weeks, and has made considerable progress in developing laws and practices concerning AML/CFT measures[99].

1036. The Law on the Central Bank of Bosnia and Herzegovina requires that the Central Bank and the respective Banking Agencies co-operate in their respective work on the financial system. Thus the Central Bank has a responsibility to co-ordinate the work of the three authorities. In June 2008, the Central Bank and the respective Banking Agencies entered into an MoU which establishes the principles of co-ordination on the supervision of the banking system and co-operation and exchange of data and information. This MoU replaces a previous similar one that had been signed in May 2003. Although the objective of the MoU is primarily for banking supervision purposes, Article 7, which lists the areas of co-operation, includes cooperation on money laundering prevention and the prevention of the funding of terrorist activities; the maintenance of blocked funds; and information related to the Credit Registry and Transaction Accounts Registry at the Central Bank. In the course of the discussions the evaluators were assured that the three authorities meet on a quarterly basis on the basis of the MoU.

1037. Within the last two years, Bosnia and Herzegovina has established the Insurance Agency at State level. The major role of the Agency at State level is the co-ordination of the work of the two Insurance Supervisory Agencies at Entity level. However, unlike the Central Bank, the State Insurance Agency does not have an MoU with the Insurance Supervisory Agencies at Entity level, although the evaluators were informed that the three authorities still meet periodically. At these meetings, which appear to be more of a supervisory nature, issues related to money laundering are also discussed. The directors of the entity level Insurance Supervisory Agencies are members of the Management Board of the Insurance Agency of BiH. Meetings are held at least once a month. In the course of these meetings, issues relating to AML/CFT controls are considered.

1038. There is no authority at State level that co-ordinates the work of the Securities Commissions at the FBiH, RS and Brčko District level. However, the Laws on Securities Markets at the respective Entity level require co-operation between the Commission, the Ministry of Finance and the Banking Agency. The evaluators have not been made aware of this co-operation requirement but it appears that this cooperation is more prudential in scope rather than for AML/CFT purposes.

Recommendation 32 – Statistics (in relation to Criterion 32.1)

1039. The evaluators have not been given any meaningful information that the systems in place for preventing money laundering and terrorist financing are reviewed periodically to assess effectiveness. As explained above the Working Group's main focus has been the drafting of the new AML LAW. The evaluators would have expected this to be an opportunity to assess the effectiveness of the system.

1040. Although the Bosnian authorities provided the evaluators with details of certain coordinating meetings no other statistics relating to national cooperation were provided.

Additional Elements

1041. The evaluators were not made aware of other mechanisms in place for consultation between competent authorities, the financial sector and other sectors (including DNFBPs) that are subject to AML Laws, regulations, guidelines or other measures.

[99] Since the on-site visit the Working Group has worked to develop a national strategy and action plan

6.1.2 Recommendations and Comments

1042. The establishment of the Working Group is a welcome positive initiative. However, the evaluators note that there are mixed views and opinions on the structure and effectiveness of the work of the Group. Indeed the evaluators noted that at times the Working Group was only mentioned because the matter was raised by them with some of the Group's representatives. There appears to be some elements of 'tension' in the Group. *It is strongly recommended to address these matters for the Working Group to become more efficient and effective in its work* as the evaluators are of the opinion that the Working Group is an important component of the whole system.

1043. The establishment and operation of the working group are an important step towards enhancing inter-agency cooperation in BiH and in coordinating between competent authorities domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.

1044. However, the working group is not and should not be regarded as a replacement for actual case by case inter-agency cooperation. In this respect results with regard to exchange of information have so far been limited.

1045. The focus of the working group should be in setting a national strategy for combating AML/CFT and improving the actual exchange of information between all competent authorities horizontally and vertically thus enhancing the systems capabilities in achieving measurable results in law enforcement (ML indictments forfeiture etc.).

1046. The coordination role of the Central Bank with the respective Banking Agencies is also a very important element in the system, particularly to ensure harmonisation not only in prudential supervision but also in matters related to AML/CFT supervision and compliance. Again the evaluators could sense wide divergent views from the Central Bank in looking at banking supervision being applied at State level and the views of the respective Banking Agencies who believe otherwise. The evaluators recommends that irrespective of the outcome of any decision on the consolidation of prudential supervision, *the current structure under the MoU in relation to AML/CFT issues should continue to be applied and strengthened to be more effective*.

6.1.3 Compliance with Recommendations 31

	Rating	Summary of factors underlying rating
R.31	**PC**	• Legal and institutional basis in place but questions remain on effectiveness, coordination and information sharing. • Possible need to review structure and operational efficiency of the Working Group. • Need to strengthen co-ordination between the various authorities in the financial sector.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Recommendation 35

1047. BiH has been a party to the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) since 1993 by succession, as it was originally ratified by Yugoslavia in 1990. BiH ratified the 2000 UN Convention against Transnational Organised Crime (Palermo Convention) and it's first two Protocols[100] in 2002 and acceded to its Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition in 2008.

1048. The 1999 UN International Convention for the Suppression of Financing of Terrorism was ratified by BiH and became effective in 2003. Also, BiH is party to all 9 conventions mentioned in the Annex of the TF Convention.

1049. Although the MEQ contained no information on the implementation of the relevant conventions and UN special resolutions, the deficiencies identified in relation to criminalisation of money laundering (see Section 2.1.1) and financing of terrorism (see Section 2.2.1) are equally applicable here, as to a certain extent are the shortcomings in the efficient implementation of the Conventions. In particular, the material elements of the money laundering offence are not fully in accordance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention. The terrorist financing offence does not make the collecting of funds, with the aim of being used for terrorist acts, punishable even when a terrorist act is not committed.

Special Recommendation I

1050. According to Criterion I.2, countries should fully implement the United Nations Security Council Resolutions relating to the prevention and suppression of terrorist financing, which require "any necessary laws, regulations or other measures to be in place and for these provisions to cover the requirements contained in those resolutions".

1051. As shown in Section 2.4.1 of the Report related to SR. III, there is a complete lack of a comprehensive, effective and directly applicable legal framework that would provide a sufficient legal basis for the implementation of the UNSCR 1267 and 1373. This is equally applicable in the context of SR. I.

1052. Nevertheless, it is worth mentioning that the objective of combating organised crime is treated as a priority in BiH as in 2006 a Strategy for Combating Terrorism for the period 2006-2009 and a Strategy for combating Organised Crime and Corruption for the period 2006-2009 were adopted. However, insufficient efforts have been taken to develop the strategy for the prevention and fighting against ML and TF in the action plan.[101]

Additional elements

1053. BiH ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime (ETS 141) in 2004 and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) on 11 January 2008.

[100] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling of Migrants by Land.
[101] Since the on-site visit the Working Group has worked to develop a national strategy and action plan.

6.2.2 Recommendations and comments

1054. The same comments as are made above in relation to implementation of the respective Conventions (especially the Terrorist Financing Convention) and the UN Security Council Resolutions apply here (See section 2.1.2 above).

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• Insufficiencies in the effective implementation of the Conventions due to the existing deficiencies related to criminalisation of ML/TF offences
SR.I	**PC**	• Deficient implementation of UNSCR 1267 and 1373

6.3 Mutual legal assistance (R.32, 36-38, SR.V)

6.3.1 Description and analysis

Recommendation 36

1055. All rules relating to BiH's ability to provide mutual legal assistance apply equally to cases involving money laundering and financing of terrorism.

1056. In the time period subject to the third round MONEYVAL evaluation, the rules under which Bosnia and Herzegovina provided mutual legal assistance to foreign countries were set out in Chapter XXX of the Criminal Procedure Code of BiH related to international co-operation in criminal matters. Subsequent to the on-site visit, a new Law on Mutual Assistance in Criminal Matters (hereinafter: Law on MLA) was adopted ("Official gazette of BiH" 53/2009 – which repealed (Article 93, par.1) CPC-BiH Chapter XXX (and also Chapter XXXI on extradition issues). The new law entered into force on 15 July 2009 and therefore its provisions will also be reflected in this report. Further procedural rules prescribing the roles and responsibilities of non-state level authorities in providing international legal assistance can be found in separate chapters of all three Criminal Procedure Codes of the Entities and Brcko District (CPC-FBiH and CPC-RS Chapter XXXI and CPC-BD Chapter XXX) which are almost entirely identical in their language and coverage (apart from some insubstantial differences in the RS regulation) and therefore it can be assumed that practically the same rules apply to all non-state level authorities throughout Bosnia and Herzegovina. The new Law on MLA does not repeal, as in the case of Chapters XXX and XXXI of the CPC-BiH, the relevant provisions of the CPCs of Entities and BD related to mutual legal assistance, but provides for an obligation to harmonise those provisions (Article 93, par.2) with the new Law within six months from the date of its entering into force.

1057. Apart from domestic legislation, MLA is also provided on the basis of multilateral international treaties to which BiH is party, bilateral agreements concluded in this respect and the principle of reciprocity (Article 12 of the Law on MLA).

1058. BiH has ratified the European Convention on Mutual Assistance in Criminal Matters (ETS 30) and its second Additional Protocol (ETS 182). BiH is not a party to the first Additional Protocol of the mentioned Convention. Furthermore, it has ratified the European Convention on the transfer of proceedings in criminal matters (ETS 73) and the European Convention on

transfer of convicted persons (ETS 112). Agreements on legal assistance in civil and criminal matters and on mutual enforcement of court verdicts in criminal matters were signed with Croatia, Serbia, Montenegro, "the former Yugoslav Republic of Macedonia" and Turkey[102]. An agreement between BiH and the Republic of Slovenia on mutual execution of the court decisions in criminal matters was signed on 5 April 2002.

1059. The possibility for BiH to provide mutual legal assistance appears quite broad so that BiH can provide assistance to foreign states regarding all investigative measures and procedures, which the domestic authorities can exercise in domestic cases. Mutual legal assistance in criminal matters (according to Article 8 and 13 of the Law on MLA) includes execution of individual procedural actions such as service of summons on a suspect, an accused, an indictee, a witness, an expert or other party to the criminal proceedings, service of documents, written materials and other objects relevant to the proceedings in the requesting state, seizure of objects, handing over of seized objects to the requesting state, taking testimony from the accused, a witness or an expert, spot examination, search of sites and persons, confiscation and control of delivery, surveillance and telephone tapping, information and intelligence exchange, etc. An MLA request shall be submitted in the form of a letter rogatory. At the same time, information about offences, which is collected during the investigation by the BiH authorities, can be sent to foreign judicial authorities without a letter rogatory if it is considered that such information may help in the institution of investigations or criminal proceedings or if it may result in a letter rogatory.

1060. The Ministry of Justice of BiH is the central authority for communication between the judicial bodies of BiH and foreign judicial authorities regarding the providing of international mutual legal assistance in criminal and civil matters. In urgent cases, when such a process is stipulated in an international agreement, the letters rogatory can be received and sent through INTERPOL, which shall transmit them to the competent authority through the Ministry of Justice of BiH. At the same time, Article 4 of the Law on MLA provides some exceptions from the rule of communication through the Ministry of Justice of BiH. Firstly, it refers to cases when the national judicial authorities can send directly letters rogatory to foreign judicial authorities when such a manner of communication is stipulated in an international agreement. In the same time, the provisions of Article 4 do not give a clear indication of whether the "national judicial authorities" imply as well the entity-level bodies and if the latter have the authority to be involved in MLA issues directly, i.e. not through the state-level judicial authorities. The evaluation team was informed by BiH authorities that in this case the "national judicial authorities" are both, state and entity level bodies and that each of them, when provided by an international agreement, can send/receive directly rogatory letters to/from foreign judicial authorities. As this is a very new provision, no such international agreements were concluded yet. However, in the MEQ, the authorities advised that such form of direct co-operation was possible since BiH ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters in 2008, but no cases have been registered. Where there is no international agreement and the assistance is provided based on the rule of reciprocity, for example, or when an international agreement explicitly stipulates communication through diplomatic channels, the central authority will be the Ministry of Foreign Affairs of BiH and the Ministry of Justice will receive and send such requests through the Ministry of Foreign Affairs. Letters rogatory can be received, when it is stipulated in an international agreement, electronically or by other means of telecommunication that produce written records when the competent foreign judicial authority is willing to send a written notice of the manner of sending and the original letter rogatory at a request. In all cases when the communication is not done through the Ministry of Justice of BiH the national judicial authorities shall send to the ministry a copy of the letter rogatory.

[102] An Agreement on legal assistance in civil and criminal matters with the Republic of Slovenia was signed on October 20, 2009.

1061. The new Law on MLA introduces the rule of "direct communication" between the Ministry of Justice of BiH and the national judicial authorities (with some exceptions), following similar informal practice applied before the adoption of this law despite the provisions of the Criminal Procedure Codes which provided for communication trough the relevant Entity Ministry of Justice and Judicial Commission of the BD (the relation between state-level and non-state level legislation will be discussed below). However, it is still not clear how the decision on the competent judicial authority is taken in cases of conflict of jurisdiction between the entities/district and state level. During the on-site visit, the evaluators were advised that in such cases the Ministry of Justice of BiH will forward the request to the Prosecutor's Office at state level which will decide whether it is of its competence or it should be dealt at the entity level. Subsequently, it was explained that the decision related to the competent judicial authority is based either on the information contained in the request itself, if it indicates expressly the executing authority or on the level of the criminal legislation, which the object of the request fall under. It appears that in such cases, the decisions are usually taken on an and-hoc base and that there are no concrete (written) rules for such a distribution of cases. The presented "rules" can not be accepted as satisfactorily solutions, especially in cases of criminal offences that equally fall into the competence of state-level and non-state level authorities, like money laundering offence.

1062. The rule of "direct communication" between the Ministry of Justice of BiH and the judicial authorities is not applicable in cases related to the recognition and enforcement of a foreign criminal judgement, transfer of a foreigner and transfer of criminal proceedings; in such cases, the Entity Ministries of Justice or the Judicial Commission of BD have to be involved.

1063. The national judicial authorities shall decide on the admissibility and the manner of performing the actions requested by the foreign authority, in accordance with their competencies and under the legislation of BiH.

1064. The Ministry of Justice of BiH shall transmit without delay any letter rogatory to the competent national authority for action, unless when it is obvious that the letter rogatory is not in line with an international agreement or the legal provisions of the Law on MLA and, consequently, should be rejected (Article 5 of the Law on MLA). Furthermore, in order to ensure that the assistance is provided in a timely, constructive and effective manner, the authorities advised the evaluators that the Ministry of Justice of BiH undertakes all necessary measures so that a request of legal assistance is forwarded to the entity level authorities/ judicial authorities not later than after one week from the moment of its receipt. Special attention is paid to extradition requests, which are processed immediately. The national judicial authorities issue a decision on a letter rogatory as soon as possible, taking into account the specifically fixed deadlines set forth in the letter rogatory (Article 23 of the Law on MLA). The judicial authority shall promptly inform the requesting state if it will not be able to comply with the fixed deadlines in the letter rogatory, indicating the period of time needed for its execution and if it is not able to execute the letter rogatory, stating the reasons. The execution of the request may be delayed if it would adversely affect the course of investigation, prosecution or criminal proceedings pending before a national judicial authority, connected to the request. It was said that the average time needed for providing legal assistance to the relevant foreign authorities is two months. However, the Ministry of Justice of BiH does not have any influence on the timing of the decisions of the courts and prosecutors on the MLA requests. The authorities advised that in cases that the court/prosecutor fails to respond prior to the established deadline, the Ministry of Justice of BiH may additionally inform the court/prosecutor about the necessity to respond. No concrete examples of such cases were made available to the evaluators in order to make possible the assessment of the effectiveness of these measures. Nevertheless, several countries, when providing feedback on international co-operation with BiH, have reported cases when the

response to certain MLA requests was provided after one year or when some problems occurred when the entity level authorities were involved, indicating that in such cases the execution of the MLA requests is not always guaranteed.

1065. The request of assistance may be refused if:

- execution of the request would be in contravention of public order of BiH or is likely to prejudice the sovereignty or security;
- the request concerns an offence which is considered a political offence or an offence connected with a political offence;
- the request concerns an offence under military law (Article 9 of the Law on MLA).

Recommendation 37

1066. Dual criminality is required for rendering mutual legal assistance, including extradition cases. In fact, the Law on MLA only requires dual criminality in case of extradition requests while it contains no such explicit provisions as regards mutual legal assistance issues. Nevertheless, the evaluators were advised by domestic interlocutors that the same principle is applicable for other MLA requests. The authorities informed the evaluators that the technical differences between the BiH laws and the laws of a requesting state is not an impediment to the provision of mutual legal assistance, but it is necessary that the incriminated criminal actions represent a criminal offence in both states. However, legal deficiencies related to criminalisation of ML (not all the material elements of the Vienna and Palermo Conventions are covered; self-laundering is not explicitly covered by all criminal codes and the lack of criminalisation of market manipulation in the law of Brčko District) and TF (financing of terrorist organisations or individual terrorists uncovered) can, potentially, present impediments in rendering MLA in the condition of dual criminality.

1067. A request for assistance shall not be refused exclusively for the reason that it concerns an offence which the national legislation treats as a fiscal offence (Article 9 of the Law on MLA). However, BiH has not ratified the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters (CETS 99).

1068. *De jure*, a request for MLA should not be refused by BiH in cases when the request involves necessity of disclosure of banking secrecy. The authorities advised that all data that would be given under the existing legal framework to domestic authorities should also be available in cases of rendering MLA. However, the evaluators were informed about the practical problems that the prosecutors are facing when seeking to freeze accounts; banking secrecy being considered an impediment in such cases.

1069. The powers of law enforcement agencies in the context of compliance with R 28, described under the Section 2.6 are applicable in the case of rendering MLA.

1070. There is no mechanism in place for avoiding conflicts of jurisdiction. The authorities have advised that for establishing such a mechanism the willingness of other states is needed and that BiH had advanced several initiatives in this respect, but they were not developed further because there was no willingness on behalf of other countries. There is a certain amount of progress in avoiding conflicts of jurisdiction in relation to war crimes so that there is an initiative to amend the existing bilateral agreements with the neighbouring countries in order to satisfactorily resolve this issue.

Recommendation 38

1071. Confiscation is referenced in Article 13 of the Law on MLA as part of the assistance that can be provided by BiH authorities. However, the Chapter on "General types of mutual legal assistance" contains detailed provision only for "seizure of property" and "handing over of seized property". So, Article 20 defines what kind of property can be seized and handing over for confiscation by a foreign state:

- objects used in the commission of an offence (instrumentalities);
- proceeds of crime or their equivalent value;
- gifts and other goods given with a view to inciting an offence and giving remuneration for an offence or their equivalent value.

1072. Certain shortcomings of the domestic confiscation regime, like the overly vague conditions on mandatory confiscation of instrumentalities (in RS such a measure is discretionary) can represent impediments in effective provision of MLA in this area.

1073. BiH does not have a special fund for confiscated assets and a competent authority for keeping and managing seized or confiscated assets.

1074. No examples were given in relation to arrangements for coordinating seizure and confiscation actions or sharing of confiscated assets with other countries.

1075. The unit within the Ministry of Justice of BiH dealing with the international mutual legal assistance is the Sector of International and Inter-entity Legal Assistance and Co-operation which has 4 departments:

Department of International Legal Assistance and Co-operation in Criminal Matters;

Department of International Legal Assistance and Co-operation in Civil Matters;

Department of Inter-entity Cooperation and Coordination; and

Treaty Department.

1076. The Sector has 29 positions, but only 17 of them are filled (that is 58.6%)[103]. The authorities informed the evaluators that the Department of International Legal Assistance and Cooperation in Criminal Matters is not affected by the staffing problems – 8 of its 9 positions are filled, but not all persons have higher education.

1077. With a view to provide training of judges and prosecutors in international legal assistance domain, two publications on International Legal Assistance were developed in 2006. In 2009, five training seminars of judges and prosecutors on the topic of International Legal Assistance were organised. However, there is no comprehensive training course for judges and prosecutors in BiH in this area. Even the Mid-Term Strategic Plan of the Ministry of Justice of BiH for 2009-2011 recognises the obvious need for additional specialisation in international cooperation within the courts and prosecutor's office and provide training activities in that respect.

Recommendation 32

1078. No comprehensive and adequately detailed statistics on MLA, either in general terms or specifically on ML/TF relations, are kept and maintained by the BiH authorities. The

[103] The evaluators have been informed that all 29 position have now been filled.

authorities could only indicate that there are in total 15,000 inward and outward MLA requests, including extradition requests, that pass through the BiH Ministry of Justice each year. About half of them concern criminal matters. Some figures were provided for 2008 which show that from the total number of 7,088 MLA requests in criminal matters processed that year, 261 were cases of taking over/ceding criminal prosecution, 129 concerned extradition cases and 52 were related to taking over the enforcement of imprisonment sentence/transfer of convicted persons. Furthermore, the authorities informed the team about an electronic program where all rogatory letters are registered, but stated that it is not possible to keep accurate and detailed statistics, particularly regarding ML/TF cases.

6.3.2 Recommendations and comments

1079. The identified legal deficiencies in the criminalisation of ML and TF may have a negative impact on providing MLA in an effective manner and need to be addressed.

1080. The authorities of BiH should consider enabling rendering MLA in absence of dual criminality, in particular for less intrusive and non compulsory measures.

1081. Bearing in mind the direct co-operation between the Ministry of Justice of BiH and the national judicial authorities, there should be in place clearer rules for acting in cases of conflict of jurisdiction between the entity/district and state level.

1082. All concerns raised by the states based on MLA bilateral co-operation, particularly related to belated responses to MLA requests, problems which have occurred when the entity level authorities were involved, etc., should be addressed.

1083. Although there are no legal impediments for rendering MLA in cases involving fiscal matters or necessity of disclosure banking secrecy, BiH authorities should undertake all necessary measures to ratify the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters and to address the practical problems concerning the banking secrecy raised by the prosecutors.

1084. Considering the initiatives of BiH authorities, further steps should be undertaken for establishing a mechanism in order to avoid conflicts of jurisdiction.

1085. The BiH authorities should consider the establishment of an asset forfeiture fund.

1086. Certain shortcomings related to the confiscation regime (see section 2.3 above) can represent impediments to the effective provision of MLA in this area and need to be addressed.

1087. Bearing in mind that only 56,6% of the positions in the Sector of International and Inter-entity Legal Assistance and Co-operation are filled and that a part of the staff has no higher education, BiH authorities should address the staffing problems and assess the qualification of the personnel working within the sector.

1088. The BiH authorities made some efforts aiming at the training of judges and prosecutors in international legal assistance by elaborating two publications on International Assistance and organising seminars in this area. However, a more comprehensive training programme is needed.

1089. Furthermore, the BiH authorities should keep annual accurate and detailed statistics on all MLA and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT,

including the nature of the request, whether it was granted or refused and the time required to respond

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**LC**	• Concerns regarding providing assistance in a timely manner when the entity/district level authorities are involved (concerns raised by other states). • No mechanism in place for avoiding conflicts of jurisdiction involving other states.
R.37	**LC**	• The existing legal deficiencies related to criminalisation of ML and FT could potentially impede effective co-operation.
R.38	**LC**	• The shortcomings related to confiscation regime may have a negative impact on the ability of rendering MLA in such cases. • No information on arrangements for coordinating seizure and confiscation actions.
SR.V	**LC**	• The deficiencies described under R. 36-38 have a negative impact on the rating of this Recommendation.

6.4 Extradition (R. 37 and 39, SR.V)

6.4.1 Description and analysis

1090. Similarly to the provisions governing mutual legal assistance, the domestic procedural rules on extradition were also regulated by the state-level Criminal Procedure Code in its Chapter XXXI until it was repealed by the newly adopted Law on MLA which contains a more comprehensive legislation on extradition issues.

1091. All rules relating to BiH's ability to extradite equally apply to cases involving money laundering and financing of terrorism.

1092. Apart from national legislation, the extradition issues are also governed by the European Convention on Extradition (ETS 24) and its Additional Protocols (ETS 86 and ETS 98), which were ratified by BiH on 25 April 2005. Agreements on legal assistance in criminal matters, including extradition aspect, were signed with Croatia, Serbia, Montenegro, "the former Yugoslav Republic of Macedonia", Slovenia, and Turkey.

1093. The general conditions for extradition, as they are prescribed by Article 33 of the Law on MLA (formerly by CPC-BiH Article 415), are as follows:

- The person whose extradition has been requested is not a national of BiH (own citizens cannot be extradited)
- The person, whose extradition has been requested has not been granted an asylum in BiH or is not seeking asylum in BiH at the time of the request;
- The offence on the basis of which the extradition has been requested was not committed on the territory of BiH, against it or its citizens;

- Dual criminality applies: the offense in respect of which the extradition is regarded as a criminal offence under the national legislation as well as under the legislation of the state in which it was committed
- The offence on the basis of which the extradition has been requested is not a political or military criminal offence;
- The offence on the basis of which the extradition for prosecution is requested, shall be punishable for a minimum period of at least one year under the laws of both states;
- Extradition for execution of a final decision on prison sentence is permissible only if the prison term or the remaining term of the prison sentence is at least four months;
- The person whose extradition has been requested has not been convicted or validly released (exception – conditions for renewal of the criminal proceedings) in relation to the same criminal offence by a national court, no criminal proceeding in BiH have been instituted against that person for the same criminal offence;
- The extradition is not requested for criminal prosecution or punishment on the grounds of race, sex, national or ethnic origin, religious belief or political views or death penalty is not provided under the legislation of the requesting state for the offence that is ground for extradition request (unless guarantees are given that no death sentence will be pronounced or executed).

1094. The request for extradition shall be submitted through diplomatic channels, including when the assistance is rendered based on the reciprocity principle, except cases where the international agreements indicate the possibility to send it directly to the Ministry of Justice of BiH.

1095. The Law on MLA states that the Ministry of Justice of BiH shall forward the extradition requests to the Prosecutor's Office of BiH, promptly (Article 35). In practice, the authorities confirmed that special attention is paid to the extradition requests, which are immediately sent to the relevant judicial authorities. Also, in case of a complete request, the Prosecutor's Office of BiH shall transmit it promptly to the Court of BiH for examination. There are no reports on the unreasonable delay in the procedure.

1096. According to the procedural rules set out in the Law on MLA, the Minister of Justice of BiH decides on the extradition, based on the decision of the Court of BiH, which found that legal requirements for the extradition of the alien have been fulfilled. Even if the Court has decided to grant the extradition, the Minister of Justice of BiH can reject it, for example, if it is requested with regards to the offence punishable with imprisonment of up to three years in the national legislation or if the foreign court imposed a prison term of up to one year. In cases of different decisions on extradition issued by the Court of BiH and the Ministry of Justice of the BiH, the Prosecutor's Office of BiH can institute and administer disputes. If the Court of BiH issues a final binding decision rejecting the extradition, it shall be delivered to the foreign state trough the Ministry of Justice of BiH. The Minister may issue a decision to postpone the extradition if criminal proceedings against the person whose extradition have been requested before a domestic court and are underway in relation to another criminal offence or if the person is serving a prison sentence in BiH or, if needed in urgent procedural actions, to temporarily surrender the person sought.

1097. As mentioned above, BiH does not extradite its own citizens. If the extradition is rejected because it refers to a citizen of BiH or other person who was granted asylum in BiH the decision rejecting the extradition, together with all available documentation and, without delay, shall be forwarded to the competent Prosecutor's Office in BiH for possible institution of the criminal proceedings according to Article 44(4) of the Law on MLA. The competent Prosecutor shall inform the Ministry of Justice of BiH within 30 days of the taken decision,

which will be communicated to the requesting state. In practice, it was advised that the country requesting extradition will be asked to deliver, if necessary, all relevant documents, as well as the consent for conducting the procedure, since there were cases when foreign countries did not recognise a decision of a BiH court because there was no explicit consent or request for conducting the procedure.

1098. As it was already referred to in different context, the issue of dual citizenship is problematic in BiH. The authorities have advised that the difficulties are related to the enforcement of the conviction sentence pronounced in BiH when the person concerned, who is a citizen of BiH and another country, is in the country of his second citizenship, which refuses the extradition request. The evaluators were informed that there were initiated amendments to the bilateral agreements with the neighbouring countries in order to ensure automatic enforcement of the conviction sentence pronounced in BiH.

1099. Dual criminality is required for extradition. At the same time, it was confirmed that technical differences between the BiH law and the law of the requesting country in terms of categorisation or naming of the offence do not represent an obstacle for providing legal assistance in BiH.

1100. A simplified extradition procedure is possible under Article 51 of the Law on MLA, with the consent of the sought person. The Ministry of Justice of BiH shall promptly inform the requesting state about the consent to surrender in a simplified procedure and in this case, the requesting state is not obliged to send an extradition request..

1101. Concerning extradition the following statistics were provided:

Table 21: Requests for Extradition

Extradition						
	Requests sent			**Requests received**		
	2007	**2008**	**2009**	**2007**	**2008**	**2009**
in total	42	77	80	31	52	43
executed	37	72	75	28	47	39
refused	4	5	5	3	5	4
pending	1	0	0	0	0	0
suspended	0	0	0	0	0	0

6.4.2 Recommendations and comments

1102. The BiH authorities should address the concerns of certain states related to MLA - problems which occurred when the entity level authorities were involved and which could lead to a risk that MLA will not be rendered – in order to ensure that MLA is provided in a timely, constructive and effective manner.

1103. As was already referred to in different context, the issue of dual citizenship is a problematic issue for extradition cases (especially those related to war crimes and crimes against humanity) between the countries in the region, known as the "the regional impunity gap". A bilateral agreement on dual citizenship is in place with Serbia, but the ratification by BiH of a similar agreement with Croatia is pending and the conclusion of such an agreement with Montenegro is underway. Recent cases demonstrated that convicted criminals were able to escape from certain neighbouring countries to BiH on the basis of having BiH citizenship and were not extradited. In such cases, the enforcement of a sentence in a country other than the one where it was pronounced is not possible without the convicted person's consent (a requirement under the existing agreement on mutual recognition of sentences between BiH

and Croatia, for example). In this context, the BiH authorities have also confirmed the difficulties related to the enforcement of a conviction sentence pronounced in BiH when the person concerned, who is a citizen of BiH and another country, is in the country of his second citizenship, which refuses the extradition request. Nevertheless, the BiH authorities are aware of the existing deficiencies and informed the evaluation team about the initiated amendments to the bilateral agreements on international assistance in criminal matters and on mutual enforcement of courts' verdicts with the neighbouring countries in order to ensure automatic enforcement of the conviction sentence for persons holding dual citizenship.

1104. BiH should address the identified legal deficiencies in criminalisation of ML and TF including, among others, that all designated categories of offences be covered by the criminal legislation to ensure that dual criminality requirements do not represent an obstacle for extradition. This particularly refers to the fact that market manipulation is, as mentioned above, not a criminal offence in the law of Brčko District.

1105. For the reasons mentioned in section 6.3.2, the BiH authorities should address the staffing problems and assess the qualifications of the personnel working within the Sector of International and Inter-entity Legal Assistance and Co-operation and develop a comprehensive training programme of judges and prosecutors in international legal assistance domain.

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

	Rating	Summary of factors relevant to Section 6.4 underlying overall rating
R.37	**LC**	• The existing legal deficiencies related to criminalisation of ML and FT could potentially impede effective co-operation.
R.39	**LC**	• In the absence of proper statistics relating to ML, the predicate offences and FT, and information whether extradition requests are handled within timeframes it has not been possible to establish the overall effectiveness of the system in place.
SR.V	**LC**	• The deficiencies described under R. 37 and 39 have a negative impact on the rating of this Recommendation.

6.5 Other Forms of International Co-operation (R. 40 and SR.V)

6.5.1 Description and analysis

Law enforcement agencies

1106. In BiH competent authorities and especially FID are authorised by law to provide international cooperation to their foreign counterparts in a rapid, constructive and effective manner.

1107. According to Article 54 of the new law on the Prevention of Money Laundering and Financing of Terrorist Activities:

> *"FID can submit data, information and documentation obtained in Bosnia and Herzegovina to financial-intelligence units from other countries as per their request or as per self-initiative in accordance with provisions of this Law,, conditioned that similar confidentiality protection is provided.*

Prior to submission of data to financial-intelligence units from other countries, FID requests written warranty that information, data and documentation will be used only for purposes defined by provisions of this Law. In order to forward data, information and documentation to police and judiciary bodies abroad it is necessary to obtain a written approval of FID prior to it."

1108. According to Article 57 FID can order a Temporary Postponement of a Transaction by a request from a foreign FIU in the following conditions:

As per written proposal from foreign financial-intelligence unit, under conditions set by this Law and on the basis of actual reciprocity, FID can send a written order to a person under obligation to temporary postpone suspicious transaction for maximum 5 working days.

FID will immediately inform BiH Prosecutor's Office about issued order from paragraph 1 of this article.

FID will act in accordance with provisions of paragraph 1 of this article if in basis of reasons mentioned in written proposal from financial-intelligence unit assess:

a. Transaction is linked with money laundering or financing of terrorist activities, and

b. To temporarily stop the transaction if that transaction is subject of national report on suspicious transaction in accordance with provisions of the article 30 of this Law.

FID will not accept a proposal from foreign financial-intelligence unit if in basis of facts and circumstances mentioned in proposal from paragraph 1 of this article assess that reasons for suspicion on money laundering and financing of terrorist activities are not given. The FID shall inform the foreign financial-intelligence unit in written format, listing the reasoning of non-acceptance of the proposal."

1109. Though a comprehensive mechanism for international cooperation exists, the evaluators remain unclear as to how effective this channel is to actually facilitate and allow for prompt and constructive exchanges of information directly between FIU counterparts.

1110. As detailed in the SIPA annual report the Department for Legal Issues and International Cooperation in FID performs information and data exchange with international FIUs and other international and local institutions, as well as legal matters.

1111. During 2008 the Department processed a total of 279 records on international cooperation, out of which 197 records were received and 82 records sent to other FIUs

1112. Of these, 119 were what the Bosnian authorities call "notifications", 28 were "data submission requests" and 50 records refer to "submitted data". The Department sent 82 records in total, out of which 40 records are data submission requests, 34 refer to sent information, while 8 records are notifications.

1113. In comparison with 2007 the Department processed 193 records (in total) on international cooperation, out of which 127 records were received and 66 records sent to other financial-intelligence units. This comparison shows the increase in number of received and sent requests within the Department..

Table 22: International Cooperation- Requests for Information and Dissemination of Data Information Exchange with Foreign FIUs- 2008

Received from foreign FIUs:				
Requests for information:50	Albania 1 Brazil 1 Montenegro 2 Guatemala 3 Georgia 1 Croatia 17 India 1	Qatar 1 Columbia 1 Lebanon 1 Luxembourg 1 Lithuania 1 "the former Yugoslav Republic of Macedonia" 1 Mauritius 1	Nigeria 1 Rumania 1 Slovenia 5 Serbia 3 St. Vincent and Grenadines 1 Slovakia 1	Taiwan 2 Ukraine 1 USA 1 Venezuela 1
Disseminated data: 63	Albania 5 British Virgin Islands 2 Bulgaria 2 Belgium 1	Montenegro 2 Egypt 1 Hong Kong 1 Croatia 9 Indonesia 1 Jersey 1 South Africa 1	Cyprus 5 Luxembourg 1 "the former Yugoslav Republic of Macedonia" 2 Germany 4 Russian Federation 2 Serbia 7 Slovenia 4	Switzerland 2 Turkey 2 United Kingdom 5 USA 3
Sent to foreign FIUs:	FIUs			
Requests for information : 49	Albania 4 Bulgaria 1 Belgium 1 British Virgin Islands 1 Montenegro 3	Croatia 7 Indonesia 2 Jersey 1 Cyprus 2 Kosovo 1 Luxembourg 2	"the former Yugoslav Republic of Macedonia" 2 Germany 1 Nigeria 1 Russian Federation 3 Serbia 6 Slovenia 2	Turkey 1 Switzerland 1 United Kingdom 4 USA 2 United Arab Emirates 1
Disseminated data: 51	Albania 1 Montenegro 1 Georgia 1 Guatemala 3 Croatia 16	Indonesia 1 Jersey 1 Qatar 1 Latvia 1 Lithuania 2 Lebanon 1	"the former Yugoslav Republic of Macedonia" 1 Mauritius 1 Germany 1 St. Vincent and Grenadines 1 Serbia 4	Slovenia 5 Switzerland 1 Taiwan 2 Columbia 1 USA 2 Venezuela 2

1114. According to the annual SIPA report there have been 129 cases that the FID has worked on since 2005 (of which 49 were in 2008). The FID continued work on 74 cases from 2007, 5 cases from 2006, and 2 cases from 2005, and had finished 18 cases, completed analysis and submitted 8 cases to the Section for Investigations and prevention of money laundering and financing terrorist activities, while continuing to work on 103 cases.

1115. Of the cases actually analysed in 2008, 8 were international requests. No data was given as to the results of this analysis.

1116. This data provided in the annual report of SIPA is insufficient for assessing how effective this channel is to facilitate and allow for prompt and constructive exchanges of information directly between FIU counterparts.

1117. The FID has signed MOUs with the following FIU Counterparts: "the former Yugoslav Republic of Macedonia", Croatia, Montenegro, Slovenia, Serbia, Albania, Spain, Netherlands Antilles, Paraguay and Aruba.

1118. Under Sections 54-57 of the above mentioned law the FID is authorised to conduct inquiries on behalf of foreign counterparts including searching its own databases with respect to information related to suspicious transaction reports as well as searching other databases to which it may have direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases.

1119. Other law enforcement authorities in BiH are authorised to conduct investigations on behalf of foreign counterparts through MLA channels. Nevertheless, no meaningful statistics were provided as to international ML or TF investigations apart from those in tables 7 and 9 in section 2.5.1 above. During the on-site visit the evaluators were advised that, as at that time, no international ML investigation had in fact been conducted - that is where the predicate offence was committed abroad and the suspected laundering in the BiH or Vice-versa.

1120. The evaluators were not made aware of any restrictions on exchange of information nor any refusals for requests for cooperation on the sole ground that the request is also considered to involve fiscal matters, or secrecy laws, legal privilege etc..

1121. BiH has established controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner. These controls and safeguards are consistent with national provisions on privacy and data protection.

Financial supervisors

1122. Article 6 of the Law on Banking Agency of the FBiH and Article 7 of the Law on Banking Agency of the RS specify the powers of the Agencies in respect of cooperation with foreign counterparts, particularly by means of participating in international conferences, meetings, and other events related to the mandate of the Agency.

1123. The Banking Agency of the FBiH has signed bi-lateral memoranda of understanding with Slovenia, Croatia, Serbia, Montenegro, and Turkey, as well as multilateral memorandum of understanding with the South-East European countries. Further, draft MoU-s have been prepared for signature with the relevant supervisory authorities of Italy, Austria, and Lithuania. The Banking Agency of the RS has signed memoranda of understanding with the regulatory authorities of Serbia, Montenegro, Croatia, "the former Yugoslav Republic of Macedonia", Slovenia, Romania, Bulgaria, Greece, Cyprus, Albania, and Turkey. The MoU-s available to the assessment team articulate the rules for the exchange of information, including the information constituting financial secrecy, for ensuring confidentiality of exchanged information, for the cooperation in the field of AML/CFT, financial stability and macro-prudential issues, monitoring banking groups and other relevant matters.

1124. The Securities Commission of the FBiH has signed memoranda of understanding with Croatia, Serbia, Montenegro, "the former Yugoslav Republic of Macedonia", Slovenia, Romania, Turkey, Greece and Malaysia. The Security commission of the RS has signed memoranda of understanding with Croatia, Romania, and Turkey. The Securities Commission of Brcko District signed a MoU with the Securities Commission of Serbia and Regulator of capital markets in Croatia (HANFA).

1125. The Bosnian authorities advised that there are no memoranda of understanding signed between the Insurance Agencies and their foreign counterparts.

1126. The evaluators were not provided information on the results of implementation of the above stated memoranda of understanding with international counterparts.

Additional elements

1127. The evaluators were not made aware of any mechanisms in place to permit a prompt and constructive exchange of information with non-counterparts

1128. According to Section 55 of the law, the requesting authority must disclose to the requested authority the purpose of the request and on whose behalf the request is made.

1129. According to Section 55, the FID can obtain from other competent authorities or other persons relevant information requested by a foreign counterpart FIU. Under the provisions of the law exchanged information must be treated as protected by the same confidentiality provisions as apply to similar information from domestic sources obtained by the receiving competent authority.

6.5.2 Recommendation and comments

1130. It is recommended that the authorities develop and maintain appropriate statistics in order to assess the effectiveness of the system. Such statistics should be reviewed regularly and necessary action taken to ensure that the system is operating effectively.

6.5.3 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to Section 6.5 underlying overall rating
R.40	**LC**	• No meaningful statistics to enable assessment of effectiveness
SR.V	**LC**	• The deficiencies described under R. 36-38 have a negative impact on the rating of this Recommendation.

7. OTHER ISSUES

7.1 Resources and Statistics (R.30 & R.32)

Resources

1131. Recommendation 30 requires that countries should provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources. Countries should have in place processes to ensure that the staff of those authorities are of high integrity.

1132. As presented by the authorities, the bodies with responsibility for supervising the implementation of the AML/CFT legislation by all obligor financial institutions and DNFBPs are the following:

- The FID as the national financial intelligence unit;
- Banking Agencies of FBiH and of RS as the supervisory bodies for banks and micro-credit organisations;
- Insurance Agencies of FBiH and of RS as the supervisory bodies for insurance companies and intermediaries;
- Securities Commissions of FBiH, of RS, and of BD as the supervisory bodies for brokerage companies, stock exchange, fund management companies, investment funds, mutual funds, as well as for banks licensed by the Commissions for doing custody and broker-dealer business;
- The Ministries of Finance of FBiH and of RS as the supervisory bodies for casinos;
- Chambers of Lawyers of FBiH and of RS as the registering and supervising bodies for lawyers;
- Chambers of Notaries of FBiH and of RS as the registering and supervising bodies for public notaries;
- Associations of Accountants and Auditors as the registering and supervising bodies for accountants, auditors and legal or natural persons performing accounting services and tax counselling services[104].

1133. The FIU is staffed by both civil servants and police officers. According to SIPA's Book of Rules on Internal Organisation and Systematisation of Positions, the FID should be staffed with 39 people, to include 20 police officers, 15 civil servants and 4 employees. At the time of the on-site visit, the FID was staffed at 62% of its intended capacity, employing 28 people, of which 11 are police officers, 13 civil servants, and 4 employees. It was particularly notable that of a budgeted complement of 20 Police Officers only 8 were in place and with regard to the Investigative Section only 5 positions out of 15 budgeted positions were filled. In the view of the evaluators, FID does not have sufficient staff resources available to fully perform its functions. Furthermore, the evaluators were of the view that the FID's IT system does not provide sufficient operational scope or capacity to effectively support FID's operations. It did, however appear to the evaluators that FID had the requisite powers and that there were adequate security controls in place.

[104] These Chambers of Lawyers, Chambers of Notaries, and Associations of Accountants and Auditors are self-regulatory organisations (SRO) as defined by the FATF recommendations.

1134. Under Article 68.2 of the new AML Law, FID assumes responsibility for Supervision over implementation of provisions of the new AML Law for the person under obligation, whose activities are not supervised by any other body. This in particular applies to certain sections of the DNFBPs (high value dealers, etc.).

1135. Some representatives of law enforcement bodies that the evaluation team met with expressed dissatisfaction with their working condition, means and the resources available. Nevertheless, the opinion of the evaluators is that the state level investigative bodies are adequately resourced. The evaluators learnt that the understaffed prosecution and judiciary wrestles with a significant backlog of cases related to serious economic crimes because of the pressure of workload and lack of specific expertise. Failure to investigate the proceeds may be one of the main reasons why there have been so few confiscations in ML cases.

1136. A number of joint training seminars between law enforcement agencies (including FID) and prosecutors and also between prosecutors and judges have been conducted. Although there have been no specific training seminars on money laundering or financing of terrorism, topics covered have included corruption, financial crime, and terrorism and the funding of terrorist activities.

1137. Lack of training is a major problem throughout all supervisory bodies, with some relative "advantage" of the Banking Agencies, which seem to be in a better position in terms of the frequency and coverage of training events attended by the staff. The Association of Banks mentioned that they also play an active role in organisation training events; however, no statistical evidence of such engagement was provided to the assessment team.

1138. As far as the supervision of DNFBPs is concerned, the legislation provided to the evaluators does not provide the powers of the Ministry of Finance and the respective SROs in relation to the obligations set forth in the AML LAW, and no systems and mechanisms are established for ensuring compliance of the obligors with the national AML/CFT framework.

1139. The evaluators were not provided with any information on the structure, funding, staffing, and technical resources available for and dedicated to supervision of implementation of the AML LAW by DNFBPs. There is no data available on the professional standards (including confidentiality and integrity requirements), and required expertise/skills of the staff at these supervisory bodies presumably involved in the supervision process.

Statistics

1140. Recommendation 32 requires that Countries ensure that their competent authorities can review the effectiveness of their systems to combat money laundering and terrorist financing systems by maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of such systems; this should include statistics on the STR received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for co-operation.

1141. With regard to statistics which could demonstrate the effectiveness of the criminalisation of money laundering and terrorist financing the evaluators were not provided with any comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions kept and maintained by relevant authorities; this was particularly the case at the level of the Entities and Brčko District.

1142. Article 52 1. d) of the new AML Law requires the FID to publish statistics on money laundering and terrorist financing activities on an annual basis with a view to informing the public on the forms of money laundering and terrorist financing. Although the report is only

published in Serbian, the evaluators were provided with English language extracts from the annual report for 2008 which contained comprehensive statistics on reports received, investigations, crimes detected and international cooperation.

1143. With regard to other law enforcement agencies, statistics on ML and FT investigations, prosecutions and convictions, the number of cases and the amounts of property frozen, seized, and confiscated relating to ML, FT and criminal proceeds etc. were only partially made available to the evaluators vis a vis the evaluation but were not maintained routinely by the authorities. The only meaningful statistics provided were from the Tax Administration of Republic of Srpska.

1144. With regard to national cooperation, the evaluators were not provided with any meaningful information that the systems in place for preventing money laundering and terrorist financing are reviewed periodically to assess effectiveness. At the time of the on-site visit, the Working Group's main focus has been the drafting of the new AML LAW; the evaluators would have expected this to be an opportunity to assess the effectiveness of the system.

1145. No comprehensive and adequately detailed statistics on MLA, either in general terms or specifically on ML/TF relations, are kept and maintained by the BiH authorities. Furthermore, the authorities informed the team about an electronic program where all rogatory letters are registered, but stated that it is not possible to keep accurate and detailed statistics, particularly regarding ML/TF cases.

1146. Apart from statistics on International Cooperation Requests for Information and Dissemination of Data no meaningful statistics were maintained on other forms of international cooperation.

1147. In conclusion, apart from the FID who did produce statistics to support their annual report, there were very few meaningful statistics available. Furthermore the evaluators were of the view that, apart from FID, those statistics that were produced for the evaluators had merely been produced at the request of the evaluators and that no use was being made of statistics to review the effectiveness of their systems for combating money laundering and terrorist financing on a regular basis.

	Rating	Summary of factors underlying rating
R.30	**NC**	• The FID is significantly below its proposed staffing level. • The FID's IT system does not provide sufficient operational scope or capacity to effectively support FID's operations. • As default supervisor of some DNFBPs FID does not have sufficient resources to carry out its responsibilities. • Insufficient resources devoted to supervision of AML/CFT controls by supervisors of financial institutions and DNFBPs. • Lack of adequate structure, funding, staffing, and technical resources available for supervision of implementation of the national AML/CFT requirements by DNFBPs. • Lack of defined professional standards (including confidentiality and integrity requirements), and required expertise/skills of the staff of bodies implementing supervision of DNFBPs

R.32	**NC**	• There are no comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions kept and maintained by relevant government authorities, particularly at the level of the Entities and Brčko District. • No ongoing maintenance of comprehensive statistics by law enforcement agencies other than FID. • Little or no use is made of statistical data by law enforcement agencies to pinpoint areas of risk or highlight where resources are required. • No evidence that statistical data was required or used by the Working Group to develop its national strategy. • No evidence of reviewing effectiveness of co-ordination and co-operation. • No comprehensive and detailed statistics on MLA requests

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating[105]
Legal systems		

1. Money laundering offence	PC	• Neither of the money laundering offences, as defined in all four Criminal Codes, is in full accordance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention as far as material elements of the offence are concerned.
		• One of the designated categories of offences (market manipulation) is not covered by criminal legislation of Brčko District.
		• The scope of competing money laundering offences are not adequately demarcated partly because of the failure to harmonise the respective thresholds in the state-level and non-state level offences and the overly ambiguous conditions in CC-BiH Article 209(1)
		• Serious deficiencies in the effective application of the criminal legislation such as:
		  • The general perception of money laundering, at all levels of jurisdiction, did not appear to go beyond the laundering of proceeds of tax evasion. There is hardly any final conviction for money laundering related to predicates other than tax crimes (particularly organised criminality such as drug crimes, trafficking etc. which are prevalent in the country). Usually, prosecution of predicate offences other than tax crimes only targets the predicates while no further investigation takes place to follow the money trail and to discover laundering activities. As a result, proceeds of organised and other proceeds-generating crimes remain uncovered.
		  • Very few money laundering cases are prosecuted at the level of the Entities and

[105] These factors are only required to be set out when the rating is less than Compliant.

		Brčko District which means that any cases below "larger value" as defined by CC-BiH 209(1) remain uncovered at the other levels as well. • Significant backlog at state-level courts and also at prosecutors' offices due to excessive workload, understaffing, lack of specific expertise as well as evidentiary problems in prosecutions.
2. Money laundering offence Mental element and corporate liability	LC	• Although such case law exists at state level, there is still uncertainty among practitioners whether the intentional element of ML may be inferred from objective factual circumstances which may well compromise the effectiveness of the AML regime. • Despite the adequate legal framework, the prosecution only rarely targets the legal persons (shell companies etc.) involved in ML cases.
3. Confiscation and provisional measures	PC	• High evidential standards as applied by trial courts, the structure of the confiscation regime and an insufficient proportion of confiscations and provisional measures not being taken with the desirable regularity all give rise to concerns over effectiveness. • Mandatory confiscation of instrumentalities is subject to imprecise conditions in most of the cases, while in RS the application of such a measure is discretionary.The specific confiscation regime for money laundering cases does not allow for value confiscation**.** • Confiscation of proceeds commingled with legitimate assets or that of income or benefits derived from proceeds of crime is not provided for by RS criminal legislation. • No provisions in place to prevent or void actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	
5. Customer due diligence	NC	• Article 28 of Law on Foreign Exchange allows the opening and retention of bearer savings accounts in foreign currency. • No obligation to apply CDD measures in all

		instances as required by Recommendation 5. • No timing for the verification of identification information and need to revise Decisions on Minimum Standards accordingly. • No mandatory obligation to apply CDD measures to all existing accounts. • Lack of awareness on the concept and applicability of a comprehensive coverage of the beneficial owner, including identification procedures. • No overall obligation to establish and identify the 'mind and management' of a legal person. • The requirements for financial institutions to conduct ongoing due diligence on the business relationship are not clear. • No requirement for obliged entities to consider filing a suspicious report where the identification process cannot be completed. • No obligation to consider the termination of business where a business relationship is established but the identification process cannot be completed. • Lack of guidance on the application of the newly introduced risk based approach and other new obligations under the new law as the new Book of Rules has not yet been issued**.** • Unable to measure the effectiveness of implementation of the newly introduced AML Law.
6. Politically exposed persons	PC	• The treatment of beneficial owners that are PEPs is not clearly defined in the law. • Definition may lend itself to different interpretations. • Lack of awareness of the industry in identifying PEPs; • Measurement of effectiveness
7. Correspondent banking	PC	• No requirement for banks to document the AML/CFT responsibilities of respondent banks. • No specific obligations regarding 'payable through account'. • Measurement of effectiveness.
8. New technologies and non face-to-face business	NC	• No provisions for financial institutions to take measures to prevent the misuse of technological developments. • Need to clarify application and effectiveness of Article 10 of the Decisions on Minimum Standards

		(FBiH, RS) for the banking sector.
9. Third parties and introducers	NC	• No requirement to immediately obtain the necessary information from the third party. • No requirement to ensure that identification data is available on request from the third party. • There are no specific provisions to ensure that the country base of the third party applies adequate AML/CFT measures. • There are no requirements to ensure that the third party is a regulated entity. • There are no provisions on introduced business. • Lack of effectiveness.
10. Record keeping	LC	• No differentiation between identification information and transaction data. • No clear indication of the initiation of the 10 year retention period for identification information and transaction data.
11. Unusual transactions	NC	• No specific obligation to monitor and examine large, unusual or complex transactions for the rest of the sectors beyond the banking and insurance sectors. • No obligation to examine the background and purpose and to keep a written statement of findings. • No obligation to make such statements available to competent authorities. • Lack of awareness and understanding of the obligations under the Recommendation and hence lack of effectiveness.
12. DNFBP – R.5, 6, 8-11	NC	• Weaknesses identified for the financial sector under Rec. 5 apply. • Lack of awareness on and understanding of customer identification obligations under Recommendation 5. • Scope of AML/CFT measures for the accountancy profession does not cover situations contemplated by the FATF Recommendations. • Strong resistance of legal profession, including public notaries, to accept obligations under the AML LAW and comply therewith – effectiveness issue. • Lack of awareness with most of the DNFBPs sector in relation to the concept of PEPs and the higher risks posed; • Lack of mandatory provisions to monitor threats

		arising from technological developments; • Need to clarify record keeping obligations as explained for the financial sector under Recommendation 10; • Same weaknesses as identified for financial sector for Recommendation 11 (large complex transactions) apply; • General lack of awareness of obligations under the AML LAW and hence lack of effectiveness.
13. Suspicious transaction reporting	LC	• Low level of STRs and no STRs were received from non-banking financial institutions (effectiveness issue). • Conflicting STR reporting requirements could have an impact on the effectiveness of the system of reporting.
14. Protection and no tipping-off	LC	• Protection from criminal and civil liability not extended to directors, and officers of obliged entities; • Loopholes in the new legislation for the prohibition of tipping off • Effectiveness
15. Internal controls, compliance and audit	PC	• Exemptions to small obliged entities (and possibly natural persons) from appointing a compliance officer and applying internal controls. • Lack of industry training. • No adequate procedures for screening at recruitment stage. • Effectiveness.
16. DNFBP – R.13-15 & 21	NC	• Overall lack of awareness of AML/CFT obligations in general throughout most DNFBPs with some resistance in certain areas. • Concern over the exclusion of applicability of certain provisions of the Law to small firms of DNFBPs and possibly natural persons. • Lack of training. • No adequate procedures for screening at recruitment stage. • No specific obligation to terminate or decline business relationships with legal and natural persons from countries that do not apply adequate AML/CFT measures. • No specific obligation to monitor, examine and record findings for large, unusual, complex transactions and to make such findings available to

		the authorities. • Need to clarify position regarding 'trust' service providers. • Lack of effectiveness
17. Sanctions	PC	• Duplication and overlap in the state level AML Law and the entity level Laws on Banks of FBiH and of RS. • Lack of proportionate and comparable sanctions throughout the applicable legislation. • Lack of legislatively provided sanctioning powers of the respective supervisory bodies in the insurance market. • Not all requirements of the AML Law are enforceable. • Lack of administrative sanctions applicable to the participants of the insurance markets.
18. Shell banks	C	
19. Other forms of reporting	C	
20. Other DNFBP and secure transaction techniques	LC	• No documented strategy to reduce the use of cash. • There are strong concerns on the effectiveness of the extended scope of the law particularly as there are no means of monitoring the added DNFBPs.
21. Special attention for higher risk countries	NC	• No specific obligation to terminate or to decline business relationship or to undertake a transaction with legal/natural persons from countries not sufficiently applying AML/CFT measures. • No specific obligation to monitor and examine such transactions further to the banking and insurance sectors, or to keep a written statement of findings and to make these statements available to the authorities for the whole sectors.
22. Foreign branches and subsidiaries	PC	• Requirement for parts of the financial sector other than banks to apply AML/CFT measures to their establishments abroad introduced recently and hence effectiveness cannot be measured. • No requirement to apply the higher standard where standards differ. • No obligation for financial institutions to inform home supervisor when a foreign branch or subsidiary is unable to apply standards.

23. Regulation, supervision and monitoring	PC	• No prohibition for criminals and their associates from holding a significant or controlling share in securities market intermediaries in FBiH and in BD. • No requirement for a clean criminal record of the managers of market intermediaries in BD. • No requirements for professional qualifications and expertise of directors and senior management of investment funds • Lack of licensing/registration procedures for persons involved in money transfer and exchange services, as well as for the persons exercising professional activities of sale and purchase of claims; safekeeping, investing, administering, managing or advising in the management of property of third persons; issuing, managing and performing operations with debit and credit cards and other means of payment, crediting, offering and brokering in negotiation of loans. • No effective monitoring of the activities of the persons engaged in the provision of money transfer and exchange services. • Lack of efficient, sufficiently frequent, risk-based supervision of financial institutions.
24. DNFBP - Regulation, supervision and monitoring	NC	• Lack of legislatively defined basis for entity level Ministries of Finance and for the Tax Administration of BD to supervise implementation of AML/CFT requirements by casinos • Sanctions defined with regard casinos for non-compliance with the requirements of the AML LAW can not be effectively applied. (*Applying Recommendation 17*) • No prohibition for individuals with criminal background to acquire or become the beneficial owner of a significant or controlling interest, hold a management function in or be an operator of a casino. • Lack of legislatively provided powers for the Chambers of Lawyers, the Chambers of Notaries, and the Associations of Accountants and Auditors at entity level to supervise implementation of the obligations set forth in the AML LAW; no systems and mechanisms for them to ensure compliance of the respective obligors with the national AML/CFT requirements.
25. Guidelines and Feedback	PC	• There is no mandatory obligation to provide general feedback.

		• Lack of provision of meaningful feedback. • Many of the obligors (especially the representatives of non-bank financial institutions) fail to have a proper understanding of their obligations under the AML/CFT framework • Not all sectors have developed indicators for suspicious transactions. • No specific guidance issued to all sectors of the industry other than the implementing guidance under the Book of Rules. • Many of the obligors (especially the representatives of DNFBPs) fail to have a proper understanding of their obligations under the AML/CFT framework • Not all DNFBP sectors have developed indicators for suspicious transactions. • No specific guidance issued to all DNFBP sectors of the industry other than the implementing guidance under the Book of Rules. • No general and specific feedback to DNFBPs. • Impact of the above on the effectiveness of the system.
Institutional and other measures		
26. The FIU	PC	• FID appears to operate in isolation from other law enforcement agencies and Financial intelligence at FID is not requested by or disseminated to other law enforcement agencies at the level of the entities and Brčko District when investigating predicate offences or money laundering. • At the time of the on-site visit there was no effective dissemination of information to domestic authorities and the power of the FID to disseminate information to domestic authorities is still limited by the new AML Law. • No guidance provided to non-banking sector by FID regarding manner of reporting. • Manual review of large cash transaction reports brings into question the effectiveness of the computerised database and overall effectiveness of analysis by FID when analysing CTRs and STRs.
27. Law enforcement authorities	LC	• Low effectiveness as ML rarely investigated as an offence when not related to tax evasion. • Perception of corruption may have an impact on

		effectiveness of the system. • No clear national strategy geared to increase the effectiveness of action taken against the proceeds of crime.
28. Powers of competent authorities	LC	• Concerns over effectiveness
29. Supervisors	PC	• Lack of clearly defined supervisory powers of the FID and no mechanisms in place for the enforcement of its decisions regarding removal of irregularities in the operations of obligors. • Lack of adequate powers of supervisors in the insurance market to monitor and ensure compliance with AML/CFT requirements and to take enforcement measures and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.
30. Resources, integrity and training	NC	• The FID is significantly below its proposed staffing level. • The FID's IT system does not provide sufficient operational scope or capacity to effectively support FID's operations. • As default supervisor of some DNFBPs FID does not have sufficient resources to carry out its responsibilities. • Insufficient resources devoted to supervision of AML/CFT controls by supervisors of financial institutions and DNFBPs. • Lack of adequate structure, funding, staffing, and technical resources available for supervision of implementation of the national AML/CFT requirements by DNFBPs. • Lack of defined professional standards (including confidentiality and integrity requirements), and required expertise/skills of the staff of bodies implementing supervision of DNFBPs
31. National co-operation	PC	• Legal and institutional basis in place but questions remain on effectiveness, coordination and information sharing. • Possible need to review structure and operational efficiency of the Working Group. • Need to strengthen co-ordination between the various authorities in the financial sector.
32. Statistics	NC	• There are no comprehensive and detailed statistics

		on money laundering investigations, prosecutions and convictions kept and maintained by relevant government authorities, particularly at the level of the Entities and Brčko District. • No ongoing maintenance of comprehensive statistics by law enforcement agencies other than FID. • Little or no use is made of statistical data by law enforcement agencies to pinpoint areas of risk or highlight where resources are required. • No evidence that statistical data was required or used by the Working Group to develop its national strategy. • No evidence of reviewing effectiveness of co-ordination and co-operation. • No comprehensive and detailed statistics on MLA requests
33. Legal persons – beneficial owners	PC	• Concerns over the viability of the Main Book of Registration at the Courts for and the information contained in it and hence the achievement of adequate transparency concerning the beneficial ownership and control of legal persons. • No timely update of the Books of Registration at competent registration courts for all types of legal persons; • The position of foreign legal persons that allow bearer shares becoming shareholders in domestically registered legal persons needs to be clarified.
34. Legal arrangements – beneficial owners	N/A	• Bosnia and Herzegovina is not a signatory to the Hague Convention. • The concept of trusts or other similar legal arrangements (other than corporates) is not known under the laws of Bosnia and Herzegovina – although reference to the term 'trust' is used under the new AML Law.
International Co-operation		
35. Conventions	PC	• Insufficiencies in the effective implementation of the Conventions due to the existing deficiencies related to criminalisation of ML/TF offences
36. Mutual legal assistance (MLA)	LC	• Concerns regarding providing assistance in a timely manner when the entity/district level authorities are involved (concerns raised by other states). • No mechanism in place for avoiding conflicts of

		jurisdiction involving other states.
37. Dual criminality	LC	• The existing legal deficiencies related to criminalisation of ML and FT could potentially impede effective co-operation.
38. MLA on confiscation and freezing	LC	• The shortcomings related to confiscation regime may have a negative impact on the ability of rendering MLA in such cases. • No information on arrangements for coordinating seizure and confiscation actions.
39. Extradition	LC	• In the absence of proper statistics relating to ML, the predicate offences and FT, and information whether extradition requests are handled within timeframes it has not been possible to establish the overall effectiveness of the system in place.
40. Other forms of co-operation	LC	• No meaningful statistics to enable assessment of effectiveness
Nine Special Recommendations		
SR.I Implement UN instruments	PC	• Deficient implementation of UNSCR 1267 and 1373
SR.II Criminalise terrorist financing	PC	• The present incrimination of terrorist financing ("funding of terrorist activities") in all four Criminal Codes appears not wide enough to clearly provide for criminal sanctions concerning the collection and provision of funds with the unlawful intention that they are to be used, in full or in part, by a terrorist organisation or by an individual terrorist as required by SR.II. • Further clarification is requires as to the coverage of "funds" as provided for by CC-BiH Article 202 and similar offences in the other three Criminal Codes respectively.
SR.III Freeze and confiscate terrorist assets	NC	• A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place. The existing legal framework consists of parallel and remarkably overlapping regimes which either are incomplete particularly when it comes to procedural rules (Laws on Banking agencies) or were designed for other purposes (the IRM Law to support the ICTY mandate) thus both are only to a very limited extend applicable in this respect.

SR.IV Suspicious transaction reporting	LC	• General low levels of STRs raise concerns about the effectiveness of implementation. • Conflicting STR reporting requirements could have an impact on the effectiveness of the system of reporting. • The existing deficiencies related to the criminalisation of FT could have an impact on the reporting of suspicions of FT.
SR.V International co-operation	LC	• The deficiencies described under R. 36-38 have a negative impact on the rating of this Recommendation. • The deficiencies described under R. 37 and 39 have a negative impact on the rating of this Recommendation. • The deficiencies described under R. 36-38 have a negative impact on the rating of this Recommendation.
SR.VI AML requirements for money/value transfer services	PC	• Money transfer services provided by Post Office needs to be supervised by the relevant authorities; • Need to re-assess position of Tenfore d.o.o vis-à-vis it relationship with the FID and the new AML Law; • Need to clarify position re sanctions for banks in the light of the new AML Law and the Laws on Banks.
SR.VII Wire transfer rules	PC	• No obligation for full originator information to accompany cross-border transfers. • No indication what information is to accompany an internal wire transfer. and no obligation for financial institutions to do so. • No monitoring of the activities of the Post Office. • Application of sanctions for non compliance not clear.
SR.VIII Non-profit organisations	NC	• No review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes. • Lack of outreach to the NPO sector. • Deficiencies of the registration mechanism. • Deficiencies of the supervisory activities and inspections. • No explicit legal requirement for the NPOs to maintain business records for a period of at least five years. • Lack of sufficient national cooperation and

		information exchange between the national agencies which investigate ML/FT cases. • No particular mechanism established for responding to international requests regarding NPOs.
SR.IX Cross Border declaration and disclosure	NC	• No obligation at the state level for reporting cash and negotiable instruments. Limited and varying reporting obligations exist at the entity level; but not for Bosnian currency (In the Federation and BD) and not for negotiable instruments. • The ITA has no authority to obtain further information from the carrier upon discovery of a false declaration (SR IX.2). • The ITA has no authority to restrain currency where there is suspicion of ML/FT or where there is a false declaration (SR IX.3). • The ITA does not retain the information required by SR IX.4 and is therefore not able to make such information available to SIPA in accordance with SR IX.5. • No or ineffective cooperation at the domestic level (SR.IX.6). • No power to apply sanctions or seize funds by ITA (SR.IX.8) (SR.IX.9) (SR.IX.10) (SR.IX.11). • Uncertainty on whether, upon a discovery of an unusual movement of gold or other precious metal, the ITA would cooperate with the authorities of the originating/destination countries. • Lack of effectiveness.

Table 2: Recommended Action Plan to improve the AML/CFT system

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• The Bosnian authorities should address the lack of clear demarcation between the scope of the money laundering offences in the different Criminal Codes. It is recommended that consideration should be given as to whether it would be more effective to restrict all money laundering cases to the State Court, and abolish the Entity and Brčko District jurisdictions. • If money laundering is not criminalised exclusively at state level, the conditions in CC-BiH Article 209(1) should be reviewed, especially those not related to value thresholds as, in the view of the evaluators, the existing conditions are overly ambiguous and thus very unlikely to be adequately proven in a criminal procedure. These should, therefore, either be replaced by more precise criteria (like the involvement of organised criminality in the predicates, the fact that the offence was committed on the territory of more than one non-state level jurisdiction etc.) or substituted merely by the application of value limitations. • As a minimum requirement, definitions of value thresholds should be publicly known and should be provided for by the legislation (such as the Criminal Code). At the State level, steps need to be taken to fill the gap between positive criminal law and actual judicial practice by finding an adequate legislative solution instead of the current *contra legem* interpretation of the law. • Definition of money laundering offences should be brought fully into line with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention as far as material elements of the offence are concerned. • The authorities of Brčko District should criminalise market manipulation in their respective legislation (either in the Law on Securities or elsewhere) to ensure that the range of offences which are predicates to money laundering include all required categories of offences in all the relevant forms. • Investigators and prosecutors need to have a clear understanding of the importance of money laundering

	beyond the tax evasion and fiscal predicates if money laundering criminalisation is to be meaningful. Effective implementation of money laundering incrimination should urgently be achieved beyond the tax predicate. • Financial investigation into proceeds needs to become an integral part of investigation of various proceeds generating offences. For this to be achieved, more resources and training are needed especially by the prosecution service. • State-level incrimination as well as those in the Federation and Brčko District should expressly include "own proceeds" laundering or, at least, appropriate guidance should be given to practitioners in this respect in all the three jurisdictions where self-laundering is not explicitly covered by law (especially in the Federation and Brčko District where there is no relevant judicial practice either). • Authorities of Republic Srpska should review the policy reasons whether and why it was considered expedient and proportionate to threaten self-laundering with higher penalty than money laundering by third parties. • The language of money laundering incrimination and penalties should be harmonised across the State level, the Entities, and Brčko District. • The uncertainty over whether the intentional element of ML may be inferred from objective factual circumstances should be addressed by appropriate guidance from the judiciary at the level of the Entities and Brčko District. • Legislation should be introduced at all levels to allow the prosecuting and convicting of defendants in absentia. • Domestic authorities should, at all levels of jurisdiction, consider whether the benefits of negligent money laundering in the statute are being maximised. • The backlog in money laundering cases pending before the Court of Bosnia and Herzegovina is a problem that must be addressed by state-level authorities. It is recommended that appropriate training of the judiciary and prosecutors be provided. • Comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts need to be maintained. Such statistics should provide statistical information on the underlying predicate crimes and possibly on further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.). The provisions of Article 60 of the new AML Law, which requires that competent prosecutors' offices and courts forward statistical data to the FID on a regular base (twice a year) on indictments and valid court cases related to the offences of money laundering and terrorist financing, including detailed

	information on the persons indicted and also on the respective criminal acts and the amount of assets temporarily seized in the criminal procedure should be fully complied with.
2.2 Criminalisation of Terrorist Financing (SR.I)	• Criminal laws should be amended to incorporate the funding of terrorist organisations and individual terrorists, both at State level and that of the Entities and Brčko District. • Domestic authorities at all competent level should satisfy themselves that the full definition of ”funds” according to Criterion II.1b is properly covered by the current terrorist financing offences. • Consideration should be given to whether the financing of terrorism should remain criminalised at all levels of legislation in Bosnia and Herzegovina or be qualified among those exclusively dealt with at state level. • Consideration should be given to abandoning the use of “double definitions” of legal terms pertaining to criminal substantive law in multiple legal sources.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Consideration should be given to the fact that the specific confiscation regime applicable in money laundering cases pursuant to Article 209(4) and identical provisions in non-state level Codes do not provide for value confiscation. • The provisions on confiscation in the Criminal Code of Republic Srpska should be amended to enable the confiscation of income or other benefits. Equally, confiscation of proceeds commingled with legitimate assets should also be provided for. • Competent authorities at State level and also in the Federation of Bosnia and Herzegovina and Brčko District should review the articles in the respective Criminal Codes that provide for the confiscation of instrumentalities and other objects with the aim of removing or, at least, concretising the overly vague conditions under which this security measure can be applied (absolute necessity based on public safety or moral reasons etc.) so that the confiscation of such objects can actually be mandatory. • The authorities of Republic Srpska should consider introducing compulsory confiscation of such objects instead of the current, discretionary provision in the Criminal Code of Republic Srpska Article 62(1). • Removal of overly insubstantial preconditions of *in rem* confiscation of instrumentalities and other objects (“interests of general security” etc.) should take place at all levels. • Consideration should be given to provisions in the criminal procedure which would enable the confiscation of proceeds where the criminal procedure cannot be

	concluded because the death or absconding of the perpetrator or for any other reason, on condition that there is a proof that the assets derive from criminal offences. • Legislative provisions should be introduced at all levels to allow for the voiding of contracts. • domestic authorities should review the practical functioning of provisions on confiscation and provisional measures to assess their overall effectiveness to ensure that they are fully operational and to satisfy themselves that the necessary tools are really in place for a complete and effective system. Such a review should primarily be supported by compiling and maintaining of comprehensive and precise statistics on the volume and effectiveness of confiscation and the provisional measures. • Domestic authorities should review the specific confiscation rule in CC-BiH Article 209(4) and identical non-state rules either in themselves or in combination with Article 74 to consider whether these provisions allow for the mandatory confiscation of instrumentalities used in or intended for use in the commission of a money laundering offence as far as such objects are not owned by the perpetrator and introduce legislation to for remedy to this apparent weakness of the system. • The evaluators understand that provisional measures can only be carried out, as a general rule, by the decision of a preliminary proceedings judge as from the initiation of the investigation. Domestic authorities should reassess the extent to which this structure might delay or even hinder the seizure of proceeds, if once applied in a concrete money laundering case. They should also reconsider, whether the immediacy of such measures could better be provided by allowing the prosecutor, in extremely urgent cases, on his own authority, to order the investigating bodies to carry them all out, subsequently obtaining the approval of a judge. • The possibility of obtaining bank information with a view to freezing of assets, as is provided by Article 72(1) and (4) of the CPC-BiH (and identical non-state provisions) appears to be unnecessarily restricted; or at least slowed down in concrete cases by factors originating in either incomplete secondary legislation or simply through inaccurate communication between the state authorities and the financial industry. This results in duplication of the court procedure when bank account information needs first to be obtained for applying for a freezing order. Domestic authorities should reassess this potential shortcoming and seek for a solution. • Legislative amendments should be introduced to introduce explicit provisions to prevent or void contractual or other actions where the persons involved knew or should have known that as a result of those actions the authorities

	would be prejudiced in their ability to recover property subject to confiscation. • A much greater emphasis needs to be given to the taking of provisional measures at early stages of investigations to support more confiscation requests upon conviction. A clear understanding is required of how early in criminal investigations the preliminary measures could be taken and the practitioners should be orientated, either by adequate guidance or training, to apply these measures as early as possible to prevent dissipation of proceeds. • In most of the cases, the prosecution is still mainly targeted at proving the predicate crime and thus no further investigation takes place to follow the trail of the proceeds. As far as this is result of inadequate staffing and lack of necessary trainings these shortcomings must urgently be remedied by competent authorities at all levels. Equally, the authorities should seek for a solution to the problem underlying this trend, that is, the overly high standard of proof applied by the trial courts with regard to the confiscation of the proceeds of crime. • Legislators at all levels should consider ensuring that, in certain well-defined serious proceeds-generating offences, elements of practice which have proved of value elsewhere should be considered, including the reversal of the burden of proof, post conviction, as to the lawful origin of alleged criminal proceeds or the utilisation of the civil standards of proof as to the lawful origins of proceeds. In this respect, particular emphasis should be given to explaining how The Criminal Code of Bosnia and Herzegovina Article 110(3) and corresponding non-state level provisions are intended to work. As far as RS criminal legislation is concerned, the examiners share the opinion of the local authorities that the Criminal Code of Republic Srpska, which currently lacks such a provision, should also be harmonised in this respect • Authorities at all levels should establish unified systems for keeping statistics on the amounts of property seized and confiscated, and designate competent bodies for this purpose, in line what was recommended by the first round report. In this respect, the evaluation team considers it more practical to address this question on a Bosnia and Herzegovina wide basis and not separately for each Entity and Brčko District. • Consideration should be given to establishing a competent agency with adequate procedures for keeping and managing seized and confiscated assets, and the introduction of an asset forfeiture fund as well as a mechanism for asset-sharing, in line with the legislative initiatives currently being in the draft phase in the country. Such an agency could optimally be set up at the level of the State

2.4 Freezing of funds used for terrorist financing (SR.III)	• A single, effective system for implementation without delay by all financial institutions for the freezing of accounts of persons named on the respective lists, together with the provision of clear and publicly known guidance concerning their responsibilities should be introduced • Procedures for considering de-listing requests and unfreezing assets of de-listed persons should be created and/or publicised. • A procedure for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the persons are not a designated person should be created and/or publicised. • An effective regime of monitoring of the private sector's compliance with freezing assets of designated persons or whether any of the recommendations in the Best Practice Paper had been implemented should be introduced. • The relevant parts of the Best Practice Paper should be considered and implemented.
2.5 The Financial Intelligence Unit and its functions (R.26)	• FID should develop its database capability as well as its analytical tools and make far greater use of electronic means of monitoring and analysis. • Article 51.5 of the new AML Law needs to be amended to allow FID to disseminate information on its own initiative to domestic authorities for investigation or action when there are grounds to suspect money laundering and/or terrorist financing. • Staffing of the Investigation Department at FID is not in proportion to the commonly understood expectations of other law enforcement agencies regarding FID's role in initiating ML investigations in BiH. FID should make it a priority to attract suitably qualified staff to fill the current vacancies. • FID's operation is isolated from the general law enforcement effort due to restrictive interpretation of existing laws, and other organisational issues. Financial intelligence at FID is not requested by or disseminated to other law enforcement agencies at the level of the entities and Brčko District when investigating predicate offences or money laundering. The evaluators consider that it is vital that there is full and effective cooperation between all relevant bodies in the entities and Brčko District and the FID, in particular, the Working Group of Bosnia and Herzegovina Institutions related to the Prevention of Money Laundering and Terrorism Financing should make it a priority to achieve full cooperation between all relevant bodies.
2.6 Law enforcement, prosecution	• ML and FT should be set as a higher priority for law

and other competent authorities (R.27 & 28)	enforcement. The money laundering offence should be an integral part of an investigation when investigating a predicate offence involving a funds generating crime. Prosecutors should also place a greater focus on targeting and proving ML as well as the underlying predicate crime. In addition much greater efforts should be put into tracing, seizing freezing and confiscating the proceeds crime. • BiH should address the problems facing the prosecution and judiciary by increasing resources and staffing in order to deal with the backlog of cases related to serious economic crimes affecting not only the effectiveness of the judicial process but also the investigative capacity of law enforcement agencies in the BiH. • A clear AML CFT national strategy should be prepared with set goals to be achieved by law enforcement bodies on all levels, including the state, entity, and cantonal levels. The main goal of such a strategy should be increasing the effectiveness of action taken against the proceeds of crime by harmonising the independent law enforcement efforts against predicate offences, ML, and tax evasion. • Considering the pivotal role of prosecutors, measures should be taken to raise awareness among prosecutors and judges both of the overall AML/CFT legislation, and particularly of the money laundering offence. • Measures should be taken to enhance national cooperation and information exchange between all agencies involved in the investigation of predicate offences, tax offences, and ML. • Special investigative techniques should be utilised to investigate money laundering. • All law enforcement authorities should continue to strengthen inter-agency AML/CFT training programs in order to have specialised financial investigators and experts at their disposal. • Corruption is a problem and it continues to be a problem for all law enforcement bodies and the judicial system. The perception of corruption undermines confidence in the various law enforcement agencies, prosecutors offices and the judiciary and inhibits inter-agency cooperation. Initiatives to eliminate corruption need to be maintained. • Little or no use is made of statistical data to pinpoint areas of risk or highlight where resources are required. It was the view of the evaluators that the statistics that were provided had been prepared largely to support the evaluation visit. It is recommended that comprehensive statistics on all aspects of money laundering and terrorist financing should be maintained and regularly analysed in order to assess the effectiveness of the system and make

	improvements where necessary.
2.7 Cross Border Declaration & Disclosure	• There is an urgent need to adopt a legislative regime on the state level of BiH for full implementation of SR IX to include domestic cash and negotiable instruments. • The Indirect Tax Authority of Bosnia and Herzegovina does not appear to be fully involved in implementing the current partial regime existing on the entity level in the context of AML CFT according to SR IX efficiently and effectively. In particular it lacks the appropriate powers and tools to do so. A significant number of essential criteria do not appear to be met and there is therefore a need to review the whole framework of cross border declarations and disclosures against the essential criteria for SR IX. • Adequate funding and training is required for Customs and the financial sectors to implement and respect the customs and tax legislation.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• Article 28 of the Law on Foreign Exchange should be reviewed. • an obligation to apply the CDD measures when carrying out occasional transactions that are wire transfers should be introduced by legislation or other enforceable means. • A review should be undertaken of the definition of "transaction" in the new AML Law which may not necessarily include "cash transactions" and hence there is doubt on the application of CDD measures. • An awareness raising programme together with and related guidance on the applicability of the risk based approach for CDD should be developed. • Although specific provisions have been included in the new AML Law imposing an obligation for the verification of the identity of customers, these provisions do not address the timing of verification and, therefore, the Decisions on Minimum Standards should accordingly be reviewed. • The relevant authorities should ensure there is awareness and understanding by the industry on the newly introduced concept of the beneficial owner, and a revision of possibly Article 15 of the new AML Law should be considered.. • An obligation for all obliged entities and persons to identify the 'mind and management' of a legal person beyond the requirements for banks should be introduced

	under the relevant Decisions on Minimum Standards of the respective Banking Agencies. • An obligation for the termination of business where a business relationship is established but the identification process cannot be completed should be considered. • A legal obligation to apply CDD measures to existing customers beyond what is currently provided for banks under the relevant Decisions on Minimum Standards should be introduced. • At the time of the on-site visit PEPs were only partially and limitedly addressed and only for the banking sector. However even these provisions did not entirely cover the requirements for Recommendation 6. There did not appear to be any similar provisions for the whole financial sector. Although the new law now provides for the treatment of PEPs there is a need to create awareness and provide guidance on the identification process, including where the beneficial owner is a PEP. • The coverage of correspondent banking is not comprehensive and does not appear to specifically cover respondent bank's relationships. Although correspondent banking is now included under the new AML Law, the issue of 'payable through' accounts is not addressed. It is advisable that (cor)respondent banking relationships be reviewed accordingly. • Although it appears that electronic business in the financial sector is low, there are no obligations for financial institutions to have policies in place to prevent the misuse of technological developments. This should be provided for in the new AML Law which to date does not address this issue. • There is a need to clarify Article 10 of the relevant Decisions on Minimum Standards with regard to non-face-to-face business. • Following the introduction of the new AML Law, a revised Book of Rules, providing guidance on its implementation and more awareness on the part of 'persons' under obligation', albeit to different degrees, on the concepts and the philosophy of the law and their obligations, needs to be adopted..
3.3 Third parties and introduced business (R.9)	• Although the old LPML does not specifically prohibit or allow third party reliance or introduced business, likewise it does not specifically allow it. However there are provisions that appear to indirectly allow such procedures. This is particularly so in relation to the use of companies specialised in customer due diligence. The absence of such companies, though recognised, impacts on procedures to licence and regulate them. This creates an uncertainty as to whether third party reliance is allowed or not.

	Notwithstanding the fact that the new AML Law has now clarified this doubt in that it specifically allows 'persons' under obligation' to rely on third parties, as defined by the new AML Law, yet the new provisions do not fully cover the FATF criteria for Recommendation 9. In the circumstances it is recommended that the legislative and other relevant provisions be revised such that the obligations and requirements should be harmonised with Recommendation 9.
3.4 Financial institution secrecy or confidentiality (R.4)	• No recommendations
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• Although both the old and the new AML Laws require the retention of all documentation and information obtained on the basis of this Law, yet both laws fall short of meeting all the essential elements of Recommendation 10. In particular there is no distinction between identification and transaction information; and there are no clear provisions for the initiation of the 10 year retention period. The availability of identification information and transactions data to the authorities is indirectly addressed with the only reference on obliged entities being that of delivering the data "without delay or within 8 days" to the FID upon its request. The provision of such data to the supervisory authorities would however be covered by the general relevant provisions for the supervisory authorities under the respective legislation (for example the Laws on Banks). It is therefore recommended that the provisions on record keeping under Article 65(1) of the new law be reviewed and extensively updated and broadened to meet the requirements under Recommendation 10. In this respect the revision should definitely differentiate between identification data and transaction data, including one off or occasional transactions. In this context the review should ensure the establishment of the commencement of the retention period under each circumstance. • Although wire transfers are covered by the Law on Payment Transactions of both Entities and Brčko District yet most of the criteria for SR VII are not met as the Law only covers the technical operational aspects. The new AML Law now addresses some of the missing aspects identified at the on-site visit. The new law however does not differentiate between domestic and cross-border payments and hence it is difficult to identify compliance with the respective criteria. Notwithstanding, it is recommended that specific legal provisions be introduced: • to ensure that full originator information accompanies cross-border transfers; • to establish what information should accompany domestic transfers; • to ensure that the Post Office is monitored on its

	compliance with such regulations as may be established; • to ensure that appropriate sanctions can be and are applied for non-compliance.
3.6 Monitoring of transactions and relationships (R.11 & 21)	• It is recommended that Recommendation 11 be specifically addressed through a revision of the new AML legislation and an eventual consequent revision of the Banking Decisions for Minimum Standards • It is recommended that a specific obligation be included for financial institutions to give special attention to business relationships and transactions with financial institutions and other legal/natural persons from countries that have inadequate AML/CFT measures in place. Such an obligation should go beyond the ongoing monitoring of accounts.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• The evaluators were, concerned about the low level of transactions reported, particularly as all STRs received were from banks with none received from the insurance and securities sectors. It was noted that there was a high level of misunderstanding together with a lack of awareness within financial institutions concerning the reporting obligations. The evaluators recommend that a programme is undertaken with financial institutions to raise awareness of the STR regime. This programme should emphasise the difference between large transaction reports and suspicious transaction reports. • It was also noted that in Republic Srpska STRs were submitted to the Banking Agency rather than to SIPA. It is strongly recommended that all STRs be reported direct to SIPA and not via an intermediate agency. • there appear to be conflicting reporting requirements between the requirements of the New AML Law and the Law on Banks in Republic Srpska and FBiH. The evaluators therefore recommend that the Law on Banks in Republic Srpska and FBiH should be amended to remove any conflicting reporting requirements. • The evaluators recommend that appropriate clarification of the word "odnosno" be made to clarify that suspicion of terrorist financing may arise in cases where funds are not derived from criminal activity. • The provisions in the new AML Law, which have enhanced those of the previous law, cover some elements of the essential criteria for Recommendation 14. However the evaluators have two main concerns. First, on the application of the protection to all directors, managements and officers of a 'person under obligation'. Second, on the use of the words "who have access to secret data" as they could create a loophole in the law where information can be disclosed without breach of the legislation. The

	evaluators therefore recommend a revision of the new provisions to cover such eventualities. • With regard to the cash reporting regime, it is recommended that that the computerised database be reviewed to ensure that all large cash transaction reports are properly input. Furthermore a computerised exceptions reporting system should be developed to replace the current manual review by FID analysts. • Following the introduction of provisions with a mandatory obligation to provide feedback in the new law, FID should provide further general and specific feedback to financial institutions and DNFBPs incorporating, *inter alia*, statistics on the number of STRs, information on current ML techniques and trends, as well as information on the decisions and results of the analysis of STRs carried out by the FID. No guidance has been provided to the non-banking sector on their AML CFT obligations. FID, in conjunction with the relevant supervisory bodies should develop guidance for all financial institutions and DNFBPs and ensure that an adequate awareness raising campaign is in place.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Article 32(2) of the new AML Law should be reviewed in relation to full exemptions from appointing an authorised person and from maintaining internal control by obliged entities (persons under obligation) with four or less employees – and interpretatively, obliged natural persons • Competent authorities, and in particular the FID, need to be more receptive to requests for training by the industry. • Adequate screening procedures need to be in place and effectively applied when hiring people, if need be through mandatory obligations. • The obligations under Recommendation 15 need to be applied to the entire financial sector. • Requirements for Recommendation 22 are only partially addressed through the Banking Decisions on Minimum Standards – more specifically only to a minor extent through Article 2 – and through the new Article 8 of the new AML Law. However there are no provisions covering the main requisites of the Recommendation. It is recommended that this matter be addressed through the new legislation and through guidance issued by the relevant competent authorities.
3.9 Shell banks (R.18)	• The definition of "shell bank" should be brought into full compliance with the FATF Methodology. • Legislation should be introduced to provide for an explicit prohibition of establishing and/or continuing operation of shell banks in BiH.

3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• Proportionate and comparable sanctions for non-compliance with AML/CFT requirements need to be introduced throughout the applicable legislation (harmonise the sanctions stipulated by different entity level laws) and all ambiguities on the applicability of sanctions under the new AML Law should be removed. • Legislation to provide for the sanctioning powers of the respective supervisory bodies in the insurance market should be introduced. • Steps need to be taken to ensure that all requirements of the new AML Law are enforceable (that is; sanctions are stipulated for non-compliance). • Administrative sanctions to be applied to the participants of the insurance market for non-compliance with AML/CFT requirements need to be introduced. • All sanctions should be reviewed to ensure that they are effective, proportionate and dissuasive. • Legislation should be amended to introduce: a) a prohibition for criminals and their associates from holding a significant or controlling share in securities market intermediaries in FBiH and in BD; b) a requirement for a clean criminal record of the managers of market intermediaries in BD; and c) requirements for professional qualifications and expertise of directors and senior management of investment funds in FBiH, in RS, and in BD. • Licensing/registration procedures should be developed for the persons involved in money transfer and exchange services, as well as for the persons exercising professional activities of sale and purchase of claims; safekeeping, investing, administering, managing or advising in the management of property of third persons; issuing, managing and performing operations with debit and credit cards and other means of payment; issuing financial guarantees and other warranties and commitments, and lending, crediting, offering and brokering in negotiation of loans. • Steps need to be taken to harmonise the efficiency of monitoring activities in respect of persons involved in money transfer and exchange activities. • Efficient, sufficiently frequent, risk-based supervision of financial institutions needs to be developed and implemented. • FID and all other competent authorities need to introduce measures aimed at ensuring that obligors (especially the representatives of DNFBPs) have a proper understanding of their obligations under the AML/CFT framework.

	• Whilst the provision of comprehensive and exhaustive lists of indicators for identifying suspicious transactions and persons is commendable, supervisory authorities should ensure that such indicators are not interpreted as being conclusive such that the examination of transactions is only guided accordingly without any flexibility. • The supervisory processes of the FID and establish mechanisms for the enforcement of its decisions regarding removal of irregularities in the operations of persons under obligation should be clearly defined. • Adequate powers should be granted to supervisors in the insurance market to monitor and ensure compliance with AML/CFT requirements and to take enforcement measures and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements. • An adequate structure, funding, staffing, and technical resources should be made available for supervision of implementation of the national AML/CFT requirements by DNFBPs. • There is a need to define professional standards (including confidentiality and integrity requirements), and required expertise/skills of the staff of bodies implementing supervision of DNFBPs.
3.11 Money value transfer services (SR.VI)	• It is recommended that the provision of money or value transfer services be reviewed particularly to ensure that the Post Office or any other agents appointed outside the banking system are subject to supervision. • The Bosnia and Herzegovina authorities should examine the operations of Tenfore d.o.o within the context of the obligations of the obliged entities under Article 3 of the old LPML – now Article 4 under the new AML Law. Indeed, through the 'Agent Compliance Manual', the company already seems to be imposing upon itself certain AML obligations, in particular in reporting and providing information to the FID. This is a positive initiative on the part of Tenfore d.o.o., however if there is a need for Tenfore d.o.o. to impose such obligations this need should be officially formalised through the AML LAW.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• The casino seems to be the only DNFBP that has identification procedures in place in accordance with the AML Law. The legal, notary and accountancy professions are more guided by their governing laws as opposed to the AML Law. The Privatisation Agencies of both Entities, on the other hand, appear to have some conflict as to the

	identification requirements under the AML Law and the financial 'fit and proper' assessment of an investor in State entities. It is recommended that the relevant authorities embark on a state wide programme of AML/CFT awareness within the whole DNFBPs sector, the more so because of the coming into force of the new legislation which now imposes specific requirements on the whole DNFBPs sector in general and to particular elements more specifically. • Although the concept of PEPs under intensified identification procedures is addressed through legal provisions and hence also for DNFBPs, in practice the issue of PEPs is not addressed by DNFBPs as there is a complete lack of awareness of the risks involved. It is therefore recommended to introduce an awareness and understanding training campaign accordingly throughout the whole sector of DNFBPs as is also required for some elements of the financial sector. • There is a need for increased awareness of threats from new or developing technologies among DNFBPs, although, as claimed, their activities are mostly related to a one-to-one customer relationship. Developments in technology on the way of carrying out certain activities could however pose certain threats. • Although DNFBPs met by the evaluators claim that they do not undertake non-face-to-face business, the enhanced obligations under the new AML Law call for more awareness of the procedures to be applied in such circumstances throughout the whole sector. It is therefore recommended that the need to conduct proper due diligence of non-face-to-face customers is included in any awareness raising exercise. • There is a need for the DNFBPs to be made more aware of the threats to money laundering and the financing of terrorism arising out of large complex transactions that may not have economic reasons. The need to analyse and understand such transactions cannot be over emphasised. It is recommended to statutory obligations to this effect are introduced for all obligors. • Record keeping procedures in the AML LAW need to be revisited and clarified in accordance with the requirements under Recommendation 10. • Although most DNFBPs have informed that they undertake business on a one-to-one basis and they identify their clients directly, yet there is a need to clarify the position on third party reliance and introduced business for customer due diligence particularly since the new AML Law now specifically provides for third party reliance for certain parts of the identification process applied
4.2 Suspicious transaction reporting	• There appears to be a need to review Article 15 of the old

(R.16)	LPML – now Article 32 under the new AML Law - to clarify in particular paragraph (3) and its application regarding the appointment of the 'authorised person' and the application of internal controls as required under the law for obliged small entities and natural persons – considering further that these provisions have been retained in the new law with specific provisions in this regard to the legal and accountancy professions. It is recommended that the Law be clarified and that the FID carries out a monitoring exercise on its application and, where necessary, imposes the relevant sanctions as provided by the Law. • it is highly recommended that DNFBPs are made more aware of their important role in the AML/CFT regime through guidelines and training thus ensuring that, in understanding their role better, DNFBPs acknowledge and implement their AML obligation further.

4.3 Regulation, supervision and monitoring (R.24-25)	• Legislation should be introduced to:
	  • define the basis for entity level Ministries of Finance and for the Tax Administration of BD to supervise implementation of AML/CFT requirements by casinos.
	  • prohibit individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding management functions in or being/becoming an operator of a casino.
	  • define the powers of the Chambers of Lawyers, the Chambers of Notaries, and the Associations of Accountants and Auditors at entity level to supervise implementation of the obligations set forth in the new AML Law; establish systems and mechanisms for them to ensure compliance of the respective obligors with the national AML/CFT requirements.
	• An authority should be designated to monitor and ensure compliance of real estate agencies and traders in precious metals and stones with the national AML/CFT requirements.
	• FID and all other competent authorities need to introduce measures aimed at ensuring that obligors DNFBPs have a proper understanding of their obligations under the AML/CFT framework.
	• FID should provide general and specific feedback to DNFBPs incorporating, *inter alia*, statistics on the number of STR-s, information on current ML techniques and trends, as well as information on the decisions and results of the analysis of STR-carried out by the FID.

4.4 Other non-financial businesses and professions (R.20)	• The scope of coverage of preventive measures under both the old and the new AML LAW has been extended to other businesses and professions beyond the FATF

	definition of DNFBPs. Monitoring and supervision mechanisms need to be put in place in order to monitor the implementation of and compliance with requirements for all categories of obligors. • Notwithstanding the measures taken and being taken by the Central Bank, there is a need to intensify the drive to reduce the use of cash and develop further the use of more modern and secure electronic means of settlement. The evaluators welcome the measures taken under the new AML Law through Article 29 limiting cash payments to persons and entities other than those under Article 4 of the Law to €15,000. However, the evaluators do not consider this to be an overarching policy for setting up the strategy for reducing the use of cash. In this regard it is recommended that the Central Bank develop and document an overarching strategy to reduce the use of cash
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• It is only in the new AML Law that the BiH legal framework attempts to provide a definition of beneficial ownership. However there is no express requirement for the registration courts, while registering a business entity, to identify and keep data on the beneficial ownership and control of legal persons. Thus, it is recommended that such provisions should be in place in order to ensure direct access to updated and accurate data which reflects the real situation, as ensured by Article 15 of the new AML Law. • It is recommended that the updating of the Main Book of Registration at the Courts is done in a timely manner for all legal persons including shareholding companies with effective, proportionate and dissuasive sanctions for late filing. • It is recommended that the obliged entities apply Articles 10 and 15 of the new AML Law better and verifies information through other public registers such as the Register of Securities. • There are concerns regarding the viability of the inter-linked electronic database of the Main Book of Register as the data started to be uploaded only in January 2008 and there are still legislative initiatives concerning the electronic signature, business, etc. Thus it is recommended that all necessary measures be undertaken in order for the inter-linked (single) electronic registry to become fully operational. • It remains unclear whether foreign legal person that allow bearer shareholding can be shareholders in another legal person registered in Bosnia and Herzegovina. It is

	recommended that the authorities consider clarifying this issue in the relevant company registration procedures.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• No recommendations
5.3 Non-profit organisations (SR.VIII)	• No review of the adequacy of the relevant laws and no outreach has been undertaken by the authorities in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes. However, considering the existing risk, based on the concrete cases where NPOs have been involved in financing of terrorism activities and current on-going investigations of suspicious NPOs, the authorities should undertake a comprehensive review to assess the adequacy of the national legal framework related to NPOs, identifying the features and types of NPOs (activities, size) that are at risk of being misused for terrorist financing and implement measures to raise awareness of the NPOs about the risks and measures available to protect them against such abuse. • The statistics on the number of the existing NPOs in BiH are not accurate enough, considering the lack of a clear mechanism on the reciprocal recognition of associations and foundation and the possibility that certain NPOs are registered, for example, at the entity and state level and counted twice. The authorities should undertake appropriate measures for avoiding double/triple registration and counting of NPOs and improving the mechanism of reciprocal recognition of associations and foundation. • There is no single Register of non-profit organisations, as is the case with churches and religious communities, and the authorities should consider introducing such a centralised register for the above mentioned purposes. Also, considering the very limited number of NPOs that decide to be registered at the state level, measures should be undertaken in order to clarify the specific of state and entity registration, advantages of state registration, etc.. • In order to enhance the effective oversight of NPOs the legal provisions regulating the NPO sector should expressly appoint a competent authority to supervise the activity of NPOs. Inspections of NPOs' activity should not only be carried out for tax purposes, but be focused as well on verification if the funds have been spent in a manner consistent with the purpose and objectives of the NPOs. Furthermore, the NPOs' reports on activity, including the financial reports should be required to be sufficiently detailed in order to cover this information. • There should be express legal provisions requiring that the business records of the NPOs are kept for at least five

	years. • The national cooperation and information exchange between all agencies involved in the investigation of predicate offences, ML and FT cases, at the entities, BD and state level should be improved.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• The establishment of the Working Group is a welcome positive initiative. However, the evaluators note that there are mixed views and opinions on the structure and effectiveness of the work of the Group. Indeed the evaluators noted that at times the Working Group was only mentioned because the matter was raised by them with some of the Group's representatives. There appears to be some elements of 'tension' in the Group. It is strongly recommended to address these matters for the Working Group to become more efficient and effective in its work as the evaluators are of the opinion that the Working Group is an important component of the whole system. • The establishment and operation of the working group are an important step towards enhancing inter-agency cooperation in BiH and in coordinating between competent authorities domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. However, the working group is not and should not be regarded as a replacement for actual case by case inter-agency cooperation. • The focus of the working group should be in setting a national strategy for combating AML/CFT and improving the actual exchange of information between all competent authorities horisontally and vertically thus enhancing the systems capabilities in achieving measurable results in law enforcement (ML indictments forfeiture etc.). • The coordination role of the Central Bank with the respective Banking Agencies is also a very important element in the system, particularly to ensure harmonisation not only in prudential supervision but also in matters related to AML/CFT supervision and compliance. Again the evaluators could sense wide divergent views from the Central Bank in looking at banking supervision being applied at State level and the views of the respective Banking Agencies who believe otherwise. The evaluators recommend that irrespective of the outcome of any decision on the consolidation of prudential supervision, the current structure under the MoU in relation to AML/CFT issues should continue to be applied and strengthened to be more effective.
6.2 The Conventions and UN	• The same comments as are made above in relation to

Special Resolutions (R.35 & SR.I)	implementation of the respective Conventions (especially the Terrorist Financing Convention) and the UN Security Council Resolutions apply here (See section 2.1. above)
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• The identified legal deficiencies in the criminalisation of ML and TF may have a negative impact on providing MLA in an effective manner and need to be addressed (See Sections 2.1 & 2.2 above). • The authorities of BiH should consider enabling rendering MLA in absence of dual criminality, in particular for less intrusive and non compulsory measures. • Bearing in mind the direct co-operation between the Ministry of Justice of BiH and the national judicial authorities, there should be in place clearer rules for acting in cases of conflict of jurisdiction between the entity/district and state level. • Although there are no legal impediments for rendering MLA in cases involving fiscal matters or necessity of disclosure banking secrecy, BiH authorities should undertake all necessary measures to ratify the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters and to address the practical problems concerning the banking secrecy raised by the prosecutors. • Considering the initiatives of BiH authorities, further steps should be undertaken for establishing a mechanism in order to avoid conflicts of jurisdiction. • The BiH authorities should consider the establishment of an asset forfeiture fund. • Certain shortcomings related to the confiscation regime (see section 2.3 above) can represent impediments to the effective provision of MLA in this area and need to be addressed. • Bearing in mind that only 56,6% of the positions in the Sector of International and Inter-entity Legal Assistance and Co-operation are filled and that a part of the staff has no higher education, BiH authorities should address the staffing problems and assess the qualification of the personnel working within the sector. • The BiH authorities made some efforts aiming at the training of judges and prosecutors in international legal assistance by elaborating two publications on International Assistance and organising seminars in this area. However, a more comprehensive training programme is needed. • The BiH authorities should keep annual accurate and detailed statistics on all MLA and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time

	required to respond.
6.4 Extradition (R.39, 37 & SR.V)	• The BiH authorities should address the concerns of certain states related to MLA - problems which occurred when the entity level authorities were involved and which could lead to a risk that MLA will not be rendered – in order to ensure that MLA is provided in a timely, constructive and effective manner. • Further steps should be undertaken in order to solve the problems related to the issue of dual citizenship. In cases of non-extradition of own citizens, the BiH authorities should make sure that internal criminal proceedings are instituted efficiently and in a timely manner. • BiH should address the identified legal deficiencies in criminalisation of ML and TF including, among others, that all designated categories of offences be covered by the criminal legislation to ensure that dual criminality requirements do not represent an obstacle for extradition. This particularly refers to the fact that market manipulation is, as mentioned above, not a criminal offence in the law of Brčko District. • The BiH authorities should address the staffing problems and assess the qualifications of the personnel working within the Sector of International and Inter-entity Legal Assistance and Co-operation and develop a comprehensive training programme of judges and prosecutors in international legal assistance domain. • It is recommended that the agreements with Croatia and Montenegro are ratified as soon as possible.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• It is recommended that the authorities develop and maintain appropriate statistics in order to assess the effectiveness of the system. Such statistics should be reviewed regularly and necessary action taken to ensure that the system is operating effectively
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• See the recommendations relating to the other recommendations above.
7.2 Other relevant AML/CFT measures or issues	• No recommendations
7.3 General framework – structural issues	• No recommendations

Table 3: Authorities' Response to the Evaluation (if necessary)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE EU AML/CFT DIRECTIVE

Bosnia and Herzegovina is not a member country of the European Union. Notwithstanding, at the time of the evaluation, Bosnia and Herzegovina informed that a new anti-money laundering and financing of terrorism law was in draft form implementing **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: "Directive") and the **Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.**

Bosnia and Herzegovina informed that the new Law on the Prevention of Money Laundering was enacted soon after the on-site evaluation visit was completed. As the new law came in force after the onsite visit the following comments will refer to the old law for the purposes of supporting the findings of the onsite visit. However, where these findings have been addressed by the new LPML this will be taken into consideration in the analysis and the conclusion as this report does not allocate ratings. It must be mentioned that concerns on the effectiveness of the system remain despite the fact that legal provisions have been enacted and are in force.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations. Please complete the description and analysis beneath and return to the Secretariat with the full completed questionnaire.

1.	**Self Laundering**
Directive	Self laundering is not explicitly addressed by the Directive but is not excluded from its scope.
FATF Rec.1	Countries may provide that the offence of money laundering does not apply to persons who committed the predicate offence, where this is required by fundamental principles of their domestic law.
Key elements	Is self laundering provided for?
Description and Analysis	According to the Ministry of Justice of Bosnia & Herzegovina it is judicial practice that the criminal offence of money laundering cannot be considered as having been committed by the perpetrator of the predicate crime offence. Article 209 of the Criminal Code of Bosnia and Herzegovina is not clear on this issue: **Article 209** (1) Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other activity, otherwise conceals or tries to conceal money or property he knows was acquired through perpetration of criminal offence, when such a money or property is of larger value or when such an act endangers the common economic space of Bosnia and Herzegovina or has detrimental consequences to the operations or financing of institutions of Bosnia and Herzegovina, shall be punished by imprisonment for a term between six months and five years. (2) If the money or property gain referred to in paragraphs 1 of this Article exceeds the amount of 50.000 KM, the perpetrator shall be punished by imprisonment for a term between one and ten years. (3) If the perpetrator, during the perpetration of the criminal offences

	referred to in paragraphs 1 and 2 of this Article, acted negligently with respect to the fact that the money or property gain has been acquired through perpetration of criminal offence, he shall be punished by a fine or imprisonment for a term not exceeding three years. (4) The money and property gain referred to in paragraph 1 through 3 shall be forfeited. In three of the four different Criminal Codes, it is not covered explicitly whether the offence of money laundering applies to persons who commit the predicate offence. The only exception is the CC-RS which contains a specific paragraph for the criminalization of the laundering of own proceeds in Art. 280(2) *(2) If the perpetrator referred to in Paragraph 1 of this Article is at the same time an accessory or accomplice in the criminal offence that resulted in obtaining money or property gain referred to in the preceding Paragraph, he shall be punished by imprisonment for a term between one and eight years.*
Conclusion	It appears, according to the Ministry of Justice, that it is only through judicial practice that self-laundering will not be prosecuted.
Recommendations and Comments	If this is the case, then the authorities of Bosnia and Herzegovina may wish to consider providing a legal basis to this 'practice'. The examiners therefore advise that for consistency purposes the state-level incrimination as well as those in the Federation and Brčko District should expressly include "own proceeds" laundering or, at least, appropriate guidance should be given to practitioners in this respect in all the three jurisdictions where self-laundering is not explicitly covered by law (especially in the Federation and Brčko District where there is no relevant judicial practice either).

2.	**Corporate Liability**
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF Rec.2 and Rec.17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply. This includes where a legal person covered by the Recommendations fails to comply with anti-money laundering or terrorist financing requirements.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
Description and Analysis	According to Article 10 of the Criminal Code of Bosnia and Herzegovina, the criminal legislation of Bosnia and Herzegovina shall be applied to legal persons pursuant to Chapter XIV (*Liability of Legal Persons for Criminal Offences*) of this Code and other laws of Bosnia and Herzegovina. Article 123 of the Criminal Code holds domestic and foreign legal persons liable for criminal offences perpetrated within the territory of Bosnia and Herzegovina. Domestic and foreign legal persons shall also be held liable for a criminal offence perpetrated outside the territory of Bosnia and Herzegovina if the legal person has its seat in the territory of Bosnia and Herzegovina or if it carries out its activities in the

	territory of Bosnia and Herzegovina, or if the offence was perpetrated against the State of Bosnia and Herzegovina, its citizens or domestic legal persons. According to the Criminal Code a domestic legal person shall also be liable for a criminal offence perpetrated outside the territory of Bosnia and Herzegovina against a foreign state, foreign citizens or foreign legal persons, subject to the conditions referred to in Article 12 (*Applicability of Criminal Legislation of Bosnia and Herzegovina for Offences Perpetrated Outside the Territory of Bosnia and Herzegovina*) of this Code. As to the criminal liability of legal persons for infringements of the AML/CFT obligations this is inferred from the Law on the Prevention of Money Laundering of May 2004. Articles 39 and 40 of Section VIII on Penalty Provisions of the old LPML distinguish between penalties that may be imposed on legal persons and those that can be imposed on natural persons for specified infringements of the preventive obligations under the Law. These provisions have now been transposed into Articles 72 and 73 of the new LPML.
Comments	Bosnia and Herzegovina recognizes the liability of legal persons for committing the act of money laundering and for offences of non-compliance with the preventive measures under the Law on the Prevention of Money Laundering and provides for sanctions accordingly.
Recommendations and Comments	

3.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF Rec.5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	According to Article 7(2) of the old Law on the Prevention of Money Laundering of May 2004, when a person under obligation opens an account for a client or establishes a business relationship with a client, the person under obligation shall at the same time identify the client. This requirement is echoed in the Laws on Banks of both the Federation of Bosnia and Herzegovina (Article 47) and the Republic of Srpska (Article 101) and in their respective Decisions on Minimum Standards for Banks' Activities on Prevention of Money Laundering and Terrorism Financing, (Article 9). This requirement is now transposed into Article 6 of the new LPML requiring identification of the applicant for business before establishing the business relationship. However, in the 2005 Evaluation Report the evaluators noted that Article 28 of the Law on Foreign Exchange Transactions of FBiH allows banks to open and keep savings deposits in bearer form but denominated in foreign currency for resident legal persons and non-resident natural persons. Such funds may be freely used for payments abroad.

	Although in the old LPML there is no specific prohibition for the opening of accounts under fictitious names or for 'numbered' accounts, in the new LPML Article 27 now requires liable persons not to open, issue or have secret accounts, signatory savings books, or savings books of the carriers or other goods that enable, directly or indirectly, hiding the clients identity. As indicated under the 'Key elements' above, both the FATF Recommendations and the European Union Third AML Directive accept the opening of numbered accounts – with EU Directive even accepting accounts in fictitious names – provided that the full CDD is still applied. Hence, any requirement in the law for financial institutions to identify the customer before opening an account would not necessarily mean that an account cannot be opened under a fictitious name or as a numbered account since the customer due diligence, including identification procedures, would still have been applied and hence would be available to the institution.
Conclusion	Despite the provisions of the law for customer identification there may still be the possibility of opening numbered accounts or accounts in fictitious names.
Recommendations and Comments	It is recommended that, if the authorities of Bosnia and Herzegovina want to further prohibit banks from opening numbered accounts or accounts in fictitious names, then the specific prohibition in the new LPML under Article 27 needs to be revised to that effect.

4.	**Threshold (CDD)**
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to EUR 15 000 or more.
FATF Rec.5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions of EUR 15 000 covered?
Description and Analysis	In accordance with Article 7 of the old Law on the Prevention of Money Laundering – now Article 6 of the new LPNL - an obliged person or entity shall conduct the identification requirements when the client carries out a 'transaction' of, or several connected transactions that in aggregate amount to, KM30.000 or over. In terms of the old LPML the term 'transaction' means the opening of an account; the deposit or withdrawal of cash as defined in the Law; transfer of funds between accounts; exchange of currency; the sanctioning of loans or the extension of credit; the purchase or sale of any share, stock, bond, certificate of deposit, or other monetary instruments or investment security; transactions in real estate or any other payment, transfer, or delivery by, through or to a natural or legal person referred in Article 3 (obliged entities)of the Law, by whatever means. Under the new LPML the term 'transaction' has been given a less comprehensive meaning *any type of receiving, keeping, exchanging, transferring, using or other way of handling money or property by liable persons.* The new law has also introduced a definition of 'cash transaction' as being *each transaction in which a person under obligation physically receives the cash money from/to a client.* Although with these two definitions and with the requirement to undertake CDD when 'a transaction of 30,000 KM or over is conducted' there may arise

	doubt as to whether the undertaking of a cash transaction actually calls for the obligation to undertake CDD, the requirement remains for the amount of 30,000 KM or over.
Conclusion	Bosnia and Herzegovina appears to comply with the requirements under the EU Third AML Directive, although there are doubts on the applicability to cash transactions.
Recommendations and Comments	The BiH authorities may wish to revisit the definition of 'transaction' in the new LPML to clearly incorporate also 'cash' transactions as further defined in the Law.

5.	**Beneficial Owner**
Art. 3(6) of the Directive	The definition of 'Beneficial Owner' establishes minimum criteria where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF Rec.5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
Key elements	The country follows which approach in its definition of "beneficial owner"?
Description and Analysis	The old LPML does not provide a definition of 'beneficial owner'. Indeed the concept of 'beneficial owner' is not explicitly recognised. Article 8(13) of the old LPML makes some reference to shareholders where the customer is a legal person by requiring obliged entities to obtain the name, surname, permanent address, date and place of birth of each natural person, who indirectly or directly owns at least 20% of the business share, stocks or other rights, and on which grounds he or she participates in the management of the legal person or the funds thereof. Articles 9 and 10 of the old LPML continue to carry forward this obligation for transactions with legal persons. Article 10 of the old LPML further requires that a person under obligation, when obtaining the information on foreign legal persons under circumstances as established by the Law, shall in all cases when another legal person is the direct or indirect owner of 20% of the businesses share, stocks or other rights of the legal person, obtain the information referred in Article 8, paragraph 1, item 13 of the old LPML for this other legal person. All these requirements have been retained under the new LPML which, however, now includes a definition of "real owner" (beneficial owner). The definition basically captures (i) the person on whose behalf a transaction is undertaken; (ii) a natural person who directly or indirectly holds 20% or more of the business rights of a legal person; (iii) a natural person who indirectly provides funds to the legal person and therefore participates in the decision making. The new LPML further attempts to give a definition of beneficial owner of a foreign legal person which is different to that for what appears to be the definition for the beneficial owner of a domestic legal person. It appears that BiH is adopting this definition for a foreign beneficial owner on the basis of the definition under Article 3 of the EU Third AML Directive for other legal entities such as 'foundations', or legal arrangements such as 'trusts' – the latter concept not being recognised under the BiH laws.

	Some further requirements can be found in the Decisions on Minimum Standards issued respectively by the Banking Agencies of the Federation of Bosnia and Herzegovina and the Republic of Srpska. Under these Decisions banks are required to implement efficient procedures for the identification of the actual beneficiary or owner of an account and, in doing so, to obtain satisfactory proof of identity of every intermediary, trustee and nominee. For certain types of legal persons, such as international business companies, banks are required to pay special attention to understanding the control and management structure; to determine the sources of funds and to identify the owners or individuals actually controlling the funds. Finally, there are no further requirements for the insurance and the securities sectors other than what is provided for in the AML Law.
Conclusion	The definition of "real owner" under the new LPML goes slightly beyond the FATF definition but falls short of covering the detailed definition under the EU Directive.
Recommendations and Comments	The BiH authorities may wish to revise the definition accordingly.

6.	**Financial activity on occasional or very limited basis**
Art. 2(2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Article 3 paragraphs (1) or (2) of the Directive. Article 4 of Commission Directive 2006/70/EC further defines and provides technical criteria for this provision.
FATF Recommendations concerning financial institutions – Glossary.	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially. (Methodology paragraph 20; Glossary to the FATF 40+9 Recommendations.)
Key elements	Does the country implement Article 4 of the Commission Implementation Directive 2006/70/EC?
Description and Analysis	The old LPML does not recognize the risk based approach concept under any circumstances, except in some prescribed instances and this only limited to the application of the identification procedures. The Law therefore does not provide for any circumstances as defined under Article 4 of the Commission Implementation Directive whereby financial activities carried out on an occasional or limited basis where the risk of money laundering or the financing of terrorism is low could be excluded from the requirements of the Directive. The position remains the same under the new LPML, even though it has introduced a risk based approach but this only in relation to identification procedures.
Conclusion	It is difficult to conclude that Bosnia and Herzegovina has in place or that it has considered an overarching strategy to prevent money laundering and terrorist financing Hence all possible entities have been included under the scope of coverage with no possible assessments for low-risk

	cases.
Recommendations and Comments	Although the adoption and implementation of Article 2(2) of the EU AML Third Directive is optional it does not appear that the non-inclusion of such provisions in the current Law on the Prevention of Money Laundering of Bosnia and Herzegovina was intentional. The BiH authorities may wish to take note for any future revisions to the new LPML and the further development of the risk based approach by the industry.

7.	**Simplified CDD**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF Rec.5	Although the general rule is that customers be subject to the full range of CDD measures yet, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Article 3 of Commission Directive 2006/70/EC which goes beyond criterion 5.9?.
Description and Analysis	Although reduced customer due diligence is an option under the Directive, with some instances being more mandatory in nature, and notwithstanding, that the old LPML does not provide for a risk based approach, yet the law does provide for some of those instances where the Directive requires Member States to apply reduced or simplified measures – however by completely exempting them from identification procedures. Thus, for example, certain insurance products are exempted whilst under Article 7(8) of the old LPML, identification of a client shall not be required if the client is: 1. An authority of Bosnia and Herzegovina, the Federation, the RS or the District or an organization with public authorization; 2. A bank, insurance company and natural and legal persons brokering in the sale of insurance policies and investment and mutual pension companies and funds whatever the legal form with headquarters or parent institutions in a member country of the European Union or in a country which, according to information from the FID, international organizations and other competent international bodies, meets internationally accepted standards for the prevention and detection of money laundering and funding terrorist activities and is designated as such a country by the Minister. The new LPML however, in introducing a risk based approach, has retained the above instances and included a third: 3. Client that was placed by a liable person into a group of clients with low risk level. Moreover under the new LPML the above are not totally exempted for the purposes of the application of CDD measures but are only subject to simplified identification and tracking. Article 25 of the new LPML then provides the simplified measures that are to be applied for these circumstances.
Conclusion	Bosnia and Herzegovina has introduced a CDD risk based approach and

	adopted some instances where reduced or simplified CDD may be applied. However it has not adopted a full simplified CDD approach as defined under the EU Directive.
Recommendations and Comments	Simplified customer due diligence is an option and is not mandatory under the EU Directive, except with respect to banks from EU Member States and equivalent countries. Hence it remains an option for the BiH authorities whether they wish to consider further application of the simplified risk based approach in accordance with the EU Directives.

8.	**PEPs**
Art. 3(8) and Art. 13(4) of the Directive	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of ceasing to be entrusted with prominent public function (Art. 2(4)).
FATF Rec.6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public function in a foreign country.
Key elements	Did your country implement Article 2 of Commission Directive 2006/70/EC, in particular Article 2(4), and does it apply Article 13(4) of the Directive?
Description and Analysis	The old LPML does not recognise the concept of politically exposed persons and hence does not provide a definition to this terminology. The only implicit reference to politically exposed persons (PEPs) can be found in Article 10 of the Decisions on Minimum Standards of the Banking Agencies of the Federation and the Republic respectively. Thus in cases where persons known to be rich individuals or persons occupying high important public functions submit requests for account opening, banks are required to fully implement all procedures for customer identification and customer documentation and are also required to implement the same process to companies related to the mentioned. There are no references to PEPs in any regulation or other document related to the insurance sector or the securities markets. Finally there are no provisions guiding the industry on action that it can take following that a person that had been identified is no longer a PEP. The new LPML now provides for a definition of 'foreign' politically exposed persons under Article 22 in defining the intensified identification measures that are to be applied for such persons. A 'foreign' politically exposed person is defined very close to the definition adopted under the EU Directive – but see comments below. Article 22 of the new LPML further provides for the measures to be applied where a customer is identified as PEP. Such measures respect very closely the provisions of Article 13(4) of the EU Third AML Directive. However, in trying to capture the provisions of Article 2(4) of the EU Implementation Directive, Article 22 of the new LPML may have created an anomaly as the definition may lend itself to different interpretations. In defining a foreign PEP, paragraph (2) of Article 22 states: *A foreign politically exposed person mentioned in paragraph 1 of this Article stands for any natural person who is or was assigned with significant public function during the previous year including the closest family members and close associates.* The words *is or was assigned.... during the previous year* may be

	interpreted that that person must have been given such responsibilities during the previous year. Article 2(4) of the EU Implementation Directive refers to persons who ceased to occupy such a position for a period of at least one year.
Conclusion	Although Bosnia and Herzegovina has adopted a definition of politically exposed persons (PEPs) such definition may not entirely cover the definition provided in the EU Third AML Directive.
Recommendations and Comments	The BiH authorities may wish to consider the above and revise the definition accordingly.

9.	**Correspondent banking**
Art. 13(3) of the Directive	Concerning correspondent banking, Article 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF Rec.7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Article 13(3) of the Directive?
Description and Analysis	The provisions in the relevant Decisions on Minimum Standards only refer to the due diligence procedures for correspondent banking relationships with correspondent (not respondent) banks that operate in countries where they are adequately supervised.
Conclusion	It does not appear that Bosnia and Herzegovina has given consideration to the issue of external or internal borders as it is not an EU Member State and therefore the obligations for enhanced customer due diligence applies to banks from all jurisdictions.
Recommendations and Comments	The obligations under the EU Directive as regards the EU borders are only applicable to Member States.

10.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13(6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favour anonymity.
FATF Rec.8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity [...].
Key elements	The scope of Article 13(6) of the Directive is broader than that of FATF Rec. 8, because the Directive focuses on products or transactions regardless of the use of technology. Are these issues covered in your legislation?
Description and Analysis	In the course of the onsite visit, in the light that the old LPML did not provide for such measures or obligations, the evaluators had been informed that the use of electronic means for the provision of financial services was low. The evaluators were of the view that the requirement under the EU Directive goes beyond the use of technology but refers more to product types and transactions. Indeed, one such product could very well be shares in legal persons as, according to Article 216 of the Law on Enterprises of the Republic of Srpska, these could be issued payable to bearer.

	The evaluators therefore welcome the new provisions under Article 5 of the new LPML where 'liable persons' are now required to make a risk assessment to determine the risk level not only of their clients but also of *transactions* and *products* and their possible misuse for the purposes of money laundering or terrorism financing.
Conclusion	Bosnia and Herzegovina complies with Article 13(6)
Recommendations and Comments	

11.	**Third Party Reliance**
Art. 15 of the Directive	The Directive allows financial institutions to rely for CDD performance on third parties from EU Member States or third countries under certain conditions and categorised by profession and qualified.
FATF Rec.9	Allows reliance for CDD performance by third parties but does not categorise obliged entities and professions.
Key elements	What are the rules for procedures for reliance on third parties? Are there special conditions, categories, etc.?
Description and Analysis	The old LPML does not specifically allow or prohibit financial institutions from relying on third parties to undertake on their behalf parts of the CDD process. Indeed the authorities of Bosnia and Herzegovina claim that in practice this does not happen. However, Article 12 of the old LPML allows the identification of a client "in his absence" under prescribed conditions, with Article 22 of the Book of Rules on Data and Information then imposing certain prudential requirements on obliged entities to collect all information, documentation and data for such clients as is required under the law. Moreover, Article 21 of the old Book of Rules on Data and Information further allows a person under obligation to perform an independent review of non-face-to-face clients by a "reputable third party", such as a company specialised in due diligence reviews of clients. Article 21 is then reflected in Item 3.6 of Article 10 of the relevant Decisions on Minimum Standards of the respective Banking Agencies. Article 17 of the new LPML is now more specific in allowing a 'liable person' to rely on a third party for undertaking parts of the CDD process when establishing the identity of the client and / or the beneficial owner (real owner). Prior to undertaking such reliance a 'liable person' is obliged to ensure that the third party meets conditions prescribed by the BiH LPML while retaining responsibility for the process.
Conclusion	It is now clear under the new LPML as explained above that the law allows financial institutions and other 'liable persons' to rely on third parties for parts of the CDD process. The new LPML however does not provide for reliance by categorisation of 'liable persons'.
Recommendations and Comments	As such therefore, there are no provisions qualifying the procedures for this reliance. As such any 'liable person' can rely on any other counterparty for undertaking CDD measures. The Bosnia and Herzegovina authorities may wish to reconsider whether to provide for a generic reliance (reliance on all obliged entities under the Law) as is

	currently provided under the law; a qualified limited reliance (reliance for example on credit institutions only); or a categorised structure of obliged entities and professions as provided for in the EU Directives.
12.	**Auditors, accountants and tax advisors**
Art. 2(1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF Rec.12	CDD and record keeping obligations: 1. do not apply concerning auditors and tax advisors; 2. apply for accountants when they prepare for or carry out transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (criterion 12.1 d).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by the FATF criterion 12.1(d). Please clarify the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	Under Article 3 of the old LPML lawyers, accountants, auditors and legal or natural persons are recognised as being obliged persons for the purposes of the Law when carrying out activities as prescribed in Article 4 of the Law. Article 4(1) establishes the activities as defined by the FATF for lawyers, law firms and their staff. However, with regards to the accountancy profession, paragraph 2 of Article 4 establishes that accountants, auditors, audit and accountancy firms and their staff, and legal or natural persons performing an audit function or performing accountancy services on behalf of a client, shall comply with the provisions of this Law when acting in the exercise of their professional activities. Tax advisors however remain outside the scope of the old Law. The new LPML however has made some changes to the way the accountancy profession – now including tax advisors - is recognised under the law as a 'liable person'. The new law has introduced a new Section VI dealing exclusively with the obligations of the legal and accountancy profession under the LPML. Article 39 of the law established the circumstances under which the legal profession is subject to the provisions of the law i.e. when acting in cases as is also defined under the EU Directive. However when applying the CDD and reporting obligations to both professions, in the case of the accountancy profession the law does not specify the application of CDD measures in circumstances as defined in Article 39. Hence the accountancy profession is obliged to CDD requirements when performing auditing or accounting services. On the other hand under Article 41 the accountancy professions is required to report suspicious

	transactions when acting in the circumstances as defined under Article 39 i.e. in the circumstances as applied to the legal profession.
Conclusion	The new Law on the Prevention of Money Laundering of Bosnia and Herzegovina seems to be creating an anomaly on the way the accountancy professions is made subject to the obligations under the law. Whereas it appears that the accountancy profession is obliged to undertake CDD when carrying out it professional activity, yet the profession is required to report suspicious transactions only when acting in circumstances as defined for the legal profession under Article 39 of the law.
Recommendations and Comments	It is recommended that the position of the accountancy professions in its obligations under the new LPML be revised and clarified.

13.	**High Value Dealers**
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR15,000 or more.
FATF Rec.12	The application is limited to dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	Under Article 3(2) the old Law on the Prevention of Money Laundering includes legal and natural persons as obliged entities within the scope of the Law when trading with works of art, boats, vehicles and aircraft. Article 7(6) requires that legal and natural persons performing activities of organizing or executing auctions or trading with works of art, boats, vehicles or aircrafts to conduct the identification of their clients when carrying out a transaction or several connected transactions of KM30.000 (Euro15,000) or more. The obligation within the scope of the AML Law therefore although being broader than the obligation in terms of the FATF standard, yet it falls short of the obligation under the EU Third AML Directive in that the scope is limited to the broader activities as listed. The position has remained the same under the new LPML. However the new law has now introduced an element of prohibition of receipt of payment in cash for amounts of 30,000 KM or more for trading persons and entities that are not identified as 'liable persons' under the law. This infers that the obligation for such 'liable persons' under the law is indirectly linked to cash payments.
Conclusion	Although the implication is that the identification process is triggered for cash transactions for this category of 'liable persons', yet the law is not as broad as the EU Directive and imposes the obligations on a specific category of traders and not all traders receiving payment in cash.
Recommendations and Comments	It appears that the BiH authorities may have given due consideration to this element as is indicated by the introduction of Article 29 of the new law imposing cash payment restrictions to the limit of 30,000 KM on all traders with the exception of those identified as 'liable persons under the law.

14.	Casinos
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR2,000 or more. This is not required if they are identified at entry.
FATF Rec.12	The identity of customers has to be established and verified when they engage in financial transactions equal to or above EUR3,000.
Key elements	In which situations do customers of casinos have to be identified? Bearing in mind that the Directive transaction threshold is lower, what is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	Under paragraph (7) of Article 7 of the old LPML, a casino, gaming houses and other organizers of games of chance and special lottery games shall be required to identify a customer when conducting a transaction of KM5,000 (EUR2,500) or more. Although the Law does not refer to 'financial transactions' yet the definition of the word 'transaction' in the Law denotes that the reference is to a 'financial' transaction: "Transaction" means account opening, deposit, withdrawal, transfer between accounts, exchange of currency, loans, extension of credit, purchase or sale of any share, stock, bond, certificate of deposit, or other monetary instruments or investment security, real estate or any other payment, transfer, or delivery by, through or to a natural or legal person referred in Article 3 of this Law, by whatever means. It follows therefore that at least identification has to be established when there is an 'exchange of currency' for amounts of KM5,000 (Eur2,500) or more – being a stricter threshold than under the FATF relevant standard under Recommendation 12. Article 8(1)(3) of the old LPML further requires that the identification record to be retained for the purposes of the Law shall include the name, surname, permanent address, date and place of birth and the personal identity number of the natural person who is establishing a business relationship, enters the establishment of a casino, gaming house or other concessionaire for special lottery games or conducts a transaction, or of the natural person on whose behalf the business relationship is being established or the transaction is being carried out, and the name of the authority that issued the official personal identification document. It appears therefore that under the old LPML of Bosnia and Herzegovina the identification of a customer entering a casino shall be such that it can be linked to the identification of the same customer when carrying out a 'financial' transaction of KM5,000 (EUR2,500) or more. These provisions have been retained under Article 14(c) and Article 44(1)(c) respectively of the new LPML and therefore the position remains the same. However the new LPML has changed the definition of a 'transaction' while including a separate definition for a 'cash transaction': "Transaction" means any type of receiving, keeping, exchanging, transforming, using or other way of handling money or property by liable persons.

	"Cash transaction" is each transaction in which a person under obligation physically receives or gives cash money from/to a client." Without going into the merits of the need of these two definitions, the evaluators are of the opinion that both definitions still capture the definition of a "financial transaction".
Conclusion	The identification requirements under the Law on the Prevention of Money Laundering of Bosnia and Herzegovina for casinos and other gaming houses is comprehensive, covering identification both at entrance and at transaction level. The application of these requirements in practice has been confirmed to the evaluators by the representatives of the only casino in Bosnia and Herzegovina which operates in Sarajevo. The AML Law therefore is in compliance with the EU Third AML Directive in this regard – except for the transaction value which for the purposes of the BiH law is established at Euro 2,500, being higher than that required by the EU Directive.
Recommendations and Comments	The BiH authorities may wish to consider the lowering of the transaction threshold in line with the EU Directive.

15. Reporting of accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU	
Art. 23 (1) of the Directive	Option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body that shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Article 23(1) of the Directive?
Description and Analysis	Article 13 of the old Law on the Prevention of Money Laundering – now Article 30 under the new LPML - requires that a person under obligation shall be obliged to forward to the Financial Intelligence Department such information as is required under the Law for the purposes of identification of persons or transactions regarding: • A transaction, client or person that is suspicious; • A cash transaction of 30.000 KM or more; • Connected cash transactions which together amount 30.000 KM or more. There are no further provisions for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to file their suspicious or cash transaction reports to any authority other than the Financial Intelligence Department.
Conclusion	Bosnia and Herzegovina has not made use of this option and required reporting directly to the FID.
Recommendations and Comments	

16. Reporting obligations	
Art. 22 and 24 of the	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing

Directive	(Article 22). Obliged persons are to be required to refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report to the FIU which can stop a transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report accordingly to the FIU (Article 24).
FATF Rec.13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or that they may be related to terrorist financing.
Key elements	What triggers a reporting obligation? Is there a legal framework addressing Article 24 of the Directive?
Description and Analysis	Under Article 13 of the old LPML – now Article 30 under the new LPML - an obliged entity or person is required to file a report with the Financial Intelligence Department when there is a suspicion of money laundering or the financing of terrorism. In such cases an obliged person is required to forward the relevant information, data and documentation to the Financial Intelligence Department immediately when the suspicion arises and before the transaction is completed and shall state the period during which the transaction is expected to be executed. However, if an obliged person, due to the nature of the transaction or because the transaction was not completed or due to other justifiable reasons, cannot forward to the Financial Intelligence Department such information, it shall be obliged to forward the information, data and documentation to the Financial Intelligence Department as soon as possible or immediately after suspicion of money laundering or funding of terrorist activities was raised, explaining why action was not taken immediately. This is the closest that the law gets in transposing Article 24 of the EU Third Directive. There is no obligation for an obliged person to refrain from carrying out the transaction once it has been reported. Moreover, under Article 18 of the old LPML – now Article 48 under the new LPML - and in order to perform its duties according to the provisions of the Law, the Financial Intelligence Department may issue a written order temporarily suspending a transaction or transactions for 5 working days at most, if the Department suspects money laundering or funding of terrorist activities in connection with a transaction, an account or a person.
Conclusion	The provisions under the Law on the Prevention of Money Laundering of Bosnia and Herzegovina are broadly in compliance with those under the EU Third AML Directive in so far as the reporting obligation is concerned but they fail to address refraining of execution of reported transactions.
Comments and Recommendations	The BiH authorities may wish to eventually give consideration to the clarification of the provisions of Article 24 of the EU Third Directive as partially and limitedly transposed in the new legislation

17.	**Protection of Employees**
Art. 27 of the Directive	Article 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.

FATF Recommendations	There is no corresponding requirement except for the protection of directors, officers and employees who shall be protected by legal provisions from criminal and civil liability for reporting suspicious transactions to the FIU – this being however the counterpart to Article 26 of the Directive.
Key elements	Is Article 27 of the Directive implemented?
Description and Analysis	Under Article 22 of the old LPML, if the FID considers that there are grounds for suspicion of a criminal offence in connection with a transaction or person it shall notify in writing and submit the necessary documentation to the prosecutor. However, in doing so, the FID is prohibited by law from providing details and information about the employee or employees of the person under obligation that were involved in forwarding the information or in handling the transaction. These provisions have been carried forward under the new LPML through Article 46.
Conclusion	Bosnia and Herzegovina is in compliance with Article 27 of the EU Third Directive.
Recommendations and Comments	

18.	**Tipping off**
Art. 28 of the Directive	Prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where prohibition is lifted.
FATF Rec.14	The obligation under Rec. 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under what circumstances is the tipping off obligation applied? Are there exceptions?
Description and Analysis	Both the old and the new LPML prohibits an obliged entity or person and its staff from revealing to a client or to a third person the fact that information, data or documentation about a client or transaction has been forwarded to the Financial Intelligence Department or that the Department has, in accordance with the provisions of the Law, temporarily suspended a transaction or that it has given instructions to a person under obligation. Such instances are considered as secret under the law. Both the new and the old law however do not extend this prohibition to where an investigation is being or may be carried out. Likewise both laws do not provide for any exceptions to this prohibition. The Law however does not impose sanctions for breaches of this prohibition.
Conclusion	Bosnia and Herzegovina is not in compliance with the EU Directive.
Recommendations and Comments	It is recommended that the tipping off prohibition be strengthened in any future revisions of the new law in accordance with the EU AML Third Directive.

19.	**Branches and subsidiaries (1)**
Art. 34(2) of the	The Directive requires credit and financial institutions to communicate

Directive	the relevant internal policies and procedures on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF Rec.15 & Rec.22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Article 34(2) of the EU Directive.
Key elements	Is there an obligation as provided for by Article 34(2) of the Directive?
Description and Analysis	Similar to the old LPML, the new Law on the Prevention of Money Laundering of Bosnia and Herzegovina remains silent on the relationship between a financial institution licensed and operating in BiH and its overseas branches and/or subsidiaries. It is only the Decisions on Minimum Standards issued by the respective Banking Agencies of the Federation and the Republic that banks are required to have written and documented internal policies and procedures for the effective implementation of internal controls for the prevention of the risk of money laundering and terrorism financing. Such procedures should be effectively applied to all domestic and foreign branches and subsidiaries.
Conclusion	Article 2 of the relevant Decisions on Minimum Standards issued by the Banking Agencies of the Federation and of the Republic respectively broadly complies with the provisions of Article 34(2) of the EU Third AML Directive.
Recommendations and Comments	However there are no similar provisions for the others parts of the financial sector. The authorities of Bosnia and Herzegovina may wish to give due consideration accordingly in the further transposition of the EU Third Directive into national law.

20.	**Branches and subsidiaries (2)**
Art. 31(3) of the Directive	The Directive requires that where the legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF Rec.22 & Rec.21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What are your financial institutions obliged to do in such circumstances?
Description and Analysis	As described under item 19 above the relationship between banks and their branches and subsidiaries overseas is only lightly and limitedly addressed under Article 2 of the respective relevant Decisions on Minimum Standards. However this only to the extent that banks ensure that such branches and subsidiaries apply anti-money laundering and financing of terrorism measures equivalent to those of the bank itself. The Decisions however fall short from providing guidance as to what banks should do should they be prohibited for any reason from applying such standards to their branches and subsidiaries. Moreover there are no such provisions to other parts of the financial sector.
Conclusions	There are no such specific requirements under the law or regulations.

Recommendations and Comments	All credit and financial institutions should be required by law or other regulations or rules to ensure that their foreign subsidiaries apply anti-money laundering and financing of terrorism standards equivalent to head office. Should credit and financial institutions not be able to do so then they should be required to take other mitigating measures. The authorities of Bosnia and Herzegovina may wish to take into account the provisions of Article 31(3) of the EU Third Directive in any further transposition into national law.

21.	**Supervisory Bodies**
Art. 25(1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF Recommendations	No corresponding obligation.
Key elements	Is Article 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	In accordance with both the old and the new Law on the Prevention of Money Laundering, the Financial Intelligence Department and the relevant supervisory bodies shall cooperate in supervising, within their individual competencies, the implementation of the provisions of this Law. Moreover, according to the AML Law, if a supervising body discovers a violation of the Law or of the provisions of other laws, which govern the operation of persons under obligation, they shall order the implementation of the appropriate control measures and shall without delay notify in writing the FID about the violations discovered. From an analysis and interpretation of these provisions it is clear that they are only imposing a reporting obligation of non-compliance with the Law rather than requireing the supervisory bodies themselves to file an STR in terms of Article 13 (now Article 30) of the LPML if in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
Conclusion	There are no such requirements in the AML Law or related regulations.
Recommendations and Comments	It is of utmost importance that supervisory authorities are themselves required to file an STR where, in the course of their activities, they encounter facts that could contribute evidence of money laundering or terrorist financing. Currently supervisory bodies do not have the legal basis and obligations to do so, even though in the course of the onsite visit the evaluators were assured that they would report to the FID in such circumstances. Such provision should be taken into consideration in any future transposition of the provisions of the EU Third AML Directive into national legislation.

22.	**Systems to respond to competent authorities**
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF Recommendations	There is no explicit corresponding requirement but such circumstances can be broadly inferred from Recommendation 23 and

	Recommendations 26 – 32.
Key elements	Are credit and financial institutions required to have such systems in place and that are effectively applied?
Description and Analysis	Under Article 17 of the old Law on the Prevention of Money Laundering the Financial Intelligence Department, if it suspects money laundering or funding of terrorist activities in connection with a transaction or a person, may demand in written form from an obliged person information listed in Article 8, of the Law, information on property and on bank deposits of such a person as well as all other information, data and documents needed for performing the duties of the FID according to the provisions of this law. In urgent cases the FID may request the information, data and documentation verbally and may inspect the documentation in the premises of the person under obligation, but the FID shall be obliged to submit a written request to the person under obligation the following working day at the latest. The obliged person is required to forward the relevant information, data and documentation to the FID without delay and at the latest within 7 days of receiving the request from the FID. There are however no obligations under the Law for the obliged persons to have in place systems to respond timely and promptly to such requests. The situation remains the same under the new LPML.
Conclusion	Article 32 of the EU Third AML Directive has not been transposed into the new legislation.
Recommendations and Comments	Although a requirement to have such systems in place can be inferred from the obligation on obliged persons to satisfy such requests within 7 days of receiving the request, reporting obliged entities may not have such systems in place – which according to the Directive should be commensurate and proportionate to each institution. Bosnia and Herzegovina may wish to assess the implications of such an obligation on the reporting obliged entities before considering its inclusion in the law.

23.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to ensure extension of its provisions to other professionals and undertakings whose activities are likely to be used for money laundering or terrorist financing.
FATF Rec. 20	Requires countries only to consider such extensions.
Key elements	Has the country effectively implemented Article 4 of the Directive? Is this based on a risk assessment?
Description and Analysis	It appears that Bosnia and Herzegovina has carried out an assessment to identify risks that may lie with other professions and undertakings that are likely to be used by money-launderers or for the purposes of the financing of terrorism. In this regard Bosnia and Herzegovina has extended the scope of coverage of the statutory AML/CFT preventive measure to Pawn Brokers Office; Privatisation Offices; Travel Agencies (now excluded under the new LPML); legal and natural persons distributing money or property for humanitarian, charitable, religious, educational or social purposes; legal and natural persons when organizing and executing auctions; and legal and natural persons trading with works

	of art, boats, vehicles and aircraft. There are however no empowering clauses in the AML Law for any appropriate authority or Ministry to extend the application of the Law to other entities that eventually could be, or risk of being, misused for money laundering or the financing of terrorism. The evaluators have been advised that should this eventuality arise the law would be amended accordingly. Moreover it does not appear that the authorities have the capacity to monitor these new entities regarding compliance with the law.
Conclusion	Bosnia and Herzegovina complies with these requirements.
Recommendations and Comments	The BiH authorities may however wish to assess the authorities' capacity to monitor the added 'liable persons'.

24.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How does your country address the issue of equivalent third countries?
Description and Analysis	In accordance with the Law on the Prevention of Money Laundering, the Book of Rules on Data and Information issued by the Ministry for Security includes a list of countries and territories that are to be considered to have internationally accepted standards for the prevention and detection of money laundering and funding of terrorist activities equivalent or more stringent to those applied in Bosnia and Herzegovina. It is expected that under the new LPML, which has retained the same position as in the old law, the new Book Of Rules will retain the publication of such lists. However this remains a national list as Bosnia and Herzegovina is not a member of the European Union.
Conclusion	Although Bosnia and Herzegovina is not a member of the European Union and is therefore not bound by the provisions of and the requirements under the relevant articles of the Directive for Member States, yet, Bosnia and Herzegovina still has its own list as guidance to the industry.
Recommendations and Comments	