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MONEYVAL(2014)1

Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

3 April 2014

"The former Yugoslav Republic of Macedonia" is a member of MONEYVAL. This evaluation was conducted by MONEYVAL and the mutual evaluation report on the 4th assessment visit of "the former Yugoslav Republic of Macedonia" was adopted at its 44th Plenary (Strasbourg, 31 March – 4 April 2014).

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LIST OF ACRONYMS USED

AFCCR	Application for Foreign Currencies Control Registers
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Counter-Terrorism Financing
AML Law	Anti-Money Laundering Law
Art.	Article
CC	Criminal Code
CDD	Customer Due Diligence
CEFTA	Central European Free Trade Agreement
CEN	Customs Enforcement Network
CETS	Council of Europe Treaty Series
CPC	Criminal Procedure Code
CSD	Central Securities Depository
CTRs	Cash Transaction Reports
CWC	Commission for Work on Cases
DA	Analytics Department
DNFBPs	Designated Non-Financial Businesses and Professions
DPML	Department for Prevention of ML
DPTF	Department for the Prevention of TF
EAW	European Arrest Warrant
EC	European Community
ECDD	Enhanced Customer Due Diligence
EFTA	European Free Trade Association
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FEI	State Foreign Exchange Inspectorate
FI	Financial Institution
FIO	Financial Intelligence Office
FIU	Financial Intelligence Unit
FPO	Financial Police Office
FT/TF	Financing of Terrorism
GRECO	Group of States against Corruption
ILECU	International Law Enforcement Coordination Units
IMF	International Monetary Fund

IRM Law/LIRM	Law on International Restrictive Measures
ISA	Insurance Supervision Agency
IT	Information technologies
KYC	Know your customer
LAF	Law on Associations and Foundations
LCA	Law on Customs Administration
LCAF	Law on Citizens' Associations and Foundations
LEA	Law Enforcement Agency
LFEO	Law on Foreign Exchange Operations
LFPP	Law on Financing Political Parties
LIS	Law on Insurance Supervision
MAPAS	Agency for Supervision of the Fully Funded Pension Insurance
MER	Mutual Evaluation Report
MEQ	Mutual Evaluation Questionnaire
MKD	"Macedonian Denar" (currency of "the former Yugoslav Republic of Macedonia)
ML	Money Laundering
MLA	Mutual legal assistance
MLA Law	Law on International Cooperation in Criminal Matters
MLPD	Money Laundering Prevention Directorate
MoF	Ministry of Finance
MoI	Ministry of Interior
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organisation
NBRM	National Bank of the Republic of Macedonia
NC	Non-compliant
NCPC	New Criminal Procedure Code ("Official Gazette of the Republic of Macedonia" No. 150/2010)
NPO	Non-Profit Organisation
NRA	National Risk Assessment
OECD	Organisation for Economic Co-operation and Development
OSS-System Law	Law on the one-stop-shop system and keeping of the trade register and the register of other legal persons
PC	Partially compliant
PEPs	Politically Exposed Persons
PPO	Public Prosecutor's Office
PRIC	Person Responsible for the Initial Checks
PRO	Public Revenue Office

QP	Quality Procedures
RILO	Regional Intelligence Liaison Office
SEC	Securities and Exchange Commission
SELEC	Southeast European Law Enforcement Center
SPMLIA	Sector for Prevention of Money Laundering and Inspection Audit
SR	Special recommendation
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TCSP	Trust and company service providers
UN	United Nations
UNMIK	United Nations Interim Administration Mission in Kosovo
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolutions
UTRs	Unusual Transaction Reports
WCO	World Customs Organization
WTO	World Trade Organisation

I. PREFACE

1. This is the twentieth report in MONEYVAL's fourth round of mutual evaluations, following up the recommendations made in the third round. This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 32, 35, 36 and 40, and SRI, SRII, SRIII, SRIV and SRV), whatever the rating achieved in the 3rd round.

2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the 3rd round. Furthermore, the report also covers in a separate annex issues related 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 "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). **No ratings have been assigned to the assessment of these issues.**

3. The evaluation was based on the laws, regulations and other materials supplied by "The former Yugoslav Republic of Macedonia", and information obtained by the evaluation team during its on-site visit to "the former Yugoslav Republic of Macedonia" from 2 to 8 June 2013, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in "The former Yugoslav Republic of Macedonia". A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues and comprised: Mr Lajos Korona (public prosecutor of the Metropolitan Prosecutor's Office Budapest, Hungary) who participated as legal evaluator, Ms Karin Zartl (expert in the International and Legislative Affairs Division, Austrian Financial Market Authority, Austria) and Ms Zuzanna Topolnicka (Inspector in Control Unit of Department of Financial Information, Ministry of Finance, Poland) who participated as financial evaluators, Mr. Igoris Krzeckovskis (Head of Intelligence and Prevention Department of the Financial Crime Investigation Service under the Ministry of Interior of the Republic of Lithuania) who participated as a law enforcement evaluator and Ms Irina Talianu and Mr Dmitry Kostin, members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

5. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following sections:

    1. General information
    2. Legal system and related institutional measures
    3. Preventive measures - financial institutions
    4. Preventive measures – designated non-financial businesses and professions
    5. Legal persons and arrangements and non-profit organisations
    6. National and international cooperation
    7. Statistics and resources

    Annex (implementation of EU standards).
    Appendices (relevant new laws and regulations)

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 27th Plenary meeting – 7-11 July 2008), which is published on MONEYVAL's website[1]. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the 3rd round report continues to apply.

7. Where there have been no material changes from the position as described in the 3rd round report, the text of the 3rd round report remains appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2013 or shortly thereafter.

9. As an introductory note, the following needs to be emphasised concerning the references used in respect of the country's name. Pending the resolution of the bilateral dispute over the name of this country, which is the subject of ongoing negotiations under the auspices of the United Nations and following the adoption by the Committee of Ministers of Resolution (95) 23 (adopted on 19 October 1995 at the 547th meeting of the Ministers' Deputies) the provisional form of reference in Council of Europe documents remains as follows: "the former Yugoslav Republic of Macedonia". This also applies for the current document. The references in the body of this report to the evaluated country, pieces of legislation, bilateral agreements, authorities and other terms are retained as they were provided by the official authorities in their written progress report, however, this should not be read as changing the official position of the Council of Europe.

[1] http://www.coe.int/moneyval

II. EXECUTIVE SUMMARY

1. Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in "the former Yugoslav Republic of Macedonia" at the time of the 4th on-site visit (2 to 8 June 2013) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of evaluations is a follow-up round, in which Core and Key (and some other important) Financial Action Task Force (FATF) Recommendations have been re-assessed, as well as all those for which "the former Yugoslav Republic of Macedonia" received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round report. This report is not, therefore, a full assessment against the FATF 40 Recommendations 2003 and 9 Special Recommendations 2001, but is intended to update readers on major issues in the AML/CFT system of "the former Yugoslav Republic of Macedonia".

2. Key findings

2. Steps have been taken by the authorities of "the former Yugoslav Republic of Macedonia" to assess the country risks by taking part in the on-line International Monetary Fund (IMF) project "Preliminary Assessment of the Risk of Money Laundering" in December 2011. No specific national risk assessment (NRA) has been conducted since the last evaluation, but there are indications that "the former Yugoslav Republic of Macedonia" is a transit country within the international channels for trafficking in human beings from high migration areas to Western Europe countries. In addition, links between domestic organised criminal groups and international ones were detected, particularly active in the field of the illicit trade in narcotics and psychotropic substances, smuggling of persons, smuggling of products, illegal trade in weapons and stolen luxury motor vehicles and in credit card fraud. The money laundering (ML) typologies identified by the Financial Intelligence Office (FIO) relate to the use of fast money transfer services; smurfed transactions; purchasing of movable and immovable property; various trade-based ML techniques and the use of legal entities from off-shore countries.

3. "The former Yugoslav Republic of Macedonia" has taken action to align its domestic anti-money laundering legislation even more closely with international standards. The removal of the value threshold from the wording of the ML offence, together with the explicit inclusion of the *"possession"* and *"use"* of proceeds from crime among the material elements of the offence, are particularly welcome. The number of criminal investigations, prosecutions, convictions and confiscations for ML indicate an increase since the last evaluation.

4. An autonomous terrorist financing (TF) offence was introduced in 2008, the scope of which was extended (by means of a further amendment being in force since April 2013), to cover the financing of terrorist organisations and individual terrorists. However, technical deficiencies still remain, limiting the country's compliance with the standards set by SR.II. There have not been any investigations or prosecutions for TF offences in "the former Yugoslav Republic of Macedonia".

5. In 2008, a new AML/CFT Law was adopted and subsequently amended, and as a result, the competences of the FIO have been extended to *i.a.*: cover the measures related to FT deterrence; notify the competent state authorities in case of suspicion of any crime (apart from ML and TF); issue written orders for temporary postponement of transactions; and submit monitoring orders. The FIO remains an administrative type of a financial intelligence unit (FIU) having the core-functions of an FIU and in addition supervisory responsibilities and powers.

6. The reporting obligations were brought more in line with the international standards, now covering the attempted transactions. The FIO issued a number of separate lists of indicators for suspicious transactions reporting, applicable for various industries, which are based only on international experience. The terrorism financing indicators are rather limited and drafted in a general manner. Nevertheless, since the last evaluation the number of suspicious transaction

reports (STRs) (including TF related) increased significantly, which is a positive outcome demonstrating the effectiveness of the reporting system.

7. Although detailed customer due diligence (CDD) measures are in place, there remain certain deficiencies including the incomplete definition of the beneficial owner and the absence of a requirement to take reasonable measures to verify the identity of the customer from *"reliable, independent source documents, data and information"*.

8. The situation of the CDD measures undertaken with regard to politically exposed persons (PEPs) has improved since the last evaluation. However, enhanced CDD measures do not extend to the beneficial owner and a requirement for the financial institutions to establish the *source of wealth* of customers who are PEPs is still missing.

9. The record keeping requirements are now largely in place in "the former Yugoslav Republic of Macedonia", but the obligation to maintain records on transactions, identification data, account files and business correspondence longer if requested by a competent authority in specific cases was not yet implemented and the requirement to provide the information on a timely basis to supervisory authorities is absent.

10. The situation relating to the transparency of wire-transfers has improved significantly since the last evaluation and only the fully effective application of the legal provisions remains to be demonstrated.

11. The supervisory responsibilities for the AML/CFT compliance monitoring for the financial institutions and the DNFBPs are divided between the FIO and the prudential supervisors of the financial institutions. The supervisory system is carefully constructed and steps have been taken towards the application of dissuasive and proportionate sanctions. However, deficiencies regarding the application of the fit and proper criteria still remain, together with effectiveness issues.

12. On the DNFBPs compliance and supervision, since the last evaluation, steps have been taken to align the requirements concerning these entities in "the former Yugoslav Republic of Macedonia" to the international standards. Supervisory actions have been undertaken and sanctions have been applied. The implementation of the necessary legal and regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino is still to be addressed.

13. The steps taken before and since the 3rd round evaluation to centralise the registration and to digitalise (and thereby to simplify and to speed up) the registration process for legal entities as well as to provide full availability of registered data are appreciated. Notwithstanding that, the concept of beneficial ownership is entirely absent from the legislation governing corporate entities and their registration.

14. Comprehensive mechanisms are in place for national and international cooperation and "the former Yugoslav Republic of Macedonia" actively cooperates with other jurisdictions at all levels. However, the application of dual criminality in the Criminal Procedure Code may negatively impact the ability of "the former Yugoslav Republic of Macedonia" to provide Mutual Legal Assistance (MLA) due to shortcomings in FT criminalisation.

3. Legal Systems and Related Institutional Measures

15. The explicit inclusion of the possession and use of proceeds from crime among the physical (material) elements of the ML offence is a major development, as a result of which the range of conducts that establish money laundering was brought more in line with the requirements of the Vienna and Palermo Conventions. The lack of criminalisation of the acquisition of proceeds is the only technical deficiency identified.

16. "The former Yugoslav Republic of Macedonia" achieved 10 final verdicts against 33 individuals for ML offence between 2008 and 2012 which makes 2 convictions every year in average. This is not an outstanding figure in itself nevertheless it is likely to be proportionate to the size of the

country and the features of its financial sector. However, the significant backlogs in the trial stage of ML cases are threatening the effectiveness of the AML system.

17. In accordance with the recommendations made in the 3rd round of MONEYVAL evaluation, the legislators introduced an autonomous criminal offence for terrorist financing in 2008. However, serious technical shortcoming were identified in the new provisions, as the TF offence only covers 2 of the 9 *"treaty offences"* adequately, while 3 offences are covered partially and a 6th one is covered only implicitly; the remaining offences are not covered by the TF offence which limits its applicability. In addition, the generic offence of terrorist act appears to be territorially limited and there is no statutory definition for the term "terrorist" or "funds". There were no TF investigations or prosecutions in "the former Yugoslav Republic of Macedonia".

18. The confiscation regime retained its dual structure in the criminal substantive law of "the former Yugoslav Republic of Macedonia". The main provisions governing the confiscation of proceeds of crime and of instrumentalities remained practically the same as at the time of the 3rd Mutual Evaluation Report (MER). The confiscation regime remains conviction-based.

19. It is an improvement that the law now clearly provides for the confiscation of all forms of indirect proceeds, including transformed and commingled assets as well as income or other benefits from the proceeds of crime. However, the confiscation regime is still too complicated which may hamper its effective application, particularly with regards to the provisional measures. Confiscation of instrumentalities is in most of the cases only discretionary and there is no value confiscation for instrumentalities and intended instrumentalities. Confiscations were successfully applied for a number of typical proceeds-generating offences including, among others, trafficking in human beings and smuggling of migrants, illegal production of and trafficking in narcotics and similar substances, trafficking in arms, extortion and corruption crimes.

20. Procedural rules on freezing of terrorist assets are provided only to a very limited extent by the legislation. Once a governmental Decree is adopted on the introduction of a restrictive measure, it is up to the FIO to immediately communicate this decision to the relevant financial institutions as well as to the Agency for Real Estate Register and the Central Depository of Securities which are then obliged to immediately check and freeze assets of natural and legal persons subject to financial restrictive measures, if these persons have had business relations with them or have utilised their services, or shall refuse to establish such relations" and to inform the FIO.

21. Guidelines for financial institutions on the application of SR.III requirements were issued the FIO and appear to adequately answer some general questions on the subject and provide for practical details, but the dominant part simply reiterates the text of the Law with no particular added value. There is still no legislation available for freezing under procedures initiated by third countries, there is no designation authority in place for United Nations Security Council Resolution (UNSCR) 1373. Additionally, the protection of the interests of bona fide third parties is missing and there are no procedures for considering de-listing requests and for unfreezing funds or other assets of delisted persons or entities and persons or entities inadvertently affected by a freezing mechanism.

22. The AML/CFT Law describes the FIO competences, which broadly covers the core functions of an FIU. In line with the 3rd round MER recommendations, additional functions and responsibilities have been added within the scope of its work, including the TF responsibilities, the power to notify the competent state authorities in case of suspicion of any crime (apart from ML and TF), postponement of transactions and monitoring of bank accounts and supervisory functions.

23. The FIO receives STRs, cash transaction reports (CTRs) (both for single transactions and in several connected transactions) in cases when the amount exceeds €15,000 in denar counter-value or more and specific reports set for four categories of reporting entities as defined in the AML/CFT Law and has access to all databases managed by the State authorities. However, those databases are not integrated and thus, no automatic search can be performed in the course of the analytical work.

24. The analytical process in the FIO and the decision chain is to be found in five internal Quality Procedures (QP) which regulate segments of the analytical process. The FIO has full authority to disseminate financial information to the domestic investigative bodies and the decision on the actual recipient of the FIO work is taken by the Commission for Work on Cases (CWC) created through the FIO Director's decision. Although both the QPs and the creation of the CWC is a welcome progress, the evaluators maintain the opinion that the dissemination instructions should be more precise in the internal procedures.

25. If there are suspicions of money laundering or terrorism financing, the responsible employee of the FIO will prepare a ***Report*** (on suspicious activities). Where there is suspicion for other criminal offences, the employee shall prepare a ***Notification***. The evaluation team noticed a steady increase in both the number of Reports and Notifications sent to the law enforcement agencies (LEA) by the FIO since the last evaluation report.

26. The AML/CFT Law contains legal safeguards to ensure the FIO's autonomy and independence and the FIO Director has the final decision on the budget expenditures. Risks to the FIO's independence may reside in the fact that the mandate of a FIO Director, though in theory of duration of four years, may be revoked by the appointing authority at any time invoking the *"lack of positive results"*.

4. Preventive Measures – financial institutions

27. Since the 3rd round mutual evaluation "the former Yugoslav Republic of Macedonia" has made welcome progress in aligning its AML/CFT legal framework with international standards. At the time of the present assessment, the risk-based approach was embedded in the AML/CFT Law and in related guidance and regulation. All the financial institutions, as defined by the FATF Glossary, are covered by the legislation as having AML/CFT obligations.

28. The general requirement for financial institutions to apply CDD measures (including the ongoing due diligence on business relationship) is provided in the AML/CFT Law and applies when establishing a business relationship; when carrying one or several linked transactions amounting to €15,000 or more in denar counter-value; when there is a suspicion of money laundering or financing terrorism, regardless of any exception or amount of funds, and when there is a doubt about the veracity or the adequacy of previously obtained client identification data.

29. If a transaction is carried out on behalf and in the name of a third party, the financial institutions are obliged to establish and verify the identity of a person performing the transaction (proxy), the holder of rights (principal) and the power of attorney. The definition of the *"beneficial owner"* prescribes it as the natural person who is the owner or who has direct influence on a client and/or the natural person in whose name and on whose behalf the transaction is being performed. Although the definition is broadly in line with international standards, it does not cover the ***ultimate*** ownership or control of a client and/or a person on whose behalf a transaction is being conducted.

30. The representatives of the banking sector appeared to be largely aware of the CDD requirements expressed in the AML/CFT Law which are in some cases further enhanced by group-wide procedures. However the non-banking financial institutions demonstrated a lower awareness of AML/CFT risks and threats and expressed uncertainty on the obligation to perform a risk analysis and to apply the CDD measures according to its results.

31. Significant steps have been taken to introduce the PEPs related requirements in the AML/CFT regime which now defines the *holders of public functions* and prescribes the additional measures that the financial institution (FI) must take to address the respective risks. However, the AML/CFT Law still does not contain a requirement to apply enhanced CDD measures when the beneficial owner is a PEP and to obtain the senior management approval to continue business relationship when the beneficial owner is subsequently found to be, or subsequently becomes a PEP in the course of the relationship is still absent.

32. At the time of the 4th round on-site visit, according to the explanations provided to the evaluators by the authorities, the AML/CFT Law clearly requires that the obligations for client

analysis/identification and other measures are implemented by the obliged entities. The AML/CFT Law does not include provisions that allow the entities to rely on mediators or third parties and/or introducers in the implementation of the measures and activities required by the AML/CFT legislation. Although *not applicable*, the authorities should adopt general legal or regulatory provisions applicable to third parties and intermediaries to cover the requirements of R.9 on intermediaries and introduced business or alternatively, *expressis verbis* prohibit the use of 3rd parties.

33. The AML/CFT Law prescribes that the reporting entities are obliged to keep the copies of documents that confirm: the identity of the client or the beneficial owner; the client's and beneficial owner's analysis procedure; the performed transactions or the transactions being performed; and the client's file and the business correspondence, for at least ten years after the performed transaction starting from the moment of last transaction performed. The requirement is broadly in line with the standard, however there is no requirement to keep records longer if requested by a competent authority in specific cases and upon proper authority.

34. Significant progress was achieved by "the former Yugoslav Republic of Macedonia" on the wire transfers rules since the last evaluation. Pursuant to the AML/CFT Law, the entities performing fast money transfers, shall be obliged to determine the identity of the client, the sender (*i.e.* beneficial owner) prior to each transaction exceeding the amount of €1,000 or another equivalent currency. However, more awareness raising is required for the FI to implement effectively risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

35. According to the AML/CFT Law, the entities are obliged to give special attention to the business relations and transactions with natural persons or legal entities from countries that have not implemented or have insufficiently implemented measures for the prevention of money laundering and financing terrorism. The Ministry of Finance, upon the proposal of the FIO, shall determine the list of countries with weaknesses in the AML/CFT system. While it appears that a general awareness in relation to the large and complex transactions with countries not sufficiently applying FATF Recommendations is in place, this is mainly understood in the context of CDD. Beyond that, the counter-measures are limited to enhanced customer due diligence (ECDD) and the information provided by the authorities is not regularly up-dated.

36. STR reporting obligations were expanded since the last MER to cover attempted transactions. The authorities have elaborated sets of indicators for recognising suspicious transactions for all financial institutions that are reporting entities (banks, exchange offices, fast money transfers, Post Offices and telegraphic delivery of valuable shipments, brokerage companies and managing investment funds, saving houses, voluntary pension funds and for the insurance industry). However, in terms of the number of STRs submitted by the non-banking financial sectors, limited success has been achieved.

37. With regard to the TF submitted STRs, although some technical deficiencies were identified, the reporting system seems to work properly in practice. STRs were constantly filled by the reporting entities (not only by banks) and their volume varies between 1% to 8% of the ML related STRs which seems a fair ratio taking into account the size of the financial system and the country risk.

38. In accordance with the AML/CFT Law, and in the context of the preparation of the internal programmes, each reporting entity is obliged to appoint an authorised person. There is, however, no direct and unconditional obligation to appoint an AML/CFT compliance officer. The AML compliance function seems well established and resourced in banks. There remains, however, a concern that the AML/CFT issues are not tied well into the internal audit procedures with the exception of banks/savings houses. The representatives of the obliged entities interviewed on-site showed very low awareness of employee screening procedures and referred exclusively to educational/professional standards which are checked during the interview.

39. The fit and proper requirements are to be found in the sector specific laws applicable to the respective FI, but are not fully in line with the international standards. In addition to the limited provisions on fit and properness of shareholders and directors, the assessors gained the conviction

that such checks are carried out only to a very limited extent in practice. The supervisory system in "the former Yugoslav Republic of Macedonia" over the financial institutions consists of five primary responsible supervisory authorities (National Bank of the Republic of Macedonia, Insurance Supervision Agency, Agency for Supervision of the Fully Funded Pension Insurance, Securities and Exchange Commission and the Postal Agency) which usually carry out the prudential supervision. In addition to these supervisory authorities, for AML/CFT purposes the FIO acts as additional supervisor. The allocation of supervisory competences and powers over specific financial institutions is laid out in the AML/CFT Law.

40. For the misdemeanours listed in the AML/CFT Law, the supervisory authorities are obliged to propose an alignment procedure before submitting a request for a criminal procedure. The sanctions are provided both for legal entities and for the *"responsible person of the legal entity"*. The highest fines for legal persons range from €80,000 to €100,000 in denar counter-value, while highest fines for responsible persons range from €5,000 to €10,000 in denar counter-value. The information about the sanctions imposed in practice to the financial sector for AML/CFT breaches as provided by the authorities shows a very limited sanctioning system.

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

41. Welcome progress has been made by "the former Yugoslav Republic of Macedonia" authorities in order to increase the technical compliance with the FATF Recommendations targeting the designated non-financial businesses and professions (DNFBP) sector.

42. At the time of the present assessment, all the DNFBPs listed in the FATF Glossary are covered by the AML/CFT Law, with the only exception of the internet casinos. The dealers in precious metals and stones are not included in the AML/CFT regime, because the Law explicitly prohibits any payment or receipt of cash in an amount of €15,000 or more in denar counter-value outside the banking system. All the obligations applicable to the FI are relevant for the DNFBPs subject to the AML/CFT Law too.

43. The CDD measures applied by the casinos and the real estate representatives seemed to broadly cover the AML/CFT Law requirements to a satisfactory level. However, during the on-site interviews, the representatives of other DNPBPs demonstrated lower awareness of the concept of beneficial owner and PEPs. No attempt is made by the notaries, lawyers and accountants to identify the beneficial owner of the transactions they assist or intermediate. The on-site interviews also lead to the conclusion that DNFBPs do not apply risk-based approach in respect of CDD.

44. The statistical data provided by the authorities showed that the number of STRs received by the FIO from DNFBP's remains very low. No TF related STRs were ever submitted to the FIO by the DNFBP sectors.

45. The on-site interviews confirmed that the notaries are the most knowledgeable category of DNFBP in terms of AML/CFT requirements and actually filed STRs. The evaluation team was told that an initial reluctance of the lawyers vis-à-vis the reporting obligation did exist, but now the issue was solved through awareness raising programs and by introducing the legal privilege excepting them from the reporting obligations in case of criminal procedures carried out in relation to the client. The rest of the DNFBP sectors (the accountants, the auditors, the real estate agents and the legal/natural entities engaged sale/purchase of vehicles) did not file any STR or filed STRs only as an exception. Their level of awareness on the AML/CFT issues confirmed the statistics.

46. The main legal provision for the regulation and supervision of DNFBPs in the area of AML/CFT legislation is the AML/CFT Law which provides that the supervision of the application of measures and actions shall be performed by the Public Revenue Office, the Bar Chambers and Notary Chambers, within their competences. The FIO supervises the application of the measures and actions determined by the AML/CFT Law over the entities in cooperation with these bodies or independently.

47. The necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management

function in, or being an operator of a casino are still to be addressed by the "the former Yugoslav Republic of Macedonia" authorities.

6. Legal Persons and Arrangements & Non-Profit Organisations

48. Similarly to the time of the previous round of evaluation, the basic law regulating the incorporation and business activity of the commercial entities in "the former Yugoslav Republic of Macedonia" is the Company Law, whose main structure and scope has not significantly changed. The trade register that had previously been maintained by the competent courts was transferred to and re-established as the Unique Trade Register within the framework of the Central Register.

49. The changes in main rules regulating the registration are related to the digitalisation of the public administration through the establishment of a legal basis for the submission of documents in an electronic format.

50. As it was already noted by the 3rd round evaluators, controls that are performed on the information presented by the legal entities are rather formal on the completeness of the documents and the registering authority is only obliged to determine whether the application contains all requirements and if the necessary attachments have been enclosed. There is no further enquiry into the veracity of the data entered for registration: there is no authority to check, for example, the identity of the natural persons subject to registration. As a consequence, there is no room for the Central Register to verify the submitted documentation and thus any rejection of entry would only be possible in case of obvious incorrectness or invalidity of the data or attachments submitted.

51. There are no provisions under the Macedonian legislation that permit the formation of trusts. Furthermore, as trusts are not recognised, it is not possible for a trust to conclude or enforce a contract through the courts. Therefore it can be concluded that R34 does not apply in "the former Yugoslav Republic of Macedonia".

52. Similarly to the time of the 3rd round of MONEYVAL evaluation, the non-profit sector comprises mainly associations and foundations. The key legislation that regulates this area, including the establishment, registration and legal status of these entities is the Law on Associations and Foundations (LAF) which entered in force in April 2010, replacing the old Law on Citizens' Associations and Foundations.

53. The associations and foundations have to be registered in their respective register as kept by the Central Register. Pursuant to the LAF these are the register of associations and unions (of associations), the register of foundations and the register of organisational forms of foreign organisations which all make part of the Register of Other Legal Entities. Registers are kept in a written form as well as in a single central electronic database that is publicly accessible on the website of the Central Register.

54. No systemic domestic review of the non-profit organisations (NPO) sector, as required by Criterion VIII.1(ii) has ever been performed in the "the former Yugoslav Republic of Macedonia"; not even any notable *ad hoc* surveys were carried out in this field.

55. In order to raise awareness in the NPO sector the FIO developed and issued various documents in this field, starting with the Guideline for the NPOs on Prevention of Financing of Terrorism issued in May 2009, which is publicly available on the official FIO's website. Since the previous round of evaluation, the FIO delivered 4 trainings specifically for the NPOs. The evaluators were informed that these trainings, which involved a large number of participants from many NPOs, had particularly been focused at issues in the area of financing of terrorism and the risk of abuse to which these organisations are exposed in this field.

56. The evaluation team found appropriate measures being in place to sanction NPOs. The generally unlawful functioning of an NPO (including terrorism-related activities) can lead to a specific court procedure and eventually to the prohibition of operations of the NPO and the deprivation of its assets.

7. National and International Co-operation

57. The main legal basis for national cooperation in the area of AML/CFT between relevant competent authorities is set out in the AML/CFT Law, which states that the FIO may exchange information with the authorities competent for carrying out investigation of money laundering or financing terrorism and the supervisory bodies, for the prevention of money laundering and financing terrorism. In order to promote inter-institutional cooperation, the Government has formed the Council for Fight against Money Laundering following a proposal of the Minister for Finance.

58. From the prosecution perspective, the operational cooperation on national level is regulated by the Law on Public Prosecutor's Office, which provides that the Public Prosecutor, for issues related to the implementation of the prosecution function, as well as for issues related to detection of criminal acts and their perpetrators, manages the cooperation and coordinates the activities with other state bodies and legal entities. The domestic cooperation between law enforcement authorities is also regulated in the *"Guideline on the Manner of Implementation of Criminal Investigations in the Police in the Ministry of Interior (MoI)"* which includes a special section on *"Implementation of Joint Criminal Investigation"* on inter-institutional and international level.

59. For the supervisory authorities the provisions of the AML/CFT Law are complemented by the sector laws. According to the National Bank of the Republic of Macedonia Law (NBRM Law), in carrying out its supervisory tasks, the NBRM may co-operate with other regulatory and supervisory authorities, both domestically and abroad and may exchange confidential information with other domestic or foreign supervisory authorities, which will be used only for supervisory purposes and shall be treated as confidential by the receiving party. The particular laws regulating the Securities and Exchange Commission (SEC), the Insurance Supervision Authority (ISA) and the Agency for Supervision of the Fully Funded Pension Insurance (MAPAS) have similar provisions.

60. During the on-site interviews, the evaluators were left with the opinion that in general, the cooperation between the FIO and law enforcement agencies is satisfactory. Information flows go both ways upon request: from the FIO to law enforcement agencies and vice-versa.

61. The international judicial cooperation in criminal cases is still regulated by the relevant chapters of the Criminal Procedure Code (CPC) as it was at the time of the 3rd round MONEYVAL evaluation. However, in the meantime, "the former Yugoslav Republic of Macedonia" has adopted a new Law on International Cooperation in Criminal Matters which can only be applied, from the day when the new CPC starts to be applied.

62. According to the CPC provisions in force at the time of the 4th round on-site visit, the Ministry of Justice remains the central judicial authority responsible for mutual legal assistance in criminal cases. The Ministry of Justice is thus responsible for delivering the requests of domestic courts to foreign counterparts via the diplomatic channel (through the Ministry of Foreign Affairs), as well as for receiving foreign letters rogatory and forwarding them to the domestic courts. Consequently, the courts still have a central and exclusive role in the circulation of letters rogatory in both ways; only they are entitled to issue a motion for legal assistance and only they have competence to execute a foreign letter rogatory.

63. While the CPC remained silent on the potential grounds for refusal of international cooperation, the new AML/CFT Law provides for a list of circumstances under which the international cooperation can generally be rejected: if the execution of a letter rogatory is contrary to the Constitution or violates its sovereignty, security or safety; refers to an act which is considered to be, or related to, a political criminal act; or it refers to a criminal act consisting in breach of military duties.

64. On a less positive side, the principle of dual criminality is, though implicitly, still present in the CPC that is the domestic legislation to be taken into account for the purposes of the evaluation. This is why the technical shortcomings of the domestic TF offence may possibly cause difficulties in providing mutual legal assistance.

65. The legal basis for cooperation between the FIO and foreign authorities is set out in the AML/CFT Law. The FIO may, within the international cooperation, request data and submit the data received pursuant to the AML/CFT Law, to the authorised bodies and organisations of third countries, spontaneously or upon their request and under condition of reciprocity, as well as to international organisations dealing in the field of fight against money laundering and terrorism financing. The FIO signed 49 Memorandums of Understandings (MoUs) with the FIUs from foreign countries and jurisdictions, out of which, 29 were signed since the last MER.

66. The international cooperation of the MoI is carried-out on the basis of the ratified international conventions, current laws and memorandums or protocols for the international cooperation concluded with third parties. Since 2009, "the former Yugoslav Republic of Macedonia" is member of International Law Enforcement Coordination Units (ILECU). In addition, the international cooperation in the MoI is implemented through the channels of Interpol, Europol, Southeast European Law Enforcement Center (SELEC), as well as through liaison officers in foreign Embassies, located in the neighbouring countries.

67. The FIO may refuse the request for information exchange if: it is contrary to the AML/CFT Law or if it impedes the conduct of the investigation of another competent state authority, or the criminal procedure against the person on which data is requested. The FIO shall be bound to explain the reasons for refusing the request. During the on-site visit, the authorities advised the evaluation team that the reciprocity principle does not impose limitations in the international exchange of information and that no request was rejected so far by the FIO and information request was left unanswered.

68. The legal provisions on international cooperation and exchange of information by the supervisory authority are limited and do not provide for details as laid out in R.40. Despite this shortcoming, the supervisory authorities seem to participate internationally to a certain degree, which is based on MoUs with relevant foreign counterparts.

8. Resources and statistics

69. A total of 51 staff is provided for the FIO in the Rulebook on Systematization of Work Positions in the FIO. At the time of the on-site visit only 30 positions were actually occupied, out of which 16 analysts performing functions related to the core-mandate of the FIO. 16 new staff was employed since the last evaluation. The Rulebook on Systematisation of Work Positions in the FIO provides for special requirements for each and every position of the employees within the unit. Most of the employees must have economic, legal and other relevant background. However, the number of i2 licences is insufficient for all financial analysts within the FIO and not all the positions available in the FIO structure are occupied by employees. The authorities should consider revising the human resources allocation between the Department for Prevention of ML (DPML) and the Department for the Prevention of TF (DPTF) to match the actual number of specific reports.

70. From the perspective of supervisory authorities of the financial sector, the conclusion of the evaluation team is that the general supervisors have adequate human and technical resources. However the FIO's human resources are considered insufficient as together with the other supervisory authorities the FIO is in charge of supervision of more than 370 financial institutions.

71. In the course of this assessment, the authorities of "the former Yugoslav Republic of Macedonia" provided statistics which each contained valuable information. It proved, however, difficult to bring together these multiple statistics in order to get a complete picture of the situation.

72. The authorities do not maintain adequate statistics on the predicate offences and on autonomous/third party laundering cases. The supervision statistics are not complete and integrated, and the statistics on MLA are not comprehensively maintained.

III. MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General Information on "The former Yugoslav Republic of Macedonia"

1. "The former Yugoslav Republic of Macedonia" is located in the central part of the Balkan Peninsula and has a total area of 25,713 km^2. It is bordered by Kosovo[2] to the northwest, Serbia to the north, Bulgaria to the east, Greece to the south, and Albania to the west. The official language is Macedonian.
2. Its population is 2.1 million inhabitants (estimation of the World Bank in 2012), of which more than 25% live in the capital city, Skopje. According to the last census, which was undertaken in 2002, the most significant ethnic groups, apart from Macedonians (64%), were Albanians (25%), Turks (4%), Roma and Serbs. Even though the population remained in the last decade more or less constant, the information published yearly by the State Statistical Office shows the aging tendency in the society, caused especially by the low birth rate.
3. "The former Yugoslav Republic of Macedonia" is a member of the UN, the Council of Europe, OSCE, WTO and other international and regional organisations.
4. Strategically, one of the central aims of Macedonian international policy has been in the past decades the accession to NATO and the European Union. Currently "the former Yugoslav Republic of Macedonia" implements the activities set out in its Annual National Program for NATO Membership for 2012-2013, as a part of the 14th cycle of the NATO Membership Action Plan.
5. "The former Yugoslav Republic of Macedonia" is officially an EU candidate state since 2005. As the accession negotiations have not been open yet, the European Commission launched in 2012 a High Level Accession Dialogue with the state authorities.

Economy

6. The Macedonian official currency is the denar, with the currency rate flowing around 61.5 denars for one euro (November 2013).
7. "The former Yugoslav Republic of Macedonia" has undergone a considerable economic reform since its independence. The country has developed an open economy, with international trade and investment steadily growing over the past decade. The government has proven successful in its efforts to combat inflation, with an inflation rate of only 3.3 % in 2012.
8. According to the World Bank, the GDP of "the former Yugoslav Republic of Macedonia" was 9,617 billion USD in 2012. After 2009, the values have shown a steady growth of 2.8% in 2010-2011, but since then the GDP has stagnated. Despite the fact that the country's GDP per capita in purchasing power standards has remained at a stable level since 2009, according to Eurostat data, Macedonian standards still stood in 2012 only at 35% of the EU average.
9. The largest part of the GDP is constituted by services (62.8%), followed by industry (25.8%) and then agriculture (11.4%).
10. One of the biggest concerns in "the former Yugoslav Republic of Macedonia" is the high level of unemployment, remaining at more than 30%, which put the country to the 183rd rank in 2012 in an evaluation made by the World Bank. The International Labour Organisation formulated, in 2012, a special recommendation to "the former Yugoslav Republic of Macedonia" addressing the issue of youth unemployment, which was at 53,4% in 2010. Between 2006 and 2012 the employment rate of persons aged 15 to 64 raised from 39% to 43%, leaving nevertheless the country still at two thirds of the EU average.

[2] All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

11. The high unemployment can however be partially explained by the large share of grey market which is estimated, according to the CIA World Factbook, to be between 20 to 45% of GDP.

12. "The former Yugoslav Republic of Macedonia" introduced in 2008 a flat tax rate of 10% with the intention of making the country more attractive to foreign investment.[3] The stock of direct foreign investment in 2012 was 4,284 billion USD, placing the country at the 88th rank according to the CIA World Factbook.

Table 1: Economic indicators 2008-2012

	2008	2009	2010	2011	2012
Output	*(Percentage change in real terms)*				
GDP[1]	5.0	-0.9	2.9	2.8	-0.5
Industrial gross output	5.1	-8.7	-4.8	3.3	-6.6
Employment[2]	*(Percentage change)*				
Labour force (end-year)	0.5	0.8	3.6	-1.8	0.4
Unemployment (end-year -% of L.F,)	33.5	32.4	30.9	31.8	30.6
Prices and wages	*(Percentage change)*				
Consumer prices (annual average)	8.3	-0.8	1.6	3.9	3.3
Gross average monthly earnings nominal	8.6	9.4	1.0	1.3	0.2
Government sector	*(In per cent of nominal GDP)*				
General government balance	/	-2.7	-2.4	-2.6	/
expenditure	/	35.8	35.1	34.4	/
debt[3]	27.8	31.6	35.4	39.9	40.8
Interest rates	*(In per cent per annum, end-year)*				
Basic rate of the NB	7.0	8.5	4.1	4.0	3.8
Interbank interest rate	5.31	6.15	2.69	2.16	2.12
Deposit rate[4]	6.5	7.5	6.7	5.6	4.8
Lending rate[4]	9.8	10.3	9.0	8.8	8.3
External sector	*(In millions of US dollars)*				
Current account	-1,236	-610	-198	-311	-385
Trade balance	-2,590	-2,169	-1,919	-2,331	-2,298
Merchandise exports	3,983	2,702	3,345	4,429	3,975
Merchandise imports	6,573	4,871	5,264	6,759	6,273
FDI, net	601	186	209	463	140
External debt stock[5]	4,658	5,420	5,452	6,271	6,555
Memorandum items	*(Denominations as indicated)*				
Population (million)	2,0	2,1	2,1	2,1	/
GDP (bill. of denars)	412	411	434	462	/
GDP per capita (USD)	4,805	4,544	4,547	5,070	/

[3] http://www.ujp.gov.mk/en/vodic

External debt/GDP (%)	47.4	58.2	58.4	60.1	/

System of Government, Legal System and Hierarchy of Laws

13. As no major changes are reported, please refer to the page 18 of the third round mutual evaluation report (paragraphs 64-69) for more detail on this topic.

Transparency, good governance, ethics and measures against corruption

14. Results presented in UNODC *"Corruption in "the former Yugoslav Republic of Macedonia": Bribery as experienced by the population"* show that, after unemployment and poverty, the citizens consider corruption as one of the most significant problems their country is facing. The report shows that 10.8% of citizens aged 18 to 64 have been directly or indirectly exposed to a bribery experience with a public official in the 12 months prior to the survey.

15. Seeing the importance of the issue, successive governments of "the former Yugoslav Republic of Macedonia" have committed themselves to fighting corruption and key steps have been taken to address it, in part due to the commitments deriving from the European Union accession process. As a result of these efforts, the country was ranked 69th (out of 176 states) in 2012 on the Transparency International Corruption Perception Index, compared to the 84th position at the time of the last evaluation.

16. According to the 3rd evaluation round evaluation and compliance reports issued by GRECO "the former Yugoslav Republic of Macedonia" has made important efforts to transpose the standards of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191) through several amendments to its Criminal Code, the latest of which entered into force in March 2010. This amendment now specifies that bribery offences may be committed directly or indirectly and third part beneficiaries are explicitly covered.

17. The Law on Financing Political Parties (LFPP) establishes a general principle of publicity of political parties' revenues and expenditures. Recent amendments to this law and to the Electoral Code have added further publication requirements: political parties have to publish their entire annual financial reports on their website, in the Official Gazette and in at least one daily newspaper (Articles 26 and 27-a LFPP). The registry of donations and the list of donors also have to be made public.

18. The laws governing the financing of political parties and election campaigns contain several provisions on fines that can be imposed upon political parties, persons in charge of the financial management within the parties, campaign organisers and donors for violations of the provisions of these laws. These sanctions foreseen by the LFPP were strengthened as a result of the July 2009 amendments.

1.2 General Situation of Money Laundering and Financing of Terrorism

19. According to the authorities, the data collected indicates the existence of links between criminal groups active on the territory of "the former Yugoslav Republic of Macedonia" and criminal groups active on the territories of the countries of Central and Eastern Europe (Bulgaria, Russia, Albania, Czech Republic), Turkey, Middle East countries, and in particularly with the criminal groups active on the territory of the countries and territories created after the dissolution of the former Yugoslavia (Serbia, Montenegro, Croatia, Bosnia and Herzegovina, and Kosovo[4]). Connection with organised criminal groups from Western European countries is caused mainly by the fact that these countries represent the final destination of the criminal activity.

20. The links between these groups are particularly visible in the field of the illicit trade in narcotics and psychotropic substances, smuggling of persons, smuggling of products, the illegal trade in weapons and stolen luxury motor vehicles and in credit card fraud.

21. The illicit trade in drugs in "the former Yugoslav Republic of Macedonia" is particularly influenced by the geographical location of the country on the so-called Balkan route, where heroin

[4] See footnote 2

from Afghanistan passes through the Balkans, to then continue further to the Western European countries (from "the former Yugoslav Republic of Macedonia" the drugs usually continue either to Albania and then by sea to Italy, or by land to Croatia and Slovenia). The position of the country is foremost as a transit area, as due to its small and non-profitable market, only a small part of the drugs remains on its territory.

22. "The former Yugoslav Republic of Macedonia" is also a transit country for the international smuggling channels for smuggling of human beings across state borders from high migration-risk countries to the countries of Western Europe and for the smuggling of products. Some of the smuggled products are though sold on the illegal market in "the former Yugoslav Republic of Macedonia" or abroad.

Table 2: Statistics on crime[5]

	2009	**2010**	**2011**	**2012**	**2013**[6]
CRIMINAL OFFENCES AGAINST PROPERTY					
Theft	5,137	4,896	5,065	5,663	2,307
Burglary	11,501	13,399	14,465	14,985	7,149
Fraud	665	647	463	540	397
Robbery	597	604	513	469	260
Theft of vehicles	607	527	487	371	210
Concealment	67	58	249	235	105
Other CO against property	340	402	160	187	99
CRIMINAL OFFENCES of ECONOMIC NATURE					
Business fraud					
Fraud					
Issuing of an uncovered cheque, misuse of a credit card	5	10	13	10	8
Tax evasion	54	50	41	51	20
Forgery					
Abuse of authority or rights					
Embezzlement	9	18	6	12	7
Usury	11	10	14	7	4
Abuse of Insider Information					
Abuse of Financial Instruments Market					
Unauthorised Use of Another's Mark or Model					
Other CO of economic nature	862	809	729	686	309
Approximate economic loss or damage from c.o. of economic	**€28,540,637**	**€58,781,184**	**€54,316,930**	**€40,189,315**	**€10,559,667**

[5] Some fields in this Table are blank because the incriminations included in the table are not the same with the criminal acts foreseen by the Criminal Code of "the former Yugoslav Republic of Macedonia".
[6] To June 2013.

nature					
OTHER CRIMINAL OFFENCES					
Production and trafficking with drugs, Article 215	439	494	481	468	189
Illegal migration					
Production and trafficking with arms	237	199	208	178	113
Falsification of money	134	217	109	107	42
Corruption					
Extortion	45	31	22	21	14
Smuggling	24	21	15	24	5
Murder, Grievous bodily harm	264	288	268	240	103
Prohibited Crossing of State Border or Territory, Trafficking in Human Beings	11	9	8	4	/
Violation of Material Copyright					
Kidnapping, False Imprisonment	46	43	14	19	8
Burdening and Destruction of Environment					
Unlawful Acquisition or Use of Radioactive or Other Dangerous Substances					
Pollution of Drinking Water	/	/	/	/	/
Tainting of Foodstuffs or Fodder					
TOTAL	**21,055**	**22,732**	**23,303**	**24,277**	**11,349**
OTHER CRIMINAL OFFENCES (NOT INCLUDED ABOVE) against life and limb, human rights, honour, sexual integrity, public health, etc.	**6,275**	**5,757**	**6,226**	**5,662**	**2,734**
NUMBER OF ALL CRIMINAL OFFENCES	**27,330**	**28,489**	**29,529**	**29,939**	**14,083**
Approximate economic loss or damage of all criminal offences					

23. In the period between the years 2008 and 2012, the FIO received 1,064 STRs, which were mostly related to fraud, abuse of official position, tax evasion, drug trafficking etc. as predicate offences. In the same period, the competent court has adopted a total of 10 final verdicts for ML against 33 people.

Money Laundering Typologies

24. On the basis of an analysis conducted by the FIO, several methods and patterns used for the legalisation of the funds derived from illegal sources have been identified.

25. The most common pattern presented by the authorities is the misuse of legal entities, which occurs mostly via the establishment of a fictitious company. In particular, several attempts have been documented aiming to establish *"temporary"* companies serving only for a certain period of time, for which most often no bookkeeping or financial records are kept. These companies are usually

registered on the name of foreign citizens from the neighbouring countries (Bulgaria and Serbia), the alleged founders-foreign citizens not being present at all at the territory of "the former Yugoslav Republic of Macedonia".

26. In practice, cash is deposited into one or several legal entities and then transferred to other companies or natural persons as payment for services, loans or advance payments for goods, or funds are withdrawn in cash as expenses. Particularly, a repeating pattern of the use of *"providing consulting services"* to justification transfers has been noticed. Obviously, the legal entities used as intermediaries do not present any or minimum activity.

27. The above mentioned typical money laundering schemes are often related to frauds as predicate offences, including VAT frauds. When it comes to VAT frauds, it is frequent for the companies to make a transfer from the founding capital of the existing company (through which the tax evasion is been done) to a new company which is related to it through capital, with the aim for the entire capital to be moved to the new company and the liabilities to the state and creditors to remain in the original company, which then becomes insolvent and is liquidated.

28. According to the authorities, in case of traffic of drugs or trade and exploitation of human beings, criminal groups most often use the services of fast money transfer for the initial transfer and integration of funds in the financial system of another country. The funds are then used for the purchase of movable and immovable property (often the investments are in the opening of catering-tourist facilities, transport companies and in construction).

29. There are no statistics showing the foreign involvement in these schemes, but the authorities stated that often the fictitious entity in "the former Yugoslav Republic of Macedonia" is founded by a foreign legal entity, or that a Macedonian natural person is an owner of several legal entities in different countries, through which funds are transferred.

30. According to the authorities, no information on terrorism and terrorism financing threats has been identified in "the former Yugoslav Republic of Macedonia".

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

Financial Sector

31. Banking activities are governed by the Banking Law and the Law on the National Bank of the Republic of Macedonia and may be conducted only by:

- A bank which was granted a founding and operating license by the Governor of the National Bank of the Republic of Macedonia (NBRM);
- A foreign bank which was granted a license for opening and operating a branch by the Governor; and
- A bank from a member state of the European Union which, according to Banking Law, opened a branch in "the former Yugoslav Republic of Macedonia".

32. Pursuant to Article 14 of the Banking Law, a bank shall be established with initial capital of 310,000,000 denars (equivalent to €5,000,000).

Table 3: Number of entities operating on the financial market

Entities in charge to undertake measures and actions for ML/FT prevention	
Type of entity	**Number of entities in 2012**
Banks	16
Savings-banks	7
Foreign exchange office	207
Providers of services for quick money transfer and sub-agents	84
Life Insurance companies	4

Brokerage companies	10
Companies for management with investment funds	4
Companies for management with voluntary pension funds	2
Post	1
Legal entities performing financial transactions, telegraph money transfer or delivery of packages of value	20
Leasing companies	9
Legal entities performing activities in relation with issuing and administration of credit cards	1

33. Currently, there are 16 banks licenced by the Governor of the NBRM according to the Banking Law and their principal activity is to accept deposits and other repayable sources of funds from the public and to extend credits on its own behalf and for its own account.

Table 4: Ownership structure of commercial banks

	Ownership structure of commercial banks				
	Dec 08	**Dec 09**	**Dec 10**	**Dec 11**	**June 12**
Foreign ownership more than 50%	14	13	14	13	12
Foreign ownership less than 50%	2	3	2	2	2
Resident Shareholders 100%	2	2	2	2	2
Foreign Branches	0	0	0	0	0
Total number of banks	18	18	18	17	16

34. The Law on Insurance Supervision and the Law on Compulsory Insurance in Traffic constitute the legal framework which regulates the conditions and manner of executing insurance and reinsurance operations, the manner and conditions of brokerage operations and the supervision of insurance undertakings and insurance brokerage companies. In accordance with this Law, an insurance undertaking has to be established as a joint stock company with its main office in "the former Yugoslav Republic of Macedonia". To establish and operate, the insurance undertaking may obtain a license for performing activities in one of both lines of business, life or non-life. Domestic and foreign legal entities and natural persons may establish an insurance undertaking under equal conditions.

35. Since the last evaluation, the insurance business has presented significant growth in terms of quantity of entities performing activities in the market. Currently there are 11 insurance undertakings providing non-life insurance and 4 insurance undertakings providing life insurance (compared to 1 at time of the last evaluation), 23 insurance brokerage companies (compared to 5) and 9 insurance agencies.

36. There are 7 saving houses founded in compliance with the provisions of the Banks and Savings Houses Act, which continue to operate according to the provisions of Banking Law. The provisions regarding supervision on banks apply to the saving houses and the Decision on the Terms and the Manner of the Operating of Saving Houses sets the terms and the manner of operating savings houses with respect to the supervision, performing specific activities and lending and accepting deposits and investments.

37. The fast money transfer services may be provided by the fast money transfer service provider on its behalf and for its own account, or by sub-agents on their behalf but on the account of a fast money transfer services provider. There are currently 7 providers of fast money transfer in "the former Yugoslav Republic of Macedonia" and 79 sub-agents. Fast money transfer services, pursuant to the provisions of the Law on Fast Money Transfer, can be conducted for domestic and foreign natural persons. Trade companies, other than banks, shall submit a written application to

the NBRM to obtain a license for providing fast money transfer service, whilst the banks having been granted a founding and operating license by the NBRM, may provide fast money transfer services after obtaining prior approval by the Governor.

38. The securities sector is regulated by the Law on Securities. There are currently 10 brokerage companies, 179 brokers and 5 authorised banks registered for dealing with securities. Four companies are registered for investment funds management and their activity is governed by the Law on Investment Funds. The Securities and Exchange Commission is responsible for issuing licenses, approvals and consents, to regulate the manner of trading with securities at the stock exchange, to follow and control the operations of the securities market participants, provide consent for appointment of directors of legal entities participating to the securities market etc.

39. Currency exchange services are regulated by the Law of Foreign Exchange operations and the Decision on Foreign Exchange Operations. Their providers must be authorised by the NBRM and currently the number of legal entities that are licensed to preform foreign currency exchange activities is 208. The operations of exchange offices include: purchase of cash foreign currency and cheques denominated and payable in foreign currency from foreign and domestic natural persons, as well as sale of cash foreign currency to foreign and domestic natural persons.

Supervision in the financial sector

40. According to Article 114 of the Banking Law, supervision, consolidated supervision and inspection on banks and saving houses are conducted by the NBRM. The manner and procedure of conducting the supervision, responsibilities of the supervisors, etc. are regulated by the Decision on the manner of conducting supervision and inspection (the Decision regulates for example the off-site supervision, on-site supervision, on-site inspection, maintaining contacts with members of the bank's bodies and with audit companies and cooperation and exchange of data and information with other supervisory authorities).

41. The supervision over the application of the measures and activities for AML/CFT by insurance companies is performed by the Agency for Insurance Supervision and by the Financial Intelligence Office.

42. The application of the AML/CFT measures by brokerage companies and investment funds management companies is controlled by the Securities and Exchange Commission (SEC) which is responsible for the issuance, offer and sale of the securities "the former Yugoslav Republic of Macedonia". The securities may be issued by the Ministry of Finance (MoF) on behalf of the State, the NBRM, municipalities and the City of Skopje, joint stock companies, limited partnerships by shares or any other domestic or foreign legal entities in accordance to the law on Securities or other laws.

43. Article 46 paragraphs 1 and 2 of the AML/CFT Law stipulates that together with the FIO the NRBM conducts supervision of the application of AML/CFT measures and actions over banks, savings houses, exchange offices and providers of fast money transfers. The supervision is performed by the Unit for Controlling the Harmonisation of the Regulations of the Non-Banking Institutions.

Table 5: Financial activities and types of financial institutions

Financial Institutions				
Type of activity of a financial institution (acc. to Glossary to 40 FATF Recommendations)	**Types of financial institutions engaged in such activity**	**Whether they are covered by AML/CFT Requirements**	**Supervisory / regulatory body for AML/CFT**	**No. of Registered Institutions**

1. Acceptance of deposits and other repayable funds from the public	Banks Savings houses	Yes	NBRM	16 banks and 7 savings houses (as of 31.12.2012)
2. Lending	Banks Savings houses	Yes	NBRM	16 banks and 7 savings houses (as of 31.12.2012)
3. Financial leasing	Banks	Yes	NBRM	
	Leasing companies	No	--	9
4. The transfer of money or value	Fast money transfer providers	Yes	NBRM	MVT services - 7 providers and 79 sub-agents (as of 31.12.2012)
	Banks		Yes	
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)			FIO	1
			NBRM	
6. Financial guarantees and commitments	Banks Financial companies		NBRM	
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities (e) commodity futures trading			SEC	15
	Banks		NBRM	
8. Participation in securities issues and the provision of financial services related to such issues			SEC	7
9. Individual and collective portfolio management			SEC	4
10. Safekeeping and administration of cash			SEC	3

or liquid securities on behalf of other persons				
11. Otherwise investing, administering or managing funds or money on behalf of other persons			SEC	1
12. Underwriting and placement of life insurance and other investment related insurance	Insurances		ISA/MAPAS	15 Insurance companies, out of which 4 are life insurance
	Pension Funds			
13. Money and currency changing			NBRM	208 exchange offices (as of 31.12.2012)

Designated Non-Financial Businesses and Professions (DNFBPs)

44. According to the Article 5 paragraph 1 from the AML/CFT Law, apart from entities operating on the financial market, obliged entities are:

- Legal and natural persons performing the following activities:
  a) trade in real estate,
  b) audit and accounting services;
  c) notary public, attorney and other legal services relating to: sale and purchase of movables, real estate, partner parts or shares, trading in and management with money and securities, opening and managing bank accounts, safe-deposit boxes and financial products, establishing or taking part in the management or operation of the legal entities, representing clients in financial transactions etc.,
  d) providing advices in the area of taxes;
  e) providing consulting services and
  f) Companies organising games of chance in a gambling room (casino);
- Service providers to legal persons;
- Legal entities taking movables and real estate in pledge;
- Agency for Real Estate Register and
- Legal entities whose activity is sale and purchase of vehicles.

Table 6: Number of DNFBPs

Entities in charge to undertake measures and actions for ML/FT prevention	
Type of entity	**Number of entities in 2012**
Real estate agencies	202
Audit companies	38
Accounting companies	1,397
Lawyers (attorneys-at-law)	2,498
Public notaries	180
Casinos	6
Legal entities in charge of sale and purchase of vehicles	277

Gambling

45. In 2011 the Law on Chance and Entertainment Games came into force, which specifies which gambling activities are permitted in "the former Yugoslav Republic of Macedonia" and regulates them. These permitted gambling activities are gambling in a casino, betting or slot-machine gambling. The license for providing gambling in a casino is issued by the Government of the Republic of Macedonia based on a submitted request to the MoF and is issued for a period of six years. Currently there are 6 licensed casinos in the territory of "the former Yugoslav Republic of Macedonia".

Lawyers and notaries

46. In accordance with the regulations of "the former Yugoslav Republic of Macedonia", the Bar Association of the Republic of Macedonia has registered 2,498 lawyers, of which 2,100 lawyers are active and perform their activity either as by themselves or in associations of lawyers. Pursuant to the Bar Law, the Bar Association of the Republic of Macedonia establishes its own Commission for Registration and Removal from the Registers and Issuing and Revoking of Licenses of the Bar Association of the Republic of Macedonia.

47. The notary work is an independent public service, regulated by the Law on Public Notaries; there are currently 180 notaries in "the former Yugoslav Republic of Macedonia".

Auditors and accountants

48. According to the Law on Audit, audit services may be provided either by registered auditing companies or by authorised auditors (registered natural persons). In "the former Yugoslav Republic of Macedonia", there are currently 28 auditing companies and 10 authorised auditors registered. The auditor certificate is issued by the Institute for Authorized Auditors of the Republic of Macedonia to persons who have passed the auditor exam and the license for an authorised auditor is issued by the Council for Promotion and Supervision of Audit. Regarding accounting services, a total of 1,397 persons are registered for providing them.

Other obligated entities

49. Due to the 2011 amendment to the AML/CFT LAW, the legal entities whose activity relates to purchase and sale of vehicles became entities responsible to undertake AML/CFT measures and activities. Besides the general obligations, they have a special obligation determined with Article 29-a, Paragraph 4, relating to the submission of data to the FIO on concluded purchase and sale contracts for new vehicles in amount of more than €15,000.

Supervision

50. According to the AML/CFT Law, the Public Revenue Office (PRO) and FIO conduct supervision of the application of AML/CFT measures and actions over casinos, audit companies and authorised auditors, real estate agents. The FIO also supervises the legal entities dealing with purchase and sale of vehicles.

51. According to Article 39 of the AML Law, both the Bar Association and the Chamber of Notaries are obliged to each establish a Commission for Supervision of the Implementation of the AML/CFT Law with the purpose of supervision of the implementation of the AML/CFT measures and obligation by the lawyers and notaries, respectively. Each of the commissions includes five members – lawyers/notaries elected for 4 years mandate, without right for re-election. On annual level each Commission organises coordinative meetings with the FIO and informs the FIO twice a year about supervisions that have been carried out.

Table 7: Details on the DNFBPs and their supervisory authorities

DNFBPs				
Type of business	**Types of professionals engaged in such activity**	**Whether they are covered by AML/CFT Requirements**	**Supervisory / regulatory body for AML/CFT**	**No. of Registered Institutions**

1.	Casinos (which also includes internet casinos)		Covered	PRO	6
2.	Real estate agents		Covered	PRO	202
3.	Dealers in precious metals		Not covered	/	/
4.	Dealers in precious stones		Not covered	/	/
5.	Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms.		Covered	Bar Association, Notary Association, PRO	Notaries: 180 Lawyers: 2,498 Audit companies: 38 Accounting companies: 1,397
6.	Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere	No evidence of their existence in "the former Yugoslav Republic of Macedonia"	Company Service Providers are covered	/	
7.	Additionally: Dealers of vehicles		Covered		277

1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

52. The main law regulating commercial entities is the Law on Companies, which specifies the forms, type and scope of activity, the parts and shares, the company agreement or company charter, the control and supervision; etc.

53. Entities that can be registered in the Central Register are the following:

- sole proprietor
- general partnership
- limited partnership
- limited liability company
- joint stock company
- limited partnership by shares
- economic interest groupings
- branch office of foreign company

54. In the period following the 3rd round evaluation, various significant amendments have been made to the Company Law, the majority aiming to ensure compliance with the relevant EU legislation. A significant number of the developments are related to the digitalisation of the public administration, establishing a legal basis for the submission of documents in an electronic format, alleviating the administrative burden.

55. Other amendments were related to the shareholders rights in listed companies, the liquidation procedure, cross-border merging and others. Especially the provisions regarding the liquidation procedure are of high importance for the purpose of this report due to the fact that many of the money laundering cases have been using fictitious companies (as mentioned above). The amendment to the Law provides for an easier procedure for deletion of demonstrably inactive companies (companies failing to deliver annual accounts and financial reports to the Central Register), which after having been proclaimed inactive for three years are automatically deleted from the Register.

Non-profit organisations

56. The non-profit organisations are regulated by the Law on Associations and Foundations (LAF), which regulates the manner, the requirements and the procedure for establishment, registration and termination of associations, foundations, unions, organisational forms of foreign organisations in "the former Yugoslav Republic of Macedonia", the available assets, the supervision, the status changes and the status of organisations of public interest. Article 6 of the LAF regulates that organisations shall acquire the capacity of a legal entity by being entered in the register kept by the Central Register of the "the former Yugoslav Republic of Macedonia" and according to Article 58, the Ministry of Justice shall supervise the legality of the application of the provisions of the Law. Associations and foundations cannot be transformed into other types of legal entities.

57. Currently the number of registered associations and foundations in "the former Yugoslav Republic of Macedonia" is 12,061, out of which 201 are foundations and 11,860 are associations. According to the data received provided by the authorities, only 1,726 associations and foundations have a turnover (incomes, donations, sponsorships) of more than 100 000 denars (around €1,600) per year.

58. According to the AML/CFT Law, associations and foundations are included in the category of obliged entities, the application of AML/CFT measures and actions by them is supervised by the PRO and the FIO.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

59. In the period following the 3rd round evaluation, the Government of the Republic of Macedonia adopted two National Strategies for Combating Money Laundering and Financing of Terrorism; for the years 2009-2011 and 2012-2014. The Strategies were prepared by the Financial Intelligence Office in cooperation with all competent institution involved in AML/CFT system, and they include a comprehensive list of activities along with obligations for their further implementation by all relevant institutions, with the purpose of remedying the gaps and weaknesses identified and with the aim of improving the AML/CFT system efficiency level. The Strategies foresee the following:

- Improvement of the legal framework and increase of the level of its efficient implementation,
- Increase of the institutional capacities of the authorities, bodies in charge of monitoring and the prosecuting bodies,
- Establishment of an efficient system for inter-institutional cooperation,
- Increase of the international cooperation, and
- Raising of the awareness of the entities on the necessity to implement measures for prevention of money laundering and financing of terrorism and the raising of public awareness.

60. These activities are to be implemented by the entities in charge of undertaking AML/CFT measures and activities, the supervisory bodies, the FIO and the state bodies in charge of prosecuting money laundering and financing of terrorism.

61. Even though most of the actions foreseen by the Strategies were in relation to the internal procedures and their efficiency, the improvement of the legal framework was foreseen above all to ensure harmonisation with the legislation of the EU and the international standards (technical equipment, trainings of staff, inter-institutional procedures, etc.).

62. The National Strategy for the Fight against Money Laundering and Terrorism Financing for the period 2012-2014, adopted in 2011 presents the same goals as the previous strategies (2005-2008 and 2009-2011), ensuring coherency and continuity of the activities.

63. In 2011, the Government of the Republic of Macedonia also adopted the National Strategy of the Republic of Macedonia for Fight against Terrorism which aims to provide an overall framework for the activities of the bodies and institutions in charge of fight against terrorism with the aim of

building a modern security system in the country. This document is, according to the authorities, based on the international goals and principles, but it should also take into consideration the national and geopolitical particularities of "the former Yugoslav Republic of Macedonia". The Strategy includes implementation of coordinated activities and sharing of information between the institutions; increased and efficient international cooperation in the prevention and fight against terrorism and foresees the signing of new agreements for bilateral cooperation with other countries in the fight against terrorism.

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

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

The Financial Intelligence Office

65. The FIO was established in 2001 as the Directorate for Prevention of Money Laundering and in 2008, on the basis of the AML Law, it was transformed into the FIO, as an authority within the MoF in the capacity of a legal entity with a higher degree of independence. In 2012 its name was changed to the current name "Financial Intelligence Office".

66. The AML/CFT Law prescribes the basic mandate of the FIO as an administrative body for financial intelligence: reception, request, processing, analysis, storage and submission of information received from the relevant entities for the purpose of AML/CFT. In addition to these main functions, the FIO also has other competencies, such as ordering temporary measures.

67. Since the last evaluation, the FIO has undertaken numerous activities aimed at strengthening its IT capacities. Starting with the upgrade of the Investigation Case Management application for work and managing of the cases, setting up a new process for information exchange with all banks (automatic receiving of all of all information), introducing a new application for receiving certain data from notaries, car dealers and insurance companies according to Article 29 (a) from the AML/CFT Law. In 2012 the FIO started to implement the "Introduction of financial intelligence project" in the frames of the bilateral cooperation with the Kingdom of Norway. The main purpose of this project is to adapt the Norwegian ASK system for AML/CFT to the needs of "the former Yugoslav Republic of Macedonia", and install thus an efficient system for ML/FT prevention in the country and provide for a more efficient coordination of the activities between all the institutions and entities involved.

The National Bank of the Republic of Macedonia

68. The functioning and the statute of the National Bank are regulated by the Law on the National Bank of the Republic of Macedonia. Apart from its traditional functions it is also the supervisory body for banks and other financial and non-financial institutions.

69. Its authority has been expanded by the new Law on Banks which entered into force in June 2007 and which modifies the measures that the Governor of the National Bank can carry out with respect to a bank, bank group or bank authority, as well as the manner and the procedure for taking these measures. The new Law accepts the approach of gradation of the measures that can be directed towards the banks, from issuing of recommendations, warnings or concluding protocols, trough interdiction or limiting of certain activities to introduction of administration and withdrawing of the permit for taking up and pursuit of the business. The Law also explicitly provides in the Article 132 for the right of the Governor to take corresponding measures in cases where there has been a violation of the regulations related to ML prevention. Similarly, in the cases when there is evidence that the bank is included in ML or other criminal offences, the Governor is entitled to withdraw its permit.

70. According to the Law, the National Bank can now also pronounce a misdemeanour sanction, without the intervention of a court, to a bank, the responsible persons, all legal entities who are obliged to act in accordance to the Law on Banks (shareholders with qualified participation, brokerage houses, audit companies, persons connected to the bank), as well as the persons responsible in those legal entities.

The Securities and Exchange Commission of the Republic of Macedonia

71. The SEC is an independent regulatory body whose authority is governed by the Law on Securities, the Law on Investment Funds, the Law on Undertaking of Joint Stock Companies and the bylaws deriving from these Laws. The Commission regulates and controls the work concerning securities on the territory of "the former Yugoslav Republic of Macedonia", it controls and regulates the legal and efficient operation of the securities market and the protection of investor rights.

72. In accordance with the AML/CFT Law, the SEC supervises the implementation of the AML/CFT measures and activities independently or in cooperation with the FIO over the brokerage companies, entities providing investment advisory services and companies managing investment funds. In the period following the 3rd round evaluation an amendment was adopted giving the SEC a clear entitlement to supervise and issue sanctions to all authorised market participants and it has started to include the AML/CFT issues in its regular supervisions over the authorised market participants.

The Insurance Supervision Agency

73. The Insurance Supervision Agency was established at the end of 2009 as a new regulatory body on the financial market and according to the Insurance Supervision Law it is an autonomous and independent regulatory body with public competencies. The competences of the Agency include supervision of insurance undertakings, insurance brokerage companies, insurance agencies, insurance brokers and agents, and the National Insurance Bureau; issue and revocation of licenses, consents, permits in accordance with the Law and other laws in its jurisdiction; pronouncing of supervision measures prescribed by Law; enactment of secondary legislation (bylaws); proposal of laws concerning the insurance sector to the MoF; membership in the International Association of Insurance Supervisors, cooperation with other authorised supervision institutions on Macedonian financial market; stimulation the further development of the insurance in the country and rise the public awareness of the role of the insurance and insurance supervision; supervision of the application of measures and actions against ML/FT in accordance with the AML/CFT Law.

The Agency for Supervision of the Fully Funded Pension Insurance (MAPAS)

74. MAPAS was founded in July 2002 in order to perform supervision of the pension companies and pension funds' work and to protect the interests of the insured persons in those funds. The new body of MAPAS was established in February, 2013 – Assembly of Experts, which reports to the Assembly of the Republic of Macedonia for its working.

75. MAPAS is responsible for issuance, cancelling and revoking licenses for establishing companies, managing pension funds. MAPAS performs daily on-site and off-site supervision of the pension funds' work and the pension funds they manage with, and particularly controls their legal working. Also, MAPAS has the powers to undertake measures against the entities for control, as well as the opportunity to present a proposal for initiating misdemeanour and criminal procedures before the competent body against the pension companies, custodians of mandatory and/or voluntary pension funds, foreign managers of assets and other persons in case of laws' provisions violations. MAPAS as an independent regulatory body has the competence to adopt bylaws and to provide proposals to amend the laws of fully funded pension insurance.

Public Revenue Office

76. Pursuant to Article 46 of AML Law, the Public Revenue Office (PRO) is responsible for the supervision of the implementation of AML/CFT measures over trade companies organising games of chance (casino), as well as other legal and natural persons performing the following services: trade with real estate, audit and accounting services, provision of services in the area of taxes or provision of consulting services, legal entities obtaining movables and real estate in pledge and citizens associations and foundations.

The Postal Agency

77. The Postal Agency was established in 2008. The Postal Agency received competencies to conduct

supervision of the application of AML/CFT measures and actions over the Post Office and legal entities performing telegraphic transmissions or delivery of valuable packages, with the amendments of the AML/CFT Law in December 2011.

Ministry of Interior

78. According to the 3rd round Mutual Evaluation Report, the Ministry of Interior was undergoing a reorganisation at the time of the preceding on-site visit. As a result of this reorganisation, a Department for Criminal Intelligence was established. This department is competent for collecting operational information related to the criminal offences of money laundering and financing of terrorism (as well as to other criminal offences) in order to transfer the data to the authorities responsible for the investigation.

79. In 2008 a Unit for Fight against Money Laundering and Economical Organised Crime was established within the Unit for Combating of Organised Crime. Its main responsibility is providing proof for the investigations of ML and FT cases. There are currently 20 employees in the Unit.

80. The organisational structure of the MoI went through another set of changes in 2011, during which a newly formed Financial Crime Department has been set up at a higher hierarchical level. This department includes a Unit for Money Laundering and Economic Organised Crime, as well as a Unit for Corruption and a Unit for Cyber Crime.

The Financial Police

81. With the adoption of the new Law on Financial Police in May 2007, the Financial Police was transformed into Financial Police Office in the capacity of a legal entity within the MoF. According to the Rulebook for Organising of the Work and the Rulebook for Systematization of Posts in the Financial Police Office, its' work has been organised in 3 departments and 12 units, including the Unit for Disclosure of Tax Evasion, Fraud and Money Laundering established within the Department for Criminal and Intelligence Analysis.

Public prosecution

82. Public prosecution is regulated by the Law on Public Prosecution, which was adopted in 2007 and which established the mandate, establishment, abolishment, organisation and functioning of the public prosecution, the grounds and procedure of appointment and dismissal of the Public Prosecutor of the Republic of Macedonia, the grounds for termination of the Public Prosecutor of the Republic of Macedonia function as well as other issues related to the public prosecution work.

83. Due to an amendment to this Law, the Basic Public Prosecution Office for Prosecuting Organised Crime and Corruption was established. This Office exercises its mandate nationwide and has its headquarters in Skopje. The Basic Public Prosecutor in charge of prosecuting organised crime and corruption is accountable for his/her work in front of the Public Prosecutor of the Republic of Macedonia and the Council of Public Prosecutors of the Republic of Macedonia. The competencies of the Basic Public Prosecution Office are also defined by the amendment and amongst others they comprise the offences of money laundering, terrorist threat against the constitutional arrangement and security, criminal association, terrorist organisation, terrorism, etc.

Courts

84. The work, mandate and organisation of the courts are regulated by the Law on Courts. This Law has been amended in the year 2010 in order to establish a specialised court department in the Basic Court Skopje I – Skopje, which is in charge of dealing with cases related to organised crime and corruption nationwide in "the former Yugoslav Republic of Macedonia".

85. There is also a project being undertaken with the aim to improve the technical functioning of the courts, the e-Judiciary Project. An Integrated Judicial Information System was established, which assigns cases electronically to the judges, with the vision that a database will be introduced in order to connect different segments in the judiciary and enable efficient and safe sharing of information and reports. These activities are part of the projects that aim to establish and develop modern and efficient judiciary in "the former Yugoslav Republic of Macedonia".

86. A new amendment to the Law on Judicial Council of the Republic of Macedonia introduced an assessment system of the judges' work and the disciplinary responsibility of a judge (which is the ground for dismissal), with the aim of maximising the objectivity in evaluation and in the determination of incompetent and inappropriate actions.

The Agency for Managing Confiscated Property

87. By the Law on Managing Confiscated Property, Material Gain and Seized Items in Criminal and Misdemeanour Procedure was established in 2009 the Agency for Managing Confiscated Property as a legal entity. Its competencies established by this Law comprise the following:

- Management of confiscated property, material gain and seized items in criminal misdemeanour procedure;
- Management of the seized property in accordance with the "good owner" principal and implementation of all the measures for storing and maintenance of the temporary sized movable and immovable property;
- Storage of the seized property, evaluation of its market value, management of a registry of the entire seized property,
- Sale of the seized movable and immovable property using electronic public bidding and refund of the funds obtained from the sale into the Budget of the Republic of Macedonia
- Dealing with goods which are outside the normal market such as seized narcotic drugs, psychotropic substances and precursors, seized weapons, ammunition and explosives; etc.

88. The Agency is managed by the Management Board and the Director. The Agency submits a report to the Government about its operations.

The Council for fight against Money Laundering and Financing of Terrorism

89. The Council is a body established by the Government of the Republic of Macedonia for the purposes of improving the inter-institutional cooperation for ML/FT prevention. The Council was initially established in 2005 for the purposes of improving the inter-institutional cooperation, and in order to strengthen its position, an amendment of the AML/CFT Law (Article 34 (a)) from 2011 introduces an explicit legal basis for its establishment and precisely defines its composition.

90. The Council was involved in the realisation of the on-line project with the International Monetary Fund "Preliminary Money Laundering Risk Assessment" and in the fulfilment of the obligations towards the international institutions and the preparation of the 4th circle of evaluation of the Moneyval Committee.

c. The approach concerning risk

91. The provisions of the AML/CFT Law impose an obligation for all obliged entities to develop an internal AML/CFT Program, which specify the internal procedures within the entity. Article 9 of the AML/CFT Law imposes an obligation for all obliged entities to implement CDD measures based on risk assessment. This risk assessment is made on the basis of the above mentioned internal procedures.

92. The new AML/CFT Law also introduces obligations for enhanced and simplified customer due diligence to address various levels of risks (for example pursuant to Article 14 of the AML/CFT Law and the NBRM Decision 103, financial institutions are obliged to establish the source of wealth and funds of customers and beneficial owners defined as PEPs), including stricter measures for the identification of beneficial owners.

93. The National Bank has also issued a document "Procedure for Assessment of Risk of MLFT". This guide is designated for the supervisors of the National Bank, providing them with recommendations and instructions for undertaking the evaluation of the assessment of the ML/FT risk by the entities subject to control. The document also contains a form, comprising detailed issues and questions which should be evaluated and answered by the supervisors during the assessment.

94. "The former Yugoslav Republic of Macedonia", joined the on-line IMF project "Preliminary

Assessment of risk of money laundering" in December 2011.The goal of this project is a preliminary identification of ML threats, vulnerabilities and consequences in each of the eight participating countries in order to estimate the adequacy of national AML policies and resources allocation. During 15 months the involved authorities have been developing activities of several project stages as follows: preliminary, threat, vulnerability and consequence stage. Envisaged activities and obligations of the project have been implemented in "the former Yugoslav Republic of Macedonia" by more than 100 persons (representatives of FIO, law enforcement authorities, supervisory authorities and private sector) and have been coordinated by the FIO.

d. Progress since the last mutual evaluation

95. Since the 3rd on-site visit in March 2007, "the former Yugoslav Republic of Macedonia" has taken several measures to develop and strengthen its AML/CFT system, the most significant being presented below.

96. In accordance with Article 40 of the AML/CFT Law, after the 3rd round evaluation all the obligated entities should have designated an authorised person to be in charge of the implementation of the internal AML/CFT program and of the direct communication with the FIO. The entities with more than 50 employees were to establish a separate department composed at least of 3 persons for the implementation of the AML/CFT Program and the AML/CFT Law provisions.

97. The Law on Banks came into force in June 2007 (after the adoption of the 3rd MER) and implements the directives of the European Union concerning the standards for credit institutions. The most important provisions of the Law having impact on the measures for prevention of money laundering and financing terrorism are the following:

- Designation of prudential requests and criteria for the licensing of shareholders with qualified participation in a bank, as well as of the members of supervisory and managing boards (it also clearly identifies the persons who cannot become shareholders with qualified participation in a bank);
- Strengthening of the corporative bank management;
- Promotion and strengthening of risk management bank system (the Law and the adequate bylaws are the first legal acts defining the term "operational risk" as a risk which includes risks arising from ML and FT);
- Promotion of the manner of performing supervision and monitoring;
- Strengthening of corrective measures.

98. The amendments to the Law on Banks from 2010 and 2013 were related to strengthening the *"fit and proper"* criteria to impede that a shareholder with qualified holding in a bank, a person with special rights and responsibilities in a bank or an administrator in a bank to be a person who has been convicted by an effective court judgment for unconditional imprisonment of more than six months.

99. In 2007, the Law on Public Prosecution was adopted establishing the mandate, organisation and functioning of the public prosecution.

100. In order to comply with international standards and the requirements of the EU, "the former Yugoslav Republic of Macedonia" adopted a new Law on Prevention of Money Laundering and other Proceeds from Criminal Act and Financing of Terrorism in 2008. This law has also been amended several times. The most significant developments are the following:

- The status (and the name) of the Financial Intelligence Office has been modified (as mentioned above) and its authority has been explicitly expanded with regard to measures related to FT prevention;
    - The number of entities obligated to implement AML/CFT measures and activities has been expanded;
    - The obligations for enhanced and simplified customer due diligence were introduced to address various levels of risks, including stricter measures for the identification of

beneficial owners;
- Special obligations were introduced for the fast money transfer service providers, casinos and brokerage houses,
- Explicit prohibition of cash transactions over €15,000 (for all, except for the banks or saving houses), opening and keeping of anonymous accounts, and business relations with shell banks,
- Record keeping obligations were further specified,
- Legal grounds were introduced for the establishment of the Money Laundering and Financing of Terrorism Council,
- Internal programs for AML/CFT were specified, obligation is introduced for establishment of special departments for AML/CFT in the entities and banks are obliged to introduce or upgrade special AML/CFT software.

101. On the basis of the AML/CFT Law, several bylaws were adopted: Rulebook for inspection monitoring; Rulebook for the contents of the reports submitted to the FIO; Rulebook for the form and the content of the of data that obliged entities submit to the FIO and the way of their electronic submission; Rulebooks for drafting of the list of countries meeting the requirements for prevention of money laundering and financing terrorism and of countries which have not implemented or have insufficiently implemented measures for prevention of money laundering and terrorism financing; Rulebooks for the form and the content of the numeric registry that is filled by obliged entities who organise games of chance in gambling clubs (casinos), who perform foreign exchange operations, by providers of fast money transfer and by brokerage houses and banks licensed to operate with securities

102. The Law amending the Law on Prevention of Corruption, adopted in January 2008, regulates the procedure for examining the property of elected and appointed state officials, determining of the value of the base amount for taxation and specify the provisions related to the activities of the Public Revenue Office in the procedure for taxation of persons having the obligation to declare change of property.

103. In January 2009, the Assembly of the Republic of Macedonia adopted the new Law on Investment Funds, which puts the investment funds under the supervision of the Securities and Exchange Commission. This should contribute to the higher level of transparency and control of the work of investment funds.

104. In February 2009 the Decision on Currency Exchange Operations was adopted defining the conditions for obtaining a license for currency exchange operations, the manner of performing currency exchange operations and the regulative and supervisory measures that can be taken by the National Bank. According to this Decision, the authorised currency exchange entity is obliged to possess a program for ML/FT prevention in accordance to the regulations defining ML/FT prevention, in case of non-compliance the National Bank may withdraw the license for currency exchange operations.

105. In March 2009 the Council of Europe Convention on Laundering, search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No 198) was ratified by the Assembly of the Republic of Macedonia.

106. In order to comply with the requirements stated in the 3rd round Mutual Evaluation Report, several amendments to the Criminal Code were adopted in 2009.

107. Since the 3rd round evaluation, the Law on Insurance Supervision (LIS) was amended three times. In June 2007, with the aim to harmonise it with the EU insurance legislation and international standards for efficient supervision, particularly with regard to strengthening the independence of the supervisory body, imposition of fit and proper requirements on shareholders and managers in the insurance undertakings, and improvement of preventive and corrective supervisory measures.

108. In 2008 and 2010 amendments were made to the Law on Securities, amongst others giving the Securities and Exchange Commission a clear entitlement to supervise and issue sanctions to all authorised market participants. Since the 3rd round of evaluation, the Commission has also started

to include the AML/CFT issues in its regular supervisions over the authorised market participants and to promote within its participants the enforcement of the AML /CFT measures in their daily work with clients.

109. In 2008 the Law on Management of Confiscated Property, Property Gained and Objects Confiscated in Criminal and Misdemeanour Procedures was adopted subsequently in 2010. The Law regulates the management, use and disposal of temporarily seized property, proceeds and objects, as well as confiscated property, proceeds and the objects seized with effective decision during criminal and misdemeanour procedure. The law also provided for the establishment of the Agency for Managing of Confiscated Property.

110. In 2008 the Law on voluntary fully funded pension insurance was adopted, prescribing for the companies that will manage the volunteer pension funds the implementation of measures and activities in accordance with AML/CFT Law, whilst the amendments made to this Law in 2010 impose that upon establishing a company that will manage the volunteer pension fund, it is obligatory to submit a program for ML/FT prevention. Furthermore, this Law gives the Agency the authority to request information from the FIO whether the founders of the company are involved in cases of ML and FT and with a mandate to cancel or revoke the approval for management with volunteer pension fund in a case of failure to comply to AML/CFT Law.

111. In 2010 the Law on Associations and Foundations came to force and in the 2011 it was amended. The details on the regulations of associations are provided above, in the section concerning non-profit organisations.

112. The amendment to the Law on Courts adopted in the year 2010 established a specialised court department within the Basic Court Skopje I, which is in charge of dealing with cases related to organised crime and corruption on the entire territory of "the former Yugoslav Republic of Macedonia".

113. In March 2011 the Law on the International Restrictive Measures was adopted, which regulates the procedure for introduction, implementation and abolition of restrictive measures, the competences and coordination of the state authorities designated for the implementation of international restrictive measures introduced by "the former Yugoslav Republic of Macedonia" against one or group of states foreign natural and legal persons and other entities.

114. The amendment to the Law on Public Revenues Office adopted in 2012 stipulating that the PRO, in addition to the competences confined to it, will also supervise the implementation of the AML/CFT Law measures of gambling in casinos and the legal entities and individuals delivering the following services: real estate purchase and sale, audit and accounting services, advices in the area of taxes of provision of consultancy services, the legal entities that receive lien in a form of movable items and real estate, as well as associations and foundations.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1)

2.1.1 Description and analysis

Recommendation 1 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

115. "The former Yugoslav Republic of Macedonia" was rated PC in the 3rd round MER based on the following shortcomings:

- At some points the money laundering offence does not meet the standards set by the Vienna and Palermo Conventions. A number of offences are either not met (possession or use of proceeds) or insufficiently met by the current offence.
- The scope of the money laundering offence is limited by the differentiation between offences as regards the object of the offence (money, other property).
- All the offences covered by the money laundering offence are only applicable if the money/property exceeds a certain threshold ("greater value").
- Self-laundering is not expressly provided as prosecutable for all kind of offences of Art. 273 of the Criminal Code (CC).
- The low number of convictions and indictments raises concerns as to effective implementation.

Legal Framework

116. "The former Yugoslav Republic of Macedonia" has achieved significant development since the 3rd round of MONEYVAL evaluation by bringing its anti-money laundering criminal legislation more in line with the wording of the Vienna and Palermo Conventions.

117. The criminal offence of money laundering is provided by Art. 273 of the Criminal Code as it was at the time of the previous round of evaluation. This Article, however, was subject to some important changes in 2009 by virtue of the Law on Changes and Amendments to the Criminal Code ("Official Gazette of the Republic of Macedonia" No 114/2009) as a result of which it follows more closely the standards set by the above mentioned Conventions.

118. Before entering into the deeper into the analysis of the legal text, it needs to be noted that the evaluators of the present round have encountered a number of inaccuracies in the various English translations of Art. 273 CC similar to those which had already been reported by the previous evaluation team[7]. That is, the evaluators were provided with different English versions of the relevant provisions (one in the MEQ and another one in a separate document) which significantly differed in terminology not only from each other but also from the English translation taken as a reference in the 3rd round report. After a thorough analysis of these alternatives together with the original text in Macedonian language, the evaluators decided to stick to the revised English version of the money laundering offence that can be found in the 3rd round report, while those parts of the text that have subsequently been amended by the 2009 novel will be quoted according to the English translation as provided in the MEQ.

Criminalisation of money laundering (c.1.1 – Physical and material elements of the offence)

119. The core ML offence now reads as follows. New additions to the text are in bold underlined type.

Laundering of money and other proceeds of crime

(1) The person who releases in circulation, accepts, takes over, exchanges or breaks money ***or other property*** *that he/she acquired through a criminal act or for which he/she knows was acquired through a criminal act, or by conversion, transfer or in any other manner conceals that it*

[7] See paragraph 120 of the 3rd round MER (page 36).

originates from such a source or conceals its location, movement or ownership, shall be punished with imprisonment from one to ten years.

*(2) The punishment referred to paragraph 1 shall also apply to the person who **possesses or uses** property or objects for which he/she knows were acquired through committing a criminal act or who by counterfeiting documents, not reporting facts or in another way conceals that they originate from such a source, or who conceals their location, movement and ownership.*

120. The explicit inclusion of the possession and use of proceeds from crime among the physical (material) elements of the offence (Art. 273 paragraph 2) is a major development, as a result of which the range of conducts that establish money laundering was brought more in line with the requirements of the Vienna and Palermo Conventions. On the other hand, the mere acquirement of proceeds, which had previously been covered by the ML offence as "*or in any other way acquires*" ("*на друг начин ќе прибави*") has apparently been lost in the amendment process. While this phrase was deleted from Art 273(2) CC there is currently no provision by which the acquirement of the proceeds of crime would in itself establish the criminal offence of ML. The evaluation team was not given any explanation as to the reasons and purposes of this amendment.

121. Certainly, the actual impact of this modification can only be assessed if one examines whether and to what extent the notion of *"acquirement"* is covered by the remaining parts of the ML offence in Art. 273 CC as amended. One of the conducts listed in paragraph (1) namely the term "*accepts*" ("*ќе прими*") deserves attention in this respect. The similarities are evident: both acquirement and acceptance refer to the simple receipt of the respective property, regardless of whether the same property would subsequently be kept in the possession of, or used by the perpetrator.

122. While the authorities of "the former Yugoslav Republic of Macedonia" argued that in the context of the ML offence, both *"acquire"* and *"accept"* had practically the same coverage, the evaluators were not provided with any source of jurisprudence to support this interpretation (e.g. explanatory notes or commentaries to the CC) nor any examples from concrete cases. On the other hand, in the previous wording of Art.273 both terms were simultaneously applied in the ML offence to denote two distinct laundering activities *("accept"* in para 1 while *"acquire"* in para 2) which makes it unlikely that these terms are merely synonyms of each other. There is, however, a substantial difference too. The *"acquirement"* is a general term that involves any act by which someone can gain possession of something while *"acceptance"* focuses to the case where someone takes or receives something as a response to the action of another party. That is to say that the property can only be *"accepted"* if somebody else offers, gives or otherwise makes it available to the acceptor while the mere *"acquirement"* is a unilateral act that does not necessarily involve any other party. As a result, the current wording of Art. 273 of the CC falls short of covering the acquirement of proceeds of crime as this term is provided by the Vienna and Palermo Conventions and therefore Criterion 1.1 cannot be considered as fully met.

123. As for the other conducts that establish the ML offence (conversion, transfer etc.) the wording of the respective provisions is practically the same as it was at the time of the 3rd round evaluation. In this very respect, there was no specific deficiency detected nor any recommendation made by the previous evaluation team.

The laundered property (c.1.2) & proving property is the proceeds of crime (c.1.2.1)

124. At the time of the 3rd round MONEYVAL evaluation, the most serious deficiencies of the ML criminalisation were those related to the object of the offence, that is, the property that could be subject to laundering. There were two shortcomings identified.

125. One was the clear and explicit application of a value threshold, as a result of which the laundering activities would not have established the criminal offence of ML if committed in relation to assets below the threshold of *"greater value"* (which corresponded to the amount of five officially declared average monthly salaries in the country at the time of committing the

crime[8]). Furthermore, these provisions were then interpreted in a way that the value threshold did, in fact, apply for all conducts under paragraphs (1) and (2) of Art.273 CC which unquestionably restricted the scope of the entire ML offence.

126. This deficiency has since been adequately remedied by the 2009 amending legislation, which entirely removed the value threshold from the ML offence. While this development is unconditionally appreciated by the evaluators, it is a further question whether and what impact it might have on the actual practice the domestic authorities follow in ML cases, in which respect the authorities could not demonstrate any noticeable positive effect on the number of the actual ML investigations and prosecutions in the country that could have been caused by ML cases initiated in relation to proceeds below the former value threshold. The apparent lack of statistical differences might, to some extent, justify the opinion of the authorities from the time of the 3rd round evaluation, when they appeared confident that there had been no ML cases rejected because of the then-existing value threshold, the elimination of which thus was not expected to increase the number of ML cases.

127. During the on-site meetings, the evaluation team had the impression that regardless of the deletion of the value threshold, the prosecution would continue to focus at ML activities related to proceeds that exceed the level of *"greater value"* while those related to proceeds below this threshold would not be considered as an ML offence. The evaluators thus concluded that the former value threshold was still likely to exist in the daily practice and approach of the prosecuting authorities. Subsequent to the on-site visit, however, the authorities of "the former Yugoslav Republic of Macedonia" claimed that these findings must have been based on statements that had either been misunderstood or mistranslated. Representatives of the prosecution underlined that the criminal offence of ML can be established regardless the value of the laundered proceeds and had there been a ML case below the former threshold detected by the competent authorities, it would have been processed *ex officio* by the public prosecutor.

128. Having no capacity to examine, retroactively, whether their on-site findings were actually based on misunderstanding or mistranslation, the evaluators performed a more profound research for concrete case examples from the past four years in which the offence of ML below the former value threshold was prosecuted. In this respect, they were finally provided with sufficient information that in at least one of the ML cases already sent to court, namely the famous "Frankfurtmafija" case (the first major case to involve proceeds from drug crimes[9]) one of the defendants was charged with the offence of ML even if he only had been suspected, at least at the time of the incrimination, to have laundered proceeds not exceeding 180 USD (thus far below the former threshold).

129. While the evaluators are thus convinced that ML cases below the former threshold can be and, at least in one case, have actually been prosecuted in "the former Yugoslav Republic of Macedonia" they encourage the law enforcement and prosecuting authorities not to cease paying due attention, particularly in the early stages of an investigation, to the laundering of such *"bagatelle"* proceeds as even such cases may lead to the identification and prosecution of more sophisticated large-scale laundering schemes (as it happened in the aforementioned ML case, too). Development of practice in such cases should therefore be subject of scrutiny in the next round of MONEYVAL evaluations.

130. The other feature the 3rd round evaluators found to be problematic was the rather complicated structure of the ML offence by differentiating between the various conducts according to which some of the laundering activities (those listed in Paragraph 1) were only related to *"money"* while others (those in Paragraph 2) related to *"property or objects"*. Such a distinction was in itself contrary to Criterion 1.2 but the situation was made even more complicated by the fact that neither

[8] As it was explained in paragraph 135 of the 3rd round MER (page 40) continuous calculation and official declaration of average monthly salaries was carried out by the State Statistical Office and the figures were regularly published in the "Official Gazette of the Republic of Macedonia" as well as on the website of the Statistical Office. At the time of the 3rd round on-site visit, the threshold of "greater value" amounted to 70,335 MKD (approx. €1,150).

[9] IV. KOK no.37/11

of the key legal terms (money, property and objects) were properly defined, at that time, for the purposes of criminal jurisdiction in ML cases[10].

131. In order to remedy these deficiencies, recommendations were made. First, the authorities were invited to reconsider the differentiation between ML offences according to whether money or other proceeds are concerned, and second, to eliminate the uncertainties regarding the object of the money laundering offence either by introducing the single notion of *"property"* instead of the current and more ambiguous terms (money – property – object) or, as a minimum requirement, by giving clear and adequate definitions for these latter terms in the Criminal Code.

132. The evaluators of the present round note with appreciation that these recommendations have since been fulfilled, at least to a satisfactory extent, by the 2009 amending legislation. Even though the various ML offences are still differentiated as regards the object of the offence, that is, those in paragraph (1) can only be committed in relation to *"money or other property"* while those in paragraph (2) to *"property or objects"* this distinction is, at the present time, nothing but a harmless peculiarity of the criminal substantive law that can no longer pose any actual impediment to the practitioners. The tiny modification that solved the problem was the addition of the expression *"or other property"* to the term *"money"* in paragraph (1) as a result of which the two paragraphs were Harmonised and *"property"* became a common factor in relation to which every offences in both paragraphs can equally be committed *("money or other property"* vs. *"property or objects"*).

133. In addition to that, the lawmakers of "the former Yugoslav Republic of Macedonia" provided for the long-awaited definitions of the above mentioned terms in the Criminal Code. First, the definition of *"money"* ("*пари*") in Art. 122 item 12 was entirely reformulated so as to cover bank account money too: *Money shall be means of payment in cash in denominations or electronic money, which are in circulation, on the basis of a law, in the Republic of Macedonia or in a foreign country.*

134. While the definition appears to need some clarification at certain points (particularly as regards the expression "*in cash in denominations*") the evaluators learnt that the term *"electronic money"* was introduced to address money on bank accounts and in similar intangible formats. On the other hand, it is unclear whether and to what extent this definition would cover all negotiable instruments.

135. Second, the term *"object"* ("*предмет*") was given a definition in Art. 122 item 39 of the CC as follows: *Objects shall include movable and immovable objects being completely or partially used or should have been used or have resulted from a commission of a crime.*

136. This definition raises some questions. First of all, the term *"object"* is one of the most generic, the most frequently used and, consequently, the least definable legal terms in any languages, therefore one would expect its definition being sufficiently abstract and very comprehensive. Surprisingly, this definition does not refer to the generic notion of *"object"* but to a very specific subset of objects, that is, those that can be subject to confiscation ("seizure of objects") pursuant to Art.100-a of the CC as instrumentalities or intended instrumentalities of crime as well as objects that resulted from the commission of a crime. In fact, there is an almost complete correspondence between Art. 122 item 39 and Art. 100-a (1) and (2) of the CC, which leads to the

[10] First, the term "money" was given a rather restrictive definition in Art. 122 item 12 CC then in force, according to which it only covered coins and banknotes in legal circulation in the "the former Yugoslav Republic of Macedonia" or in another country thus excluding, on the face of it, money on bank accounts and all types of negotiable instruments. Since this general definition referred to any criminal offences in the Special Part of the CC (including the ML offence) the scope of the offences listed in Art. 273 (1) CC must have been restricted to laundering of cash i.e. domestic and foreign coins and banknotes, even if the domestic authorities argued that this definition was actually interpreted more widely in the judicial practice so as to comprise money on bank accounts as well. As for the expression "property and objects" neither of these terms was defined at that time by the Criminal Code and therefore the authorities made reference to the definition of "property" as it was provided by the AML Law then in force. This definition was, on the one hand, fully in line with the Vienna and Palermo Conventions but, on the other, it was not directly applicable in the context of the Criminal Code and could only be considered as a potential base of interpretation.

following conclusions:

- the definition in Art. 122 item 39 only serves to define the term "object" in the context of Art. 100-a (i.e. objects that can be confiscated/seized);
- even in this context, the definition is meaningless: item 39 simply reiterates the contents and wording of paragraphs (1) and (2) of Art. 100-a without any added value (i.e. it defines the term with itself);
- the definition cannot be generally applied to the term "object" as it occurs in any other context in the CC (including its occurrence in the ML offence).

137. The third and most important new definition is of the term *"property"* ("*имот*")[11] in Art. 122 item 38: *Property shall include money or other payment instruments, securities, deposits or other property of any type, both material or non-material, movable or immovable, other rights over objects, claims, as well as public documents and legal documents for ownership in hard copy or electronic format, or instruments proving the right to ownership or interest in that property.*

138. This definition is comprehensive enough to be in line with the requirements of the Vienna and Palermo Conventions and, what is more important, it clearly incorporates *"money"* and *"objects"* as referred to above in Art.273 paragraphs (1) and (2) respectively. The fact that these are both included in the notion of *"property"* ensures that both paragraphs (1) and (2) of the ML offence are now equally applicable to any sort of proceeds. As a consequence, the legislation is now technically compliant with Criterion 1.2.

139. A new item 16 was inserted into Art. 122 CC to provide a definition for *"proceeds of crime"* ("*принос од казниво дело*") according to which: *Proceeds of crime shall be any property or benefit obtained directly or indirectly by the commission of a criminal act, including proceeds from a criminal act committed abroad if, at the time when it was committed, such act was punishable as a criminal act in accordance with the laws of the country where it was committed and in accordance with the laws of the Republic of Macedonia.*

140. This definition gives an explicit answer to the question whether the ML offence is extended both to direct and indirect proceeds of crime. At the time of the 3rd round evaluation, this issue was suffering of uncertainty. While the admissibility of indirect proceeds was neither mentioned in, nor excluded from, the ML offence of that time, the examiners were assured by the host authorities that indirect proceeds of crime were, at least in practice, generally considered as being covered by the ML offence[12].

The scope of the predicate offence (c.1.3) & Threshold approach for predicate offences (c.1.4)

141. As far as the range of potential predicate offences is concerned, the lawmakers of "the former Yugoslav Republic of Macedonia" had already introduced an *"all crimes approach"* by the time of the previous MONEYVAL evaluation with full coverage of all the designated categories of offences under the Glossary to the FATF Recommendations. The evaluators of the present round were not made aware of any changes in this field and therefore Criterion 1.3 continues to be met.

Extraterritorially committed predicate offences (c.1.5)

142. At the time of the 3rd round evaluation, there was no positive legislation to explicitly cover proceeds laundered on national territory which stem from a predicate offence committed abroad. Notwithstanding that, the evaluators of the 3rd round acknowledged that the laundering of foreign proceeds was generally considered among practitioners as being covered by the language of Art. 273 CC taking into account that the offence contained no restriction or specification in this respect and therefore it would automatically refer to any proceeds, regardless of whether the crime they

[11] The original term was randomly translated as "property" or "assets" in the official English version of the CC, out of which the evaluators chose the more appropriate "property"

[12] At that time, this argument could only be based on the broad interpretation of Art. 97 (1) CC that originally dealt with the grounds for confiscation of property gain. It provided that nobody was allowed to retain *"indirect or direct property gain acquired by the perpetration of a criminal offence"* which rule was then interpreted in a way that the notion of *"proceeds of crime"* would necessarily comprise indirect proceeds as well.

were derived from had been committed in the country or abroad, provided that the predicate offence committed in another country met the standard of dual criminality. This interpretation had then already been applied in the practice of the prosecuting authorities and the judiciary in a number of cases, out of which the 3rd round MER gave reference[13] to a recent conviction for ML related to proceeds derived from cigarette smuggling and tax evasion committed abroad.

143. Although the formulation and the confirmed practical implementation of the above described legal framework was in itself sufficient in the 3rd round evaluation, the authorities have since gone forward in improving the domestic legislation in this field.

144. The term *"proceeds of crime"* cannot be found in the core ML offence (paragraphs 1 and 2 of Art. 273 CC as quoted above) which only refers to *"property"*, *"money"* and *"objects"*. Nonetheless, the actual name of the ML offence (*"laundering of money and other proceeds of crime"*) does contain this expression which also occurs in paragraphs 4, 5, 7 and 13 of Art. 273 CC with a view to the entirety of the assets (money, property and object) that can be subject to laundering activities. This expression implies, first, that laundered money is also considered part of the general notion of proceeds (hence "and other proceeds") and second, that the material scope of *"proceeds"* is likely to correspond to that of the term *"property"* as discussed above. As a consequence, the various terms occurring in this field should not pose an actual problem of interpretation for the practitioners.

145. The definition in item 16 above provides for a precise and comprehensive coverage of foreign proceeds of crime, fully in line with the wording and the spirit of Criterion 1.5. The adoption of this provision formally recognised and approved the effective practice that had already been followed, as discussed above, by the practitioners in "the former Yugoslav Republic of Macedonia" beforehand. (For example, one of the ML convictions made available to the 4th round examiners in English[14] was also brought for a ML offence the predicate crime (namely investment fraud) which had been committed in the United Kingdom and the proceeds that had originally been paid to an escrow account in the United States were subsequently transferred to a bank account in "the former Yugoslav Republic of Macedonia".)

Laundering one's own illicit funds (c.1.6)

146. The 3rd round evaluators recommended the authorities to clarify that self-laundering was actually criminalised for all conducts of ML. The concerns whether self-laundering was prosecutable for all forms of conducts were raised by certain differences between paragraphs (1) and (2) regarding the formulation of the terms by which the mental element (the knowledge of the ill-gotten origin of the proceeds) was defined. That is, while the offences in paragraph (1) referred to assets "*that he/she* (that is, the perpetrator) *acquired through a criminal act"* as well as to those "*for which he/she knows was acquired through a criminal act*" and hence provided for two alternative options in this respect, the offence in paragraph (2) was explicitly related to property or objects "*for which he/she knows were acquired through committing a criminal act*" (thus, apparently excluding the possibility to launder the assets that *he/she acquired*). This differentiation led to the conclusion that self-laundering was not prosecutable for the conducts in paragraph (2) even though the host authorities were positive that laundering of own proceeds was covered, at least in practice, by both paragraphs.

147. The above quoted parts of paragraphs (1) and (2) of Art.273 have not since been amended and therefore the formal discrepancy between the two paragraphs has also remained the same, as a result of which only the ML offences listed in paragraph (1) can explicitly be committed in relation to assets that the money launderer himself "*acquired through a criminal act*". Thus, it appears, on the face of it, that the laundering of own proceeds is only provided as prosecutable for offences in paragraph (1) of Art. 273 while those in paragraph (2) including the possession and use of proceeds would not be applicable to the author of the predicate offence. Should it actually be the case, it would be a definite shortcoming of the criminalisation regime.

[13] See footnote 38 to paragraph 141 of the 3rd round MER (page 41).
[14] KOK no.50/09.

148. However, the authorities maintained that neither of paragraphs (1) and (2) are expressly excluded from being applicable to one's own proceeds considering that the one condition that applies to paragraph (2) that is, the knowledge that the property "*was acquired through a criminal act*" can be interpreted, in itself, to encompass own proceeds. In this context, the evaluators were informed by the Ministry of Justice that there had already been numerous ML convictions involving self-laundering activities, a part of which was said to be based on offences listed in Art. 273 (2) CC.

149. More precise information was provided by the prosecutors the evaluation team met subsequent to the on-site visit who presented, as an example, one of the ML cases recently ended with a conviction[15] in which two of the defendants had been prosecuted and eventually convicted, first, for the predicate offence they had committed (abuse of official position and authority i.e. in a corporate entity) and, second, for the use of the proceeds they had derived from the same predicate offence which in itself constitutes a ML offence in the scope of Art. 273(2). The two perpetrators were thus convicted for self-laundering charges based on paragraph (2) of Art. 273 CC.

150. The evaluators agree that the wording of paragraph (2) does not necessarily exclude its applicability to the laundering of own proceeds and such an interpretation can only be established if both paragraphs, and particularly the apparent discrepancy between their coverage, are taken into account. The prosecuting authorities and the judiciary thus did not resort to a *praeter legem* interpretation when applying Art. 273(2) CC to self-laundering cases – instead, it was a practical solution for the formal inconsequence of the criminal legislation.

151. As a consequence, the evaluation team accepts that Criterion 1.6 is met to a sufficient degree. Notwithstanding that, they need to note that the uneven formulation of paragraphs (1) and (2) would ideally require a legislative response.

152. It was already clarified in the preceding rounds of MONEYVAL evaluations that no conviction for the predicate offence was essential to a successful prosecution for money laundering in "the former Yugoslav Republic of Macedonia" even in *"classic"* autonomous ML cases, where the predicate and the laundering offence are not prosecuted together or simultaneously[16]. At the time of the present round, this positive approach was carried on by the legislators of "the former Yugoslav Republic of Macedonia" when adding the following paragraph (10) to the ML offence in Art. 273 CC: *If any actual or legal obstacles exist for determination of predicate crime or prosecution of the perpetrator, the existence of such crime shall be determined on the basis of actual case circumstances and the existence of grounded suspicion that the assets have been obtained through such a crime.*

153. This provision is formulated to confirm that no previous conviction for the predicate criminal act is required and, furthermore, that it shall be sufficient to prove the predicate crime at the level of *"grounded suspicion"*. This interpretation had actually been applied in concrete ML cases including the one already mentioned above[17] (in the context of Criterion 1.5) in which the underlying criminal activity could successfully be proven without obtaining a conviction or an indictment in this respect (as it was noted by the representatives of the judiciary the team met on-site, paragraph (10) of Art.273 is basically the pre-existent court practice being enshrined in positive law).

Ancillary offences (c.1.7)

154. The 3rd round MER provided a detailed description and analysis[18] of the ancillary offences related to the ML offence such as attempt (Art. 19 CC) instigation (Art. 23) aiding and abetting

[15] VIII. KOK no. 17/10.

[16] As it was described more in details in the 3rd round MER, this issue had first been formally addressed by the Explanatory Report for the 2004 amending law to the CC as well as in a series of training sessions organised for legal practitioners in the following year, in which context the minimum level of proof was described as the existence of solid evidence that could prove the commission of the underlying criminal offence for the prosecution.

[17] KOK no.50/09

[18] See paragraphs 145 to 151 of the 3rd round MER (pages 42-43)

(Art. 24) as well as the criminal offence of Conspiracy to commit a criminal offence (Art. 393). These provisions together were then found to meet the requirements of Criterion 1.7 and therefore no particular deficiency was noted nor was any recommendation made in this field. Considering that these provisions have not since been amended and the 4th round evaluation team has no information on any restrictive interpretation or implementation of the respective ancillary offences, all findings and conclusions in the 3rd round MER remain valid.

Additional element – If an act overseas which does not constitute an offence overseas but would be a predicate offence if occurred domestically leads to an offence of ML (c.1.8)

155. According to the definition of "proceeds of crime" in Art. 122 item 16 CC as quoted above, the ML offence cannot be applied to foreign proceeds unless the dual criminality standard is fully met (*"proceeds from a criminal act committed abroad if, at the time when it was committed, such act was punishable as a criminal act in accordance with the laws of the country where it was committed and in accordance with the laws of the Republic of Macedonia"*). As a consequence, the legislation of "the former Yugoslav Republic of Macedonia" does not cover the situation in Additional Element 1.8.

Recommendation 32 (money laundering investigation/prosecution data)

156. Concerning the basic statistical information on the number of ML/TF investigations, prosecutions and final convictions, the following figures were provided by the authorities of "the former Yugoslav Republic of Macedonia". During the evaluation process, the accuracy of these data could be verified by use of a more detailed case-by-case analysis provided by the authorities (not attached to the MER).

Table 8: ML/TF investigations, prosecutions and convictions

		Investigations		Prosecutions		Convictions (final)	
		cases	persons	cases	persons	cases	persons
2008	**ML**	5	11	6	13	3	19
	FT	0	0	0	0	0	0
2009	**ML**	9	29	5	16	1	1
	FT	0	0	0	0	0	0
2010	**ML**	5	46	2	6	0	0
	FT	0	0	0	0	0	0
2011	**ML**	2	12	4	42	1	2
	FT	0	0	0	0	0	0
2012	**ML**	5	36	2	25	5	11
	FT	0	0	0	0	0	0

157. The aforementioned case-by-case analysis made it possible to determine how many of the respective ML cases (including investigations, indictments and convictions for the criminal offence of ML) had originally been based on reports submitted by the FIO. The results can be seen in the Table 9 below.

Table 9: ML cases originated by FIO reports

	Investigations		Prosecutions		Convictions (final)	
	based on FIO report	other	based on FIO report	other	based on FIO report	other
2008	4	1	3	3	1	2
2009	5	4	3	2	1	0
2010	4	1	2	0	0	0
2011	1	1	2	2	0	1
2012	4	1	2	0	2	3

158. No statistics were available on the predicate offences, nor on the autonomous/third party laundering cases. Information on the predicate offences was only provided for cases that ended

with a final conviction and hence any further conclusions could only be drawn on this basis.

Effectiveness and efficiency

159. In contrast to the time of the previous evaluation, when there could only be 2 convictions reported from 2 separate years in a 10-years period since ML had been criminalised in "the former Yugoslav Republic of Macedonia" the present situation is significantly different. As an apparent result of the activities of the investigating and prosecuting authorities, there are numerous ML cases being brought before the court every year as a consequence of which final convictions for the offence of ML can no longer be considered a rarity in the country.

160. While the evaluators welcome the relative frequency by which ML convictions occurred in the criminal statistics of the last five years, they also note that the statistical figures provided in respect of the number of criminal investigations, prosecutions and convictions for ML does not allow to establishing any noticeable tendency (either upwards or downwards) throughout the period under scrutiny.

161. As for the convictions, "the former Yugoslav Republic of Macedonia" achieved 10 final verdicts against 33 individuals for ML offence between 2008 and 2012 which makes 2 convictions every year in average. This is not an outstanding figure in itself nevertheless it is likely to be proportionate to the size of the country and the features of its financial sector.

162. The number of indictments is not significantly higher than the convictions. According to the table above, the prosecutors submitted 19 indictments in the assessed interval which shows a 2:1 balance as compared to the number of convictions. (As for the number of indicted and convicted persons, there were 102 persons indicted versus 33 convicted.) On the face of it, these figures appear to suggest that successful convictions could only be achieved in approximately 50% of the ML cases that the prosecutors brought before the court and the other 50% of the cases eventually ended with an acquittal or discontinuation of the case.

163. Nonetheless, the case-by-case statistical analysis the evaluators were provided subsequent to the on-site visit proves that there has not been ML cases tried and decided by the court but not with a conviction (and there was only one case where the second instance court abolished the first verdict and returned the case to the prosecutor). It appears therefore that the remaining 50% of the indictments are still pending before the court which raises questions about the effectiveness of the judiciary.

164. While in most cases the final verdict could be brought in a reasonable time after the issuance of the indictment, the evaluators noted enormous delays in almost half of the respective cases (at least 5 out of 10) where the court proceedings (both first and second instance) required more than 3 years until a final verdict could be achieved (the actual time span was approximately 4 years in 2 cases while 5 years and 5 months in 1 case). Among the cases still pending before the court, there are 2 cases in which bringing the first instance verdict took 3 and 4 years respectively while there are 2 further cases where an indictment was issued back in 2009 but no verdict has yet been brought.

165. The total number of indictments is likewise proportionate to that of the investigations. Nonetheless, while all of these figures (investigations, indictments and convictions) appear proportionate, as mentioned above, to the general parameters of the country and its financial sector, they are rather low if compared to the remarkably high number of incriminations for proceeds-generating criminal offences as illustrated by Table 2 in the preliminary part of this report.

166. As for the representation of cases actually based on transaction reports (either from financial institutions or other obliged entities) as opposed to the total figures, it can be illustrated by the table below:

Table 10: ML cases

		Prosecutions		Convictions (final)	
		cases	persons	cases	persons
2008	**ML**	6	13	3	19
	ML/STR	1	4	0	0
2009	**ML**	5	16	1	1
	ML/STR	2	4	1	1
2010	**ML**	2	6	0	0
	ML/STR	2	6	0	0
2011	**ML**	4	42	1	2
	ML/STR	0	0	0	0
2012	**ML**	2	25	5	11
	ML/STR	1	19	1	5

167. During the on-site visit the host authorities claimed that the majority (approximately 70%) of investigations ending with an indictment had been based on transaction reports (STR) submitted by the obliged entities. This statement is only partially confirmed by the statistics above, where such kind of indictments and convictions represent one-third of the total figures (6 out of 19 indictments and 3 out of 10 convictions were based on STRs) which implies that the 70% ratio must have included cases where the investigation was launched on the basis of an FIO report made, as it was discussed above, at the request of the law enforcement. While the one-third ratio applies for both investigations and convictions, the actual proportion of STR-based cases varies year by year (e.g. in 2010 all the 2 indictments had been based on transaction reports while none in 2011).

168. Certainly, even such a proportion of STR-based cases can demonstrate the effectiveness of the FIO and the entire AML regime of "the former Yugoslav Republic of Macedonia" particularly if taking into consideration the analytical activities the FIO carried out in other cases that had originally been initiated by the MoI.

169. As far as ML prosecutions and convictions are concerned, the written information the evaluators were provided consisted of the above-mentioned case-by-case statistical analysis (including information about the respective predicate offences) together with three ML convictions in English translation, three others in original Macedonian language as well as a detailed description of seven different ML cases in the MEQ (in which context it was not clear, however, whether and to what extent these cases represent convictions and if yes, which ones).

170. The examination of these data shows that most ML offences were related to a certain set of predicate offences, including abuse of official position and authority (i.e. within a corporate entity), tax evasion, crimes against property (various forms of fraud) and corruption (three out of these four offences were actually represented as predicates in the three convictions too). In a number of cases, the predicate crimes involved classic forms of organised criminality such as organised illegal games of chance or extortion.

171. In the 10 ML cases ended with a conviction between 2008 and 2012 the proportion of the predicate offences was as follows (in case of multiple predicates, reference is made to the most significant one)

- abuse of official position and authority: 4 cases
- tax evasion: 3 cases
- smuggling of goods: 1 case
- fraud and similar offences: 2 cases

172. The prosecutors met on-site made reference, among others, to drug trafficking as a potential predicate offence for ML. In this context, the evaluators note with appreciation that the first ML case involving the proceeds derived from drug trafficking (the aforementioned "Frankfurtmafija"

case) was successfully finished with a final verdict[19] in 2013 which appears to be a cornerstone in the fight against the financial aspects of organised criminality in "the former Yugoslav Republic of Macedonia". The evaluators encourage this approach, with a particular regard to the high number of drug-related incriminations in the country and the lack of information whether and to what extent this sort of criminality or other proceeds-generating criminal offences (such as trafficking in arms or human beings) are generally represented among the predicate offences in concrete cases pending investigation or before the court. The importance of this question lies in the information the authorities disclosed in the MEQ according to which the most represented proceeds-generating predicate offences in the field of organised crime are the offences of corruption and corruptive behaviour, trafficking in human beings and drugs while two of these categories were not represented in the final convictions described above.

173. Even though the corporate criminal liability is related to R.2 and hence it cannot be subject of technical compliance assessment in R.1, the evaluators need to note, at least among the factors of effectiveness, that there is still an unexplainable lack of convictions, prosecutions and even investigations for ML against legal entities. Criminal liability of legal persons had already been provided for at the time of the 3rd round evaluation[20] and the respective rules were said, already at that time, to be effectively and successfully applicable to other criminal offences and this is why the 3rd round evaluators could not understand why these rules had not yet led to ML cases against legal entities.

174. It is therefore a sign of ineffectiveness that the practitioners the evaluation team met could not report a single criminal case from the last five years in which a legal person was convicted or at least indicted of the offence of ML whereas, on the other hand, there have actually been other cases (involving the offences of tax evasion, customs fraud or others) where legal entities could successfully be prosecuted. This is particularly worrisome considering that 7 out of the 8 most typical laundering methods in "the former Yugoslav Republic of Macedonia" as these are listed in the MEQ were clearly and directly related to the use of legal entities.

175. In the investigatory phase of the criminal proceedings, however, there appears to be some case practice developing in the last couple of years. As it was reported by the MoI subsequent to the on-site visit, there have already been a number of ML cases initiated against legal persons since 2010 as follows:

Table 11: ML cases initiated against legal persons

ML charges submitted in	Number of cases where legal persons were charged with the offence of ML	Total number of legal persons charged with the offence of ML	Predicate offences
2010	1	2	- damaging or privileging creditors (Art.257 CC)
2011	2	11	- tax evasion (Art. 279 CC) - misuse of official position and authorisation (Art. 353 CC)
2012	2	6	- concealment (Art. 239 CC) - misuse of official position and authorisation (Art. 353 CC)

176. The number of cases above is promising, nonetheless it remained unclear to the evaluators what had since happened in the respective criminal procedures (whether the investigations were still pending and if yes, what the reason of not yet achieving a conviction or an indictment was). It is therefore up to the assessors of the next MONEYVAL evaluation to examine the outcome of these proceedings.

[19] IV. KOK no.37/11.
[20] See paragraph 161 and onwards in the 3rd round MER (page 46).

2.1.2 Recommendations and comments

Recommendation 1

177. The examiners appreciate the development in the anti-money laundering criminal legislation that "the former Yugoslav Republic of Macedonia" has achieved since the last round of MONEYVAL evaluations, positively and effectively responding to most of the recommendations made by the 3rd round evaluation team. The legislators eliminated the value threshold from the offence, introduced new, comprehensive definitions for *"property"*, *"money"* and *"proceeds"* by which remedied the overly complicated inner structure of the core ML offence, provided for the explicit coverage of foreign predicate offences and indirect proceeds of crime and also inserted the conducts of *"use"* and *"possession"* in the core ML offence, which are all welcomed by the evaluators.

178. Together with the introduction of the latter two conducts, however, the lawmakers left out the third one from the core ML offence. The acquirement of proceeds of crime, which had previously been part of the offence, was deleted which causes partial incompliance with the standards for material (physical) elements of the ML offence as set by the Vienna and Palermo Conventions. The authorities of "the former Yugoslav Republic of Macedonia" should therefore urgently revisit the formulation of the core ML offence and provide for the reintroduction of the missing term.

179. Similarly to the situation at the time of the 3rd round evaluation, self-laundering is still not expressly provided as prosecutable for the ML offences in paragraph (2) of Art. 273 CC the wording of which, on the other hand, does not necessarily exclude its applicability to one's own proceeds. In this context, the evaluators accept and appreciate the practical approach and interpretation the prosecution and the judiciary adopted in this matter, nevertheless they reiterate that the unevenness in the formulation of the respective provisions should ideally be addressed by a reliable, legislative solution.

180. As for the issues of effective implementation, the competent authorities of "the former Yugoslav Republic of Macedonia" should analyse why the number of ML cases, including convictions, indictments and even investigations, continues to be relatively low as compared to the predominantly higher number of incriminations for proceeds-generating criminal offences and why classic forms of organised criminality are only seldom represented among the predicates in ML cases. Attention should be paid, among others, to the existence of evidentiary difficulties, staffing and educational issues as well as to the potential backlog occurring at certain authorities.

181. The examiners were seriously concerned that the enormous backlog in the trial stage of ML cases impacts on the effectiveness of ML criminalisation, particularly as such delays in achieving final results in cases may also reduce the potential for making successful confiscation orders. This phenomenon should be urgently addressed, for which reason the responsible authorities are recommended to determine what obstacles in court proceedings may have led to this situation and take the necessary measures to overcome that.

182. Rules that allow for the criminal accountability of legal entities should effectively be implemented also in ML cases, with a particular attention to the frequency by which legal persons are involved in laundering activities. Domestic authorities should explore the reasons for the apparent lack of ML prosecutions against legal persons and urge the application of the existing legal framework once it is applicable in concrete cases.

Recommendation 32

183. The authorities should keep statistics generally on the predicate offences (not only for the final convictions) and on the autonomous/third party laundering cases.

2.1.3 Compliance with Recommendation 1

	Rating	Summary of factors underlying rating
R.1	**LC**	• The acquirement of proceeds is not criminalised; **Effectiveness**

		• Significant backlogs in the trial stage of ML cases are threatening *the effectiveness* of the AML system.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

Special Recommendation II (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

184. The former Yugoslav Republic of Macedonia was rated PC at the 3rd MER based on the following shortcomings:

- The incrimination of terrorist financing appears not wide enough to clearly provide for criminal sanctions in respect of both individuals and legal persons concerning: the collection of funds with the unlawful intention that they are to be used, in full or in part, to carry out a terrorist act, by a terrorist organisation or by an individual terrorist; the provision of funds with the unlawful intention that they are to be used, in full or in part, to carry out a terrorist act, or by an individual terrorist.
- Further clarification is required as to the coverage of "financial means" as provided for by Art. 394a(2) CC.
- Attempt and the other ancillary offences as requested by criteria II.1d and II.1e seem to be not covered.

Legal framework

185. In accordance with the recommendations made in the 3rd round of MONEYVAL evaluation, the legislators of "the former Yugoslav Republic of Macedonia" introduced an autonomous criminal offence for terrorist financing in 2008 so as to achieve better compliance with the International Convention for the Suppression of the Financing of Terrorism (hereafter "FT Convention") which the country had ratified already in 2004.

186. It was the Law on Changes and Amendments to the Criminal Code ("Official Gazette of the Republic of Macedonia" No. 7/2008) that incriminated the financing of terrorism as a separate criminal offence by inserting it into the Criminal Code in the form of a new Article 394-c (in the original "394-в"). At the same time, the offence of terrorist organisation in Art.394-a CC was amended accordingly, as a result of which its paragraph (2) that had previously covered, to a very limited extent, the financing of a terrorist organisation (*"one that provides means for financing…"*) was deprived of any reference to financing activities so that it only refers to helping the organisation "*in any other way*".

187. The amending law, including the new TF offence, was published in January 2008, some six months before the adoption of the 3rd round MONEYVAL mutual evaluation report (July 2008). In the following year, some parts of the TF offence were amended by the Law on Changes and Amendments of the Criminal Code ("Official Gazette of the Republic of Macedonia" No.114/2009) that entered in force in September 2009. At that time, the core TF offence was formulated as quoted below (this paragraph was not affected by the 2009 amendment).

Financing of Terrorism

Article 394-c

(1) The person who provides or collects means in any way, directly or indirectly, unlawfully and consciously, with the intent to be used, or knowing that it will be utilized, wholly or partially, for the purpose of committing the crime of hijacking an aircraft or ship (Article 302), endangering the safety of air traffic (Article 303), terrorist threat to the constitutional order and security (Article 313), terrorist organisation (Article 394-a), terrorism (Article 394-b), crime against humanity (Article 403-a), international terrorism (Article 419), taking of hostages (Article 421) and other act of murder or serious bodily injury committed with intent to create a sense of insecurity or fear among the citizens, shall be punished with at least four years in prison.

188. The other paragraphs under Art.394-a CC provided for the following:

- as a *sui generis* ancillary offence to the financing of terrorism, paragraph (2) criminalised the act of making a public call in order to motivate the perpetration of any action foreseen in Art. 394-c (a similar provision can currently be found in paragraph [3])
- as another specific ancillary offence, paragraph (3) (the current paragraph [4]) criminalised the agreement with another person to perform a TF offence foreseen in the said article (which corresponds to the notion of conspiracy) as well as the invitation of other persons to join an association or group with the intention to commit such an offence
- paragraphs (4) to (6) (the current paragraphs [5] to [7]) provided for specific aggravated offences in case the TF was committed in a group or a criminal gang
- paragraph (7) (the current paragraph [11]) provided that legal persons shall be fined for the commission of a TF offence
- while paragraph (8) (the current paragraph [12]) prescribed the confiscation of means intended for the preparation, financing or perpetration of a TF offence.

189. The 2009 amendments slightly reformulated paragraph (2) on the offence of publicly calling for a TF act, increased the range of punishment for the aggravated offence in paragraph (4) and added three paragraphs to Art. 394-c (paragraphs [7] to [9] currently paragraphs [8] to [10]) by which officials and responsible persons in banks or other financial institutions and other persons authorised for undertaking measures for preventing TF were threatened with punishment for consciously failing to undertake their CFT obligations or for unauthorised disclosure of data related to CFT procedures and measures (tipping-off). Notwithstanding that, the core TF offence of that time still suffered from various deficiencies. The terrorist acts, as the potential targets of financing activities, were defined in a primarily enumerative but still incomplete manner while the offence did not provide for the criminalisation of financing an individual terrorist for any purpose.

190. These deficiencies were addressed by a further Law on Changes and Amendments of the Criminal Code ("Official Gazette of the Republic of Macedonia" No.55/2013) that was published on 15th April 2013 and entered in force 8 days after its publication, that is, shortly before the 4th round MONEYVAL on-site visit of "the former Yugoslav Republic of Macedonia" was carried out in the beginning of June 2013. This last amendment completed the core TF offence in Art. 394-c (1) and added a new paragraph (2) thereto by which the scope of the offence was extended so as to cover the financing of terrorist organisations and individual terrorists as follows[21]. (Additions to the previous text of paragraph [1] are in underlined bold type while paragraph [2] is entirely new.)

(1) The person who in any way, directly or indirectly, ***gives,*** *provides or collects* ***money or other property*** *with the intent to be used, or knowing that it will be utilized, wholly or partially, for the purpose of committing the crime of hijacking an aircraft or ship (Article 302) endangering the safety of the air traffic (Article 303), terrorist threat to the constitutional order and safety (Article 313), terrorist organisation (Article 394-a), terrorism (Article 394-b), crime against humanity (Article 403-a), international terrorism (Article 419), taking of hostages (Article 421)* ***or other act of terrorism provided by this Law, or other activity done with the intention to cause death or serious body injury of citizens or other people not involved in the conflict having the character of armed conflict pursuant to the international law,*** *with the intention to create a sense of insecurity or fear among the citizens* ***or to force the state or any international organisation to perform or to refrain from performing certain actions****, shall be punished with imprisonment of at least* ***eight*** *years.*

(2) The person who in any way, directly or indirectly gives, provides or collects money or other

[21] English translation of the current text of Art.394-c CC was provided to the evaluation team during the on-site visit in a separate document, the language and terminology of which was slightly different from that used in other sources such as the MEQ or the official English version of the CC. After thorough examination of the various English versions, some minor discrepancies and inadequacies were corrected in the text quoted above that had no impact on the actual meaning and coverage of the respective provisions.

property with the intent to be used for preparation for the act under paragraph (1) of this Article, or in any way provides or collects money or other property consciously, with the intent to be used or knowing that it will be utilized, partially or wholly, by a terrorist or a terrorist organisation, shall be punished with imprisonment of at least four years.

191. The recently amended TF offence provides for a structure and wording that is beyond doubt more in line with the respective international standards set by Art.2 of the FT Convention and FATF Special Recommendation II. Considering that the evaluation team was not made aware of any actual implementation of the pre-amendment TF offence in any concrete criminal cases (there had been no investigations or prosecutions) it appears unnecessary to analyse the previous formulation and coverage of Art.394-c CC for which reason the following assessment will only focus on the current wording and scope of the respective article as quoted above.

Criminalisation of financing of terrorism (c.II.1)

192. The main conducts of collection and provision of funds are criminalised, both in paragraphs (1) and (2) above, almost as formulated in Art.2(1) of the FT Convention. In addition, a third conduct was inserted into the conventional TF offence by which the *"giving"* of funds would also constitute financing of terrorism (although the evaluation team reserves some doubts whether *"giving"* can precisely be distinguished from *"providing"*).

193. The offence clearly extends to all the financing activities be committed "*in any way, directly or indirectly*". Although a further aspect of the SR.II standard, namely the unlawful and wilful commission of the offence is not expressly addressed by Art. 394-c CC, the evaluators share the opinion of the practitioners met on-site that this is implicitly covered, as the offence can be committed only with direct intent and/or knowledge, which necessarily meets the conditions of unlawfulness and wilfulness. As a consequence, the current formulation of the conducts by which the TF offence can be established ensures an adequate level of compliance with the wording of Criterion II.1(a).

194. The financing of a terrorist act, as required by Criterion II.1(a)(i) is criminalised under Art.394-c paragraph (1) both in respect of specific terrorist acts provided for in the nine international conventions listed in the Annex to the FT Convention (as required by Art. 2(1)a) and the generic notion of terrorist act (as provided by Art. 2(1)b of the FT Convention).

195. The TF offence in Art.394-c (1) CC clearly addresses a number of the offences within the scope of the treaties listed in the Annex to the TF Convention, making reference to the CC articles by which these offences have been introduced in the criminal substantive law of "the former Yugoslav Republic of Macedonia" such as the hijacking of an aircraft or ship (Art. 302) endangering the safety of the air traffic (Art. 303) crime against humanity (Art. 403-a) and the taking of hostages (Art. 421). While these offences are basically covered in accordance with the wording of the respective international treaties, the evaluators noted certain shortcomings in this respect:

- the International Convention against the Taking of Hostages also refers to *"a natural or juridical person or a group of persons"* among the entities that can be subject to compelling by hostage-takers (see the offence in Art.1) which aspect is not addressed by the offence in Art. 421(1) CC;
- the offences prescribed in Art. 3(1) of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, are only partially covered by Art.302 CC where paragraphs (1) and (2) adequately address Art. 3(1) subpara (a) and, to a certain extent, subpara (g) but the rest of the subparagraphs (b) to (f) appear not to be covered.

196. Furthermore, there are 4 offences within the scope of the aforementioned treaties that are not addressed by the TF offence. Out of these 4 offences, there are 2 which are, beyond any doubt, not covered to any extent by the criminal legislation of "the former Yugoslav Republic of Macedonia" that is, the offences provided by the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988).

197. Two other *"treaty offences"* appear to be covered, at least partially, by the CC, but the legislators failed to include them in the range of offences specifically mentioned in Art. 394-a (1) CC (these are marked in underlined bold type in the compliance table below).

198. The first of these *"omitted"* offences is the endangering of persons under international protection (Art. 420 CC), which adequately covers the offence prescribed by the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973), while the second is the unauthorised procurement and possession of nuclear materials (Art. 231 CC) which covers, even if not completely[22] the criminal offence prescribed by the Convention on the Physical Protection of Nuclear Material (1980). As a result of this formal deficiency, no financing activity carried out in respect of these 2 criminal offences can be considered a TF offence in accordance with Art. 394-a CC (such activities could nevertheless be punishable as aiding-abetting of the respective offences.)

Table 12: Acts of terrorism listed in the CC of the "the former Yugoslav Republic of Macedonia"

Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970	Art. 302 CC Hijacking an aircraft or ship
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Montreal on 23 September 1971	Art. 303 CC Endangering the safety of air traffic
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973	Art. 420 CC Endangering persons under international protection (adequate coverage but not included in Art. 394-c)
International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979	Art. 421 CC Taking of hostages (with a restricted coverage as regards the entities that can be compelled)
Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980	Art. 231 CC Unauthorised procurement and possession of nuclear materials (partial coverage + not included in Art. 394-c)
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988	(not covered)
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) done at Rome on 10 March 1988	Art. 302 CC Hijacking an aircraft or ship (partial coverage)
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (SUA Protocol) done at Rome on 10 March 1988	(not covered)
International Convention for the Suppression of Terrorist Bombings, adopted by the General	Art. 394-b Terrorism

[22] The offences in Art.7 of the Convention on the Physical Protection of Nuclear Material are, to a certain extent, covered by Art.231 CC that criminalises the unauthorised procurement and possession of nuclear materials. Specifically, subpara (a) of Art.7(1) is expressly covered by Art. 231 (1) CC while subparagraphs (b) and (c) are at least indirectly addressed by the use of the term "by committing a crime or in any other way". Nonetheless, subpara (e) that refers to the threat to use nuclear material etc. appears not to be covered by the CC offence.

Assembly of the United Nations on 15 December 1997	(partial coverage)

199. As for the offence provided in Art.2 of the International Convention for the Suppression of Terrorist Bombings (1997) reference was made to the criminal offence of terrorism in Art. 394-b CC which, however, can only provide coverage as far as the causing of fire and explosion, the destroying of public and other facilities and the use of "*weapons and dangerous materials*" are concerned, while other aspects, such as the delivering or placement of explosive or other lethal devices, appear not to be addressed.

200. Turning to the generic notion of terrorist act as it is defined by Art.2(1)b of the FT Convention, the evaluators found that the wording of this provision is reiterated almost verbatim in the second part of Art. 394-c (1) thus providing for a remarkable level of compliance. However, there are two issues that need to be mentioned.

201. Firstly the TF offence does not refer to *"act"* ("*дело*" in the original) but *"activity"* ("*дејствие*") which term would normally denote a less definable action that is likely to be carried out continuously or repeatedly. Nonetheless, the evaluators were assured by domestic interlocutors that this difference in terminology would not have any restrictive effect on the applicability of the TF offence.

202. The second issue, however, appears to be more problematic. Art. 2(1)b of the FT Convention clearly requires that the financing of *"any other act"* of terrorism (*i.e.* the generic offence of terrorist act) apply to acts committed for the purpose of intimidating or compelling the population or government of any country, that is, not only the country's own population or government. In this respect, the language by which the population or government is described usually gives sufficient indication as to whether these are referred to under general terms[23] or specifically in the context of the given country.

203. As far as the legislation of "the former Yugoslav Republic of Macedonia" is concerned, Art. 394-c (1) CC makes clear reference to "***the*** *state*" which appears, on the face of it, to indicate the adoption of the second approach and hence the derivation from the wording and spirit of the FT Convention. The definite article can equally be found in the Macedonian original, where Art. 394-c (1) CC refers to "*државата*" (the state) instead of "*држава*" (a state) or more adequately "*некоја држава*" (any state) which expression is applied, right in the same paragraph, for international organisations ("*некоја меѓународна организација*"). For the sake of comparison, the official Macedonian version of the FT Convention[24] uses the term "*да се принуди некоја влада или меѓународна организација*" literally "to compel any government or international organisation" which makes it applicable to the governments of any country of the world, unlike the TF offence in Art. 394-c (1) CC which only applies to the state of "the former Yugoslav Republic of Macedonia" while terrorist acts committed, either in "the former Yugoslav Republic of Macedonia" or elsewhere, with the purpose of intimidating the population or compelling the government of another country seem to fall out of the scope of this offence.

204. In disagreement with this, the representatives of the competent authorities argued that such an interpretation would be contrary to the structure and terminology of the Criminal Code. They explained that wherever the CC makes any reference to "the former Yugoslav Republic of Macedonia" as a specific state, it would not be carried out by simply adding a definite article to the word "state" (as above) but by a proper reference to the country indicating its full official name[25] as it can be seen in a number of criminal offences, particularly those provided in Chapter 28 CC (Crimes against the State). Nonetheless, this argumentation does not give an explanation to the terminological divergence between Art. 394-c (1) CC and the FT Convention and, what is more, the title of the above mentioned Chapter 28 CC provides a perfect example that the

[23] For example, the use of indefinite articles ("a" or "an" in English) implies the coverage of any country while definite articles ("the" in English) limit the offence to domestic context.
[24] According to the translation as provided by the Law on the Ratification of the FT Convention ("Official Gazette of the Republic of Macedonia" No.30/2004) at http://www.pravo.org.mk/download.php?id=5617
[25] In the form of "Republic of Macedonia".

expression "the state" does actually mean "the former Yugoslav Republic of Macedonia" in the context of the Criminal Code.

205. There are other, more generic terroristic offences the financing of which would also establish the TF offence in Art. 394-c (1) CC as follows, also indicating the basics of the respective criminal act:

- terrorist threat to the constitutional order and safety (Article 313)
  - causing (threatening to cause) explosion, fire, flood or other generally dangerous act of violence with the intent to endanger the constitutional system or the security of the Republic and thereby intimidating the citizens
- terrorist organisation (Article 394-a)
  - creation of a criminal organisation with the intent to commit certain serious crimes (murder, bodily injury; kidnapping; destruction of public facilities, transport systems, infrastructure facilities, information systems etc.; hijacking of planes or other means of public transportation; production, possessing or trade with nuclear, biological, chemical and other weapons and dangerous materials; emission of dangerous radioactive, poisonous etc. substances; causing fire and explosion; destruction of facilities for water supply, energy or other essential natural sources) with the intent to endanger the life and intimidate the citizens
- terrorism (Article 394-b)
  - committing any of the serious crimes listed above in Art. 394-a CC with the same intent as indicated above
- international terrorism (Article 419)
  - committing some of the serious crimes mentioned above (kidnapping or other act of violence, causing fire or explosion) or causing danger, to a greater extent, to the human life and to property with other, generally dangerous acts or by generally dangerous means with the intent to harm a foreign state or any international organisation.
- and any other act of terrorism provided by the Criminal Code.

206. Apparently, the criminal law provides for a complex variety of criminal offences to address various aspects of terrorism and terrorist acts. While these criminal offences are categorised under different sections[26] of the CCC, one can find unquestionable similarities between these criminal acts as a result of which they are not only complementing but, to a significant extent, also overlapping and/or reiterating each other. (In fact, the evaluators could not find any "other" act of terrorism provided by the Criminal Code, apart from those already listed in Art. 394.c [1] CC).

207. Certainly, the criminalisation of terrorist acts in the criminal substantive law is beyond the scope of this evaluation as long as the notion of *"terrorist act"* as provided by Art. 2(1), (a) and (b) of the FT Convention is adequately covered by the national law. In this respect, however, the evaluators noted a number of deficiencies in Art.394-c (1) CC as it was discussed above more in details. As far as Art.2 (1) (a) of the FT Convention is concerned, only 2 out of the 9 *"treaty offences"* are adequately and other three are partially covered by the CC and referred to by the FT offence. Further two are at least partially covered by the CC but not referred to by the FT offence, while the remaining two offences are not at all covered by the CC.

208. The requirements of Art.2 (1) (b) of the TF Convention are addressed, by the last part of Art.394-c (1) CC, but with an apparently restricted applicability in relation of other countries.

209. The question remains whether the reference to these 4 more generic terroristic offences can, to any significant degree, extend the scope of the TF offence in Art. 394-a (1) CC so as to remedy the deficiencies described above. The evaluators could find only one area where these generic offences adequately completed the aforementioned deficiencies, namely Art. 231 of the CC by which the Convention on the Physical Protection of Nuclear Material (1980) had to a certain

[26] Art. 313 is one of the offences against the State in Chapter 28 of the CC, Art.s 394-a and 394-b are in Chapter 33 on crimes against the public order, while Art. 419 is among the offences against humanity and international law in Chapter 34

extent been implemented but was left out of the scope of Art. 394-a (1) CC. Nevertheless, two of the four generic terrorist offences (terrorist organisation in Art. 394-a and terrorism in Art. 394-b CC) both address, among other acts, basically the same conduct as Art. 231 CC does, criminalizing the production, possession, transport, trade, purchase or use of nuclear weapons and other types of dangerous materials as well as the release of dangerous radioactive substances but, again, some aspects of the respective Convention remain uncovered[27].

210. It needs to be noted that the apparent territorial limitation of the TF offence (as far as the compelling of *"the"* state and not *"any"* state is concerned), cannot be considered as remedied just because the TF offence refers to the criminal offence of international terrorism (Art. 419). While the latter offence clearly covers terroristic acts committed in order to harm a foreign state or an international organisation, it does not cover acts committed in order to compel such a foreign state to do or not to do something or to intimidate its population and therefore Art. 419 C is irrelevant in this respect.

211. The financing of a terrorist organisation, as required by Criterion II.1(a)(ii) is provided by the new paragraph (2) of Art. 394-c CC as quoted above. The wording of this provision is in line with the requirements of SR.II as it is broad enough to encompass the financing of terrorist organisations for any purpose, including legitimate activities.

212. The term *"terrorist organisation"* is not specifically defined by the CC. However, this term is the name (title) of the offence provided by Art. 394-a CC. Thus, it appears obvious (and indeed it was so explained by the domestic interlocutors met on-site) that whenever Art. 394-c(2) makes reference to a *"terrorist organisation"* it shall automatically refer to an organisation that meets the criteria of Art. 394-a(1) of the CC, as quoted above.

213. These criteria are formulated quite differently from the definition of a *"terrorist organisation"* in the Glossary to the FATF Methodology. Nevertheless, the actual coverage is rather similar. The main difference is that Art. 394-a CC defines the terroristic activities of the organisation by referring to a list of criminal offences, without a "generic" act of terrorism the way it was provided in Art. 394-c CC, which may restrict its applicability. On the other hand, the existence of any criminal group intending to commit these criminal offences is already sufficient to establish a terrorist organisation (that is, the actual or at least attempted perpetration of any of these offences is not a prerequisite) and the law threatens not only the founders and leaders but also the members, assistants or public supporters of the organisation. As a result, the evaluation team accept that Criterion II.1(a)ii is technically met, to a satisfactory degree.

214. Financing of an individual terrorist is also criminalised by Art. 394-c (2) CC, together with the financing of a terrorist organisation. In this case, however, the legislators failed to provide any sort of statutory definition for the term *"terrorist"* (meaning an individual terrorist and not a member of a terrorist organisation) in the Criminal Code or elsewhere, which seriously questions its applicability. Without an adequate definition, the practitioners cannot know exactly what characteristics would make a terrorist in this context (whether an individual terrorist is defined by the terroristic acts he/she has already committed or by those he/she is about to carry out, what level of involvement is required to consider him/her an actual terrorist etc.) which may pose an impediment to the effective application of this provision.

215. In this respect, the representatives of the competent domestic authorities argued that the term *"terrorist"*, as derived from logical and systemic interpretation of different articles of the CC, is commonly understood among the practitioners so it does not require a statutory definition. As an illustration, reference was made to the term *"thief"*, which necessarily and obviously means a person who committed theft. Consequently, the term *"terrorist"* shall necessarily and obviously denote a person who committed any of the criminal offences listed in paragraph (1) of Art. 394-c CC.

[27] Art. 394-a and 394-b CC clearly cover Art.7(1) subpara (a) of the Convention on the Physical Protection of Nuclear Material and the same goes, in this very respect, to subpara (e) regarding the threat to use nuclear material. On the other hand, subparagraphs (b) and (c) appear not to be adequately addressed by these 2 criminal offences.

216. While the evaluators can see no reason not to accept that this term is generally understood like this, they need to note that this interpretation is significantly narrower than envisaged by the FATF standards and particularly the definition of *"terrorist"* as provided by the Glossary to the FATF Methodology[28].

217. At the time of the previous round, the notion of *"means for financing"*, the object of the TF offence was not defined by the CC and therefore it was quite doubtful, in absence of any relevant jurisprudence, whether the legislation met the standard set by the FT Convention, and particularly whether this form of support included all types of *"funds*.

218. The current FT offence applies the terms *"money or other property"* where the notion of *"property"* comprises a broad range of assets (including the *"money"* itself) as defined by Art. 122 (38) of the CC. The definition, which was already quoted above in relation to FATF Recommendation 1 is almost fully in line with the scope of *"funds"* as defined in the FT Convention.

219. The only notable difference is that the FT Convention clearly and explicitly extends to funds whether from a legitimate or illegitimate source (by making reference to assets *"however acquired"*) while the definition in Art. 122 (38) remains silent on this issue. The authorities argued that the broad wording applied in the latter definition does not leave room for any restriction regarding the legitimate or illegitimate source of the money or other property and thus the FT offence extends to any funds regardless of their origin. Notwithstanding that, the evaluators are of the opinion that the definition fails to meet the standard of the FT Convention in this respect, for which reason no full compliance with Criterion II.1.b can be achieved.

220. Criteria II.1.d (attempt) and II.1.e (ancillary offences) seemed to be not covered at the time of the 3rd round MONEYVAL evaluation in lack of an autonomous TF offence. By the adoption of Art. 394-c of the CC, this issue was effectively remedied and the generic provisions on attempt and ancillary offences (Articles 18 to 25 CC) can be applied, without any restriction, to the TF offence. Furthermore, Art. 394-c CC contains specific provisions that are relevant in this respect, such as a *sui generis* ancillary offence in the current paragraph (3) criminalizing the act of making a public call in order to motivate the perpetration of any action foreseen in Art. 394-c CC, and the provisions of paragraph (4) which criminalizes the agreement with another person to perform a TF offence (which basically corresponds to the notion of conspiracy), as well as the invitation of other persons to join an association or group with the intention to commit such an offence. As a result, Criteria II.1.d and II.1.e are fully met by the present legislation.

Predicate offence for money laundering (c.II.2)

221. This criterion had already been met at the time of the 3rd round MONEYVAL evaluation (to the extent permitted by the limited scope of the TF offence of that time). Apart from the restructuration and completion of the TF offence, no relevant changes have since taken place.

Jurisdiction for Terrorist financing offence (c.II.3)

222. The criminal legislation of "the former Yugoslav Republic of Macedonia" does not specify whether the FT offence apply regardless of whether the person alleged to have committed the financing offence in the same jurisdiction or a different jurisdiction from the one in which the terrorist act occurred or would occur or where the respective terrorist or terrorist organisation is located. That is, the CC does not contain a provision similar to the one that defines *"proceeds"* in Art. 122 item 16 by which jurisdiction for the laundering of foreign proceeds is provided (see quoted above, in relation to FATF Recommendation 1).

223. On the other hand, the CC contains some general provisions on the place of commission of a crime (as a circumstance that may determine territorial jurisdiction) in Art. 31 as follows:

[28] This definition refers to any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

(1) A crime is committed both at the place where the offender acted or was obliged to act, as well as at the place where the consequence appeared.

(2) The preparation and the attempt of a crime shall be considered committed both at the place where the offender acted, as well as at the place where according to his intent the consequence should have or could have appeared.

(3) The activity of the accomplice shall be committed at the location where the activity was transferred to the offender or co-offender, as well as at the place where the accomplice has worked or was obliged to work.

224. By virtue of these provisions, it is sufficient that either the act of financing, or the occurrence of the terrorist act, or the location of the terrorist organisation / individual terrorist can be linked to the territory of "the former Yugoslav Republic of Macedonia" which provides an adequate compliance with Criterion II.3.

The mental element of the FT and the liability of legal persons (applying c.2.3 & c.2.4 in R.2)

225. Criterion II.4 had already been considered as met, in its every aspect, at the time of the 3rd round evaluation. As for the issue of corporate criminal liability, the new TF offence contains a specific paragraph (11) providing that *"if the act under this Article is committed by a legal entity, the same shall be punished with fine and termination of the legal entity"* which consequences are in line with the FATF requirements (the possibility to pronounce the termination of the entity as a criminal sanction was added by the 2013 amending legislation). Generally speaking, the analysis given in relation to Recommendation 1 applies, from a technical point of view, for the TF offences except that the lack of convictions, prosecutions and investigations against legal entities, which was criticized in the context of the ML offence, is also present in TF relations. However, considering the rare occurrence of this criminal offence, it represents a less serious issue.

Sanctions for FT (applying c.2.5 in R.2)

226. The sanctions provided by the CC for TF offences range from a minimum of 4 years imprisonment to a maximum of 10 years. The means intended for preparation, financing and execution of the crimes from paragraphs 1, 2, 3 and 4 shall be seized.

227. The evaluation team considers that the sanctions are proportionate and effective.

Recommendation 32 (terrorist financing investigation/prosecution data)

228. There were no investigations and prosecutions for TF offences in the "the former Yugoslav Republic of Macedonia".

Effectiveness and efficiency

229. Both the statistics provided to the evaluators and the information gathered on-site confirmed that there has never been any investigation or prosecution for TF offences in "the former Yugoslav Republic of Macedonia". As a consequence, the effectiveness and implementation of the relevant provisions could not be assessed.

2.2.2 Recommendations and comments

Special Recommendation II

230. The evaluators welcome the steps "the former Yugoslav Republic of Macedonia" has taken in criminalizing TF more in line with the standards set in the FT Convention and SR.II. Among the most important features, the TF offence now encompasses the financing of terrorist acts and individual terrorists, with express reference to a number of offences defined as terrorist offences in the Annex to the FT Convention. The FT offence extends to "funds" (property) almost in line with the definition provided by the FT Convention.

231. Some technical deficiencies however need to be noted as the full coverage of the *"treaty offences"* is not achieved. The TF offence only covers adequately two offences, three offences are covered only partially (the deficiencies were described in the analytical part) and another offence can only be considered to be met implicitly. The remaining offences are not covered by the TF

offence (2 out of 3 are neither covered elsewhere in the CC). As a result, the coverage of the *"treaty offences"* is rather limited which cannot be counterbalanced by the unusual variety of *"classic"* terrorist offences in the CC and within the scope of the TF offence. Thus, the authorities are invited to take legislative measure to bring the list of *"treaty offences"* in line with the SRII requirements.

232. Another derivation from the standards is that the generic offence of terrorist act should explicitly be applicable to the compelling of (the government of) *"any country"* instead of the present provisions which appears to be territorially limited to "the former Yugoslav Republic of Macedonia". Such unnecessary shortcomings need to be corrected so as to achieve full compliance with SR.II.

233. While the legislators of "the former Yugoslav Republic of Macedonia" successfully criminalised the financing of an individual terrorist, they failed to draft and insert into the CC an adequate (or at least any sort of) definition for this expression. While the domestic authorities appeared confident that the term *"terrorist"* was commonly understood by the practitioners and thus there was no need for a statutory definition, the examiners found that the generally accepted interpretation of this term appeared remarkably narrower than envisaged by the respective FATF standards. Considering, that this deficiency might pose a potential impediment to the effective implementation of this provision, the situation calls for an intervention from the legislators' side.

234. Although the CC contains a comprehensive definition for *"funds"* (property) it needs some clarification or completion so as to clearly provide that the notion of *"funds"* equally refers to assets "however acquired" thus covering funds of both legitimate and illegitimate source.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• The TF offence only covers 2 of the 9 *"treaty offences"* adequately, while 3 offences are covered partially (with various deficiencies) and a 6th one covered only implicitly; the remaining offences are not covered by the TF offence which limits its applicability. • The generic offence of terrorist act in Art. 394-c (1) CC appears to be territorially limited and thus cannot formally be applied to acts committed in order to compel (the government of) "any country". • There is no statutory definition for the term "terrorist" as used in Art. 394-c (2) CC while the generally understood scope of this term, as derived from logical and systemic interpretation of different articles of the Criminal Code, appears narrower than envisaged by the FATF standards. • The definition of "funds" (property) contains no indication whether it refers to all assets "however acquired" including funds whether from a legitimate or illegitimate source.

2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

2.3.1 Description and analysis

Recommendation 3(rated LC in the 3rd round report)

Summary of 2008 factors underlying the rating

235. R.3 was rated LC in the 3rd Round Evaluation Report based on the following factors:

- The confiscation regime is too complicated, which may hamper its effective application; this refers particularly to the provisional measures where neither the actual list of applicable measures nor their respective coverage is properly defined by law;
- confiscation of instrumentalities, including those of the ML offence is in most of the cases only discretionary;

- only in certain situations provisional measures can be carried out *ex parte* and without prior notice;
- postponement of transactions by the FIU with a view to further provisional measures is bound to overly high standard of suspicion;
- and that provisional measures are only rarely applied (effectiveness issue).

Legal framework

236. Apart from a number of relevant improvements that will be described below more in detail, the basics of the confiscation and provisional measures regime have not changed significantly since the 3rd round of MONEYVAL evaluation.

237. As emphasized in the 3rd round MER[29] unusual difficulties were encountered in comprehending the particularly complex structure of the relevant provisions of the Criminal and Criminal Procedure Codes, that jointly establish the confiscation and provisional measures regime. Specifically, it was challenging to decode the basically inaccurate and inconsequent terminology used in these pieces of legislation (even in the original Macedonian versions), defining the key legal terms intended to denote the measures consisting of the permanent deprivation of property or items that can typically be ordered by the court in its final decision (that would normally be referred to, in most jurisdictions, as "confiscation"). The measures with a provisional character where the deprivation of property would only last until the end of the criminal proceedings with a view to further decision in this respect (that would generally be referred to as "seizure"), were equally unclear.

238. As it was demonstrated in the 3rd round MER, a clear differentiation in the legal terminology was entirely absent from the legal texts the evaluation team had been provided with. As for the English translation of the respective Codes, the terms *"confiscation"* and *"seizure"* appeared to be completely interchangeable as these were applied on a random basis in various texts, indicating either permanent or provisional measures. In order to exclude the possibility of mistranslation, the original Macedonian legal texts had also been taken in consideration which, however, appeared even more complicated with not less than four different terms used randomly to designate either the permanent or the provisional deprivation of property[30].

239. Notwithstanding the apparent confusion in terminology, the evaluators of the previous round had finally found out that the proper meaning of these terms in the respective CC and CPC articles could adequately be identified through structural analysis of the laws. In order to maintain the comprehensiveness of the report, some amendments had thus to be made when quoting the original English-language versions of the respective provisions as a result of which all measures consisting of permanent deprivation of either objects/items or other sorts of property were systematically denoted by the term *"confiscation"* and measures with provisional character by the term *"seizure"* regardless of what terminology had originally been used in the official translation[31].

240. The examination of the legal texts that the evaluators were provided in the 4th round of assessment, proves that the respective CC and CPC articles, both in their official English translation and in the original versions, are still suffering from the same terminological inaccuracies. Considering, however, that the provisions of the confiscation and provisional measures regime have since been applied by the authorities of "the former Yugoslav Republic of Macedonia" in a number of cases on a regular basis and apparently without any remarkable problem of comprehension, it can be assumed that the unsystematic use of the legal terms have not prevented the practitioners from the effective implementation of the respective provisions. While this is appreciated by the assessors, they also need to consider the general comprehensiveness and textual consistency of their report, for which reason the same method will be applied in the present MER as in the one adopted in the 3rd round of evaluations so as to make

[29] See paragraph 205 of the 3rd round MER (page 56).
[30] See paragraph 206 *idem* (page 56 and the table on page 57).
[31] See paragraph 207 *idem* (page 57).

a clear distinction between *"confiscation"* and *"seizure"*. In case the respective texts had to be amended, these changes will thus be made visible in the text as dotted underlined and the explication will be given in a footnote (e.g. *"confiscation[1]"*).

241. The 3rd round examiners had additional problems with the renumbering of the Criminal Procedure Code, which had previously been "clarified" i.e. renumbered from beginning to end (so as to eliminate the odd numbering of subsequently added articles like "100-a" or "142-f") and the new numbering scheme had actually been applied in the consolidated English version of the CPC the 3rd round evaluators were provided with. Nonetheless, the local authorities kept on referring, regularly and systematically, to the former numbers of the respective CPC articles which created much confusion throughout the evaluation process, as the respective numbers were completely different. Furthermore, as it is explained more in details in the 3rd round MER[32] the previous evaluation team found that the *"clarified"* (renumbered) version of the CPC had apparently never been used in practice in "the former Yugoslav Republic of Macedonia".

242. The latter statement is completely in line with the findings of the 4th round evaluation team. All references the host authorities have ever made to CPC articles (either in the MEQ or on-site) followed the old numbering scheme, which was also retained in the official, updated English version of the CPC (including its latest amendment from 2009) that was provided to the evaluators. It can therefore be concluded that the renumbering of the CPC has since been abandoned and therefore this report will contain no reference to the *"new"* or *"clarified"* article numbers as the 3rd round MER did (where both numbers were indicated).

243. While this report primarily focuses at criminal procedural rules as these are provided by the CPC mentioned above ("Official Gazette of the Republic of Macedonia" No. 15/1997 as amended) it needs to note that there is a new CPC ("Official Gazette of the Republic of Macedonia" No. 150/2010 of 18.11.2010 hereinafter: NCPC) too, which was adopted more than two and a half years before the on-site visit. Nevertheless, it only became applicable half a year thereafter. According to its Art.568, the NCPC entered in force already on the eight day of its publication (that is 26th November 2010) but it could not be applied before the expiry of two years after this day. Furthermore, this transitional period was extended by an amendment to the NCPC in 2012 ("Official Gazette of the Republic of Macedonia" No. 100/2012) which expressly provided that the new law would be implemented as from 1st December 2013.

244. In preparing the MER and in giving ratings, only such pieces of legislation can be taken into account that are in force and effect at the time of the on-site visit or, at least, in a two-months period immediately following the on-site mission. While the NCPC had already been in force at the time of the on-site visit, and its official English version had actually been provided to the assessors beforehand (without the 2012 amendment though) the relevant articles of the NCPC will be referred to below as necessary (especially in case they significantly differ from the respective provisions of the old CPC) but will not be taken into account for ratings purposes as the NCPC was only in force, but not in effect in the aforementioned period.

Confiscation of property (c.3.1)

245. The confiscation regime retained its dual structure in the criminal substantive law of "the former Yugoslav Republic of Macedonia". In its General Part, the CC contains generic provisions on confiscation (Art. 97 to 100-a CC) which are complemented by offence-specific provisions in the Special Part, such as the specific confiscation rule for the ML offence (Art. 273[13] CC).

246. The main provisions governing the confiscation of proceeds of crime (Criterion 3.1a) remained practically the same as at the time of the 3rd MER. The confiscation regime remained conviction-based considering that Art.490 CPC providing for this rule has not changed since[33] (Art.536 NCPC also provides accordingly).

247. The grounds for confiscation of proceeds are provided by Art. 97 CC which has not changed

[32] See paragraph 208 of the 3rd round MER (page 58).
[33] See as quoted in paragraph 210 of the 3rd round MER (page 58).

either (its text is therefore the same as it was quoted in the 3rd round MER[34]), while the manner of confiscation is defined by Art. 98(1) which has undergone only some minor amendments since the previous round but without any actual impact on its coverage (the parts added or modified in 2009 are marked accordingly)

Manner of confiscation of property gain[35]

Article 98

*The **indirect and direct** property gain acquired through crime consisting of money, valuable movable or real property, as well as any other property, assets, material rights or rights in kind, shall be confiscated from the perpetrator and if their confiscation is not possible, then other property corresponding to the **value of the** acquired gain shall be confiscated from the perpetrator.*

248. It was already demonstrated in the 3rd round MER[36] that the confiscation of proceeds was, by virtue of these general provisions, a compulsory measure. This compulsoriness comes from the imperative language of Art. 97-98 CC, supported by the similarly rigorous procedural rules of the CPC, in which respect the evaluators of the present round did not find any relevant difference in the current legal framework.

249. The concept of *"property gain"*, that is the object of confiscation of proceeds, had already been defined, at the time of the 3rd round MONEYVAL evaluation, widely enough so as to cover any sorts of property including real estate or property rights. In addition, Art. 97(1) CC expressly provided for the confiscation of both direct and indirect proceeds of crime.

250. The new Art. 97-a was added to the Criminal Code to define what sorts of property can be considered indirect proceeds of crime and hence subject to confiscation:

Confiscation of indirect[37] *property benefit*

Article 97-a

Beside the direct property benefit, the indirect property benefit consisting of the following shall also[38] *be confiscated from the offender:*

1) *the property, into which the benefit obtained from crime has been transformed or turned;*
2) *the property obtained from legal sources in case the benefit obtained from crime is completely or partially mixed with such property; up to the assessed value of the mixed benefit obtained from crime, and*
3) *the income or other benefit resulting from the benefit obtained from crime, from property into which the benefit obtained from crime has been transformed or turned, or from property with which the benefit obtained from crime is mixed; up to the assessed value*[39] *of the mixed benefit obtained from crime.*

251. As a result, the law now clearly provides for the confiscation of all forms of indirect proceeds, including transformed and commingled assets as well as income or other benefits from the

[34] See paragraph 211 *idem* (page 58).
[35] In any legal texts quoted in English translation throughout this report, the terms "property benefit" and "property gain" are interchangeable as both are equivalents of the same Macedonian term "*имотна корист*".
[36] See paragraph 212 *idem* (page 59).
[37] In the official English version of Art.97-a CC the evaluators were provided, the terms "direct" and "indirect" were inadvertently reversed. Examination of the Macedonian original, however, proves that Art. 97-a does actually refer to the confiscation of indirect property benefit (*конфискација на посредна имотна корист*).
[38] English translation as corrected by the evaluation team (the term "also" is missing from the official English version).
[39] English translation as corrected by the evaluation team. (The official English version used the term "estimated amount" in subpara 3 and "estimated value" in subpara 2 whereas the respective originals are identical in the Macedonian text ("*проценетата вредност"* in both subparagraphs. The accurate translation is "estimated value").

proceeds of crime, which is in compliance with Criterion 3.1.1(a).

252. Value confiscation for proceeds of crime was, and is still adequately provided by Art. 98(1) CC as quoted above. In cases it is not possible to confiscate the proceeds of crime or a part thereof in their original form, the court is allowed to make a value order to confiscate other property to an equivalent amount. As detailed in the 3rd round MER[40] the effectiveness of the value confiscation is supported by procedural rules that require the *ex officio* activity of the court in establishing the value of proceeds. In this context, Art. 488 CPC remained the provision that requires the court to appoint expertise if the value of the proceeds cannot be determined otherwise and to issue an international seizure warrant in case the property is suspected to be abroad. It also authorises the court to request additional data from other state bodies, financial institutions and other legal and natural persons who are then obliged to submit the requested information without delay. (Art. 532 NCPC provides accordingly.) As it was noted by the 3rd round examiners, these provisions encourage judges to take such decisions instead of simply waiving the confiscation order because of difficulties in establishing the precise amount of the pecuniary benefit, which is an essential component of an effective confiscation regime.

253. While the 2009 amendment of the CC carried out some notable changes to the scope and structure of the rules that provide for the range of criminal sanctions applicable to legal persons, it had no particular effect on the provisions dealing with confiscation of proceeds of crime. In this respect, the two key articles are Art.96-m CC (original numbering Art. 96-к) that replaced (with an almost identical wording), the former Art.96-e and, on the other hand, Art.100 CC which was not affected by the amendment.

254. Art.96-m CC ("*Confiscation of property, property gain and seizing items*") contains almost the same provisions that the former Art.96-e did at the time of the previous evaluation[41] in which respect the evaluators could only notice some minor differences: while the former Art.96-e (1) CC made reference to Articles 98 to 100 CC as the provisions to be applied *mutatis mutandis* for confiscation of proceeds that a legal entity had obtained, Art.96-m CC (1) now clearly refers to Articles **97** to 100 CC so as to cover all articles that are relevant in this respect; Art.96-m (2) (the former Art. 96-e [2]) that provides for the subsidiary responsibility of the natural persons behind the legal person was completed so as to provide that the legal successors of the defunct legal entity are primarily obliged to settle an amount equal to the property benefit subject to confiscation and the founders can only be obliged in case there are no legal successors.

255. Turning to the confiscation of instrumentalities of crime, Art.100-a CC remained the article to provide for the confiscation of property that constitutes instrumentalities either used in, or intended for use in the commission of any ML, TF or other predicate offences as required by Criteria 3.1b and 3.1c. The wording of this article has not since been modified (as it was quoted in the 3rd round MER[42]) and it also remained directly applicable to legal persons, in accordance with Art.96-m (3) CC (the former Art.96-e [3])[43]. Not even the misleading cross-reference in the latter (referring to the non-existent Art. 101-a instead to Art. 100-a as a result of a numbering mistake) was corrected in the text, although this deficiency was clearly pointed out in the 3rd round MER.

256. The unchanged wording of Art.100-a CC also means that the shortcomings of this provision, namely, the conditionality of this measure (where confiscation is only possible depending on some, rather indistinctly formulated conditions e.g. if so required by *"interest of general safety, human health and moral reasons")* and its basically discretionary character (where confiscation is left to the court's discretion even if the conditions mentioned above can be proved by the prosecution). The evaluators thus share the opinion of the 3rd round assessment team in that these features all appear to be unnecessary restrictions that may impede the effective applicability of this measure, in which respect the evaluators make reference to the findings of the previous evaluation team regarding the numerous examples of criminal offences in the Special Part of the

[40] See paragraph 221 of the 3rd round MER (page 61).
[41] Art. 96-e (1) to (2) and Art.100 CC were quoted in paragraphs 216-217 of the 3rd round MER (page 60).
[42] See paragraph 218 *idem* (page 60).
[43] See paragraph 220 *idem* (page 61).

CC where the lawmakers had provided for mandatory confiscation of instrumentalities without any further condition or restriction[44].

257. One of these offence-specific provisions was, at the time of the 3rd round evaluation, Art.394-a (6) CC relating to the instrumentalities of the offence of terrorist organisation (at that time, as discussed above, some forms of the financing of terrorism were criminalised by this offence). Article 394-a (6) then in force prescribed that objects and means intended for the preparation of this offence as well as money for financing the terrorist organisation shall be confiscated. In the meantime, however, "the former Yugoslav Republic of Macedonia" adopted a new, autonomous TF offence in Art.394-c CC. The new offence introduced a separate rule on mandatory confiscation in paragraph (11) which was substantially amended (and removed to paragraph [12]) by the April 2013 novel and now it reads as follows:

(12) The money and the property intended for preparation and execution of the acts under this Article shall be confiscated[45].

258. Before April 2013, the respective provision (then in paragraph [11]) used the term *"means"* which was then replaced by the more comprehensive *"money and property"*. Likewise, the former paragraph (11) referred to means intended for *"the preparation, financing and execution"* of the TF offence, out of which only the *"preparation and execution"* were retained in the current paragraph (12) as the lawmakers had probably noticed the apparent redundancy in using the term *"financing"* in this context (as this conduct would normally indicate the TF offence itself).

259. Parallel to the adoption of the TF offence in Art.394-c CC, the paragraph (6) of Art. 394-a on the offence of terrorist organisation was amended accordingly so as to avoid overlapping with the provision quoted above. As a result, Art. 394-a (6) now only provides that *"the immovable used for, as well as objects and means intended for preparation of the crimes referred to in paragraphs 1, 2 and 3 shall be confiscated*[46]". While there are more issues that could be discussed in this field (e.g. why property items used or intended for the execution of the offence of terrorist organisation remained uncovered by paragraph [6] above), the examination team needs to focus on Art.394-c (12) as the provision that is relevant for the purposes of this evaluation.

260. On the one hand, the object of this provision i.e. the *"money and property"* represents a wide range of assets by virtue of the broad definition of *"property"* in Art. 122 item 38 of the CC (which, as it was already discussed under Recommendation 1 above, includes *"money"* and therefore the expression *"money and property"* appears somewhat redundant). It is also appreciated that the purposive element encompasses both preparation for and execution of the TF offence. On the other hand, the language of Art.394-c (12) (similarly to Art. 394-a [6] being in force at the time of the previous evaluation) leaves some discretion whether it adequately covers the money and property not only intended but also used for the preparation or execution of the crime. Although it is not entirely clear where the border is between the phase of *"being intended for use"* and the phase of *"used for"* (e.g. the financier has already handed over or transferred the funds by which he/she wishes to finance terrorism but it still takes time and a process until these funds actually arrive at the recipients: in the meantime, are these funds already *"used"* or still *"intended for use"*?) it is quite apparent that the current paragraph (12) is formulated in a restrictive manner and thus the offence-specific mandatory confiscation only applies to assets intended (but not yet used) for terrorist financing.

261. It is another question whether the money and property referred to in paragraph (12) above are to be considered the object (*corpus*) or the instrumentalities of the TF offence or both of them. In this case, the object means the assets themselves, by which the terrorist acts, terrorist organisations or individual terrorists would be financed (i.e. the funds collected or provided for financing purposes), while the instrumentalities are those property items by the use of which the TF offence

[44] See examples in paragraph 221 *idem* (page 61).

[45] The dotted underlined text corresponds to the meaning of the term used in the original. Conversely, the English translation uses "withheld". The original is "*одземат*".

[46] The dotted underlined text corresponds to the meaning of the term used in the original. Conversely, the English translation uses "seized". The original is "*одземат*".

can be committed (e.g. means of telecommunication, IT facilities of any kind, vehicles etc.).

262. The wording of paragraph (12) together with the broad definition of *"property"* mentioned above seems to sufficiently cover instrumentalities intended for use in a TF offence (Criterion 3.1[c]) which are therefore subject to mandatory and unconditional confiscation. Instrumentalities that have actually been used in the commission of a TF offence (Criterion 3.1[b]) however, remain out of the scope of paragraph (12) and can only be confiscated according to the general rules in Art.100-a CC on a conditional and discretionary basis.

263. The ML offence also contains a specific provision on mandatory confiscation. At the time of the previous evaluation, this rule could be found in paragraph (8) of Art. 273 CC, while now it is in paragraph (13). Its text is quoted below:

(13) Proceeds of the crime shall be confiscated *and if the* confiscation *is not possible, then other property corresponding to that value shall be* confiscated *from the perpetrator.* [47]

264. While the formulation of this provision was simplified (now it refers to *"proceeds of crime"* in general terms) its actual coverage was not affected by the amendment. The property that Art.273(13) CC renders subject to mandatory confiscation as *"proceeds of crime"* is thus nothing but the property that has been laundered by the perpetrator, that is, the object (*corpus*) of the ML offence. As it was pointed out in the 3rd round MER[48] whereas this mandatory confiscation rule is fully in line with the first part of Criterion 3.1 that requires the confiscation of *"property that has been laundered"* its scope does not extend to the instrumentalities or intended instrumentalities of the ML offence. As a consequence, there is still no provision to prescribe mandatory and unconditional confiscation of instrumentalities used in or intended for use in the commission of a ML offence and it can therefore be assumed that such items can only be confiscated pursuant to the general rules in Art.100-a CC and thus bound by statutory conditions and the discretion of the court.

265. Criterion 3.1 requires that value confiscation be equally applicable to any sorts of property subject to confiscation, that is, not only for proceeds of crime but also for the property that has been laundered as well as the instrumentalities and intended instrumentalities of a criminal offence. In the law of "the former Yugoslav Republic of Macedonia" the property of corresponding value can be subject to mandatory confiscation in two cases: for the proceeds of crime (as already described above) and for the object (*corpus)* of the ML offence, pursuant to Art.273(13) CC as quoted. On the other hand, value confiscation remained inapplicable for instrumentalities or intended instrumentalities in general, despite the clear recommendation[49] the previous assessment team made in the 3rd round MER. It was then recommended that the authorities consider the overall mandatory and unconditional confiscation of objects used for or intended for use in criminal offences and, particularly, that the offence-specific mandatory confiscation rule of the ML offence be extended beyond its current scope so as to address the instrumentalities and intended instrumentalities, too.

266. Confiscation *in rem* remains expressly provided in the CC both as regards the confiscation of property gain (Art.97[3]) and the objects serving as instrumentalities of a criminal offence (Art.100-a [4]). As it is quoted in the previous report[50] these two provisions likewise stipulate that the court shall also issue a decision for confiscation when *"factual or legal impediments"* make it impossible to conduct criminal proceedings against the perpetrator. The related procedural rules remained the same such as Art. 485 CPC (Art. 529 NCPC provides accordingly), stipulating that the property and objects which have to be confiscated according to the CC must also be confiscated even if the criminal procedure is not finished with a verdict by which the defendant is found guilty *i.e.* the criminal proceedings are terminated but the conviction of the perpetrator was not possible for the above-mentioned factual or legal impediments (para 1).

[47] The dotted underlined words correspond to the meaning of the term used in the original. The English translation instead uses "seized"/"seizure". The original is "*одземат*"/ одземање". See also para 241.
[48] See paragraphs 223-224 of the 3rd round MER (page 62).
[49] See paragraph 263 *idem* (page 70).
[50] See paragraph 225 *idem* (page 62).

267. Such a separate decision on confiscation must be equally brought in cases the court already convicted the perpetrator but, for any reason, failed to decide on the confiscation in the verdict by which the defendant was pronounced guilty (para 3).The other procedural rule is Art. 493-a CPC which provides that in such cases, the court enforces a special procedure for confiscation (both in terms of proceeds and instrumentalities of crime) upon the proposal of the public prosecutor. In this procedure, the court examines the evidence necessary to decide whether the respective property or objects can actually be considered proceeds or instrumentalities and whether the conditions of the confiscation as prescribed by the CC are fulfilled. As it was noted in the previous MER[51] these procedural rules clearly cover the money or property forfeitable under the offence-specific confiscation rules too, such as Art.273(13) as mentioned above.

Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation (c.3.2)

268. The regime of provisional measures has not undergone much change since the 3rd round of MONEYVAL evaluation. Starting with the seizure of objects, Art.203 CPC[52] remained the key provision in this field, stipulating that objects which are subject to confiscation according to the CC or may serve as evidence in the criminal procedure shall be *"temporarily confiscated"* (i.e. seized).

269. On the face of it, this measure appears to cover any object that is forfeitable pursuant to the CC, including proceeds and instrumentalities of a criminal act and, obviously, that has been laundered (see Art. 273[13] CC) but, as it was found by the previous examination team, the clear reference to "*objects*" and not to "*proceeds*" or "*property*" implies that its scope is restricted to objects confiscatable under Art. 100-a CC and those falling under the scope of offence-specific provisions such as the above mentioned Art.273(13). In addition, the language of Art.203 CPC apparently excludes intangible property items or real estate and, what is more, money only appears to be covered as far as it can be considered *"object"* which likely refers to any forms of cash but not to assets consisting of bank account money. (Art.194 of the NCPC provides accordingly).

270. These aspects are to be covered by Art. 203-a of the CC which provides, as quoted in the 3rd round MER[53] that the investigative judge or the council may order temporary securing of property and assets that are related to the criminal act. The temporary securing may consist of *"temporary freezing[54] seizure, retention of funds, bank accounts and financial transactions including proceeds of crime"* and it is carried out under the supervision of the court. This is a remarkably large coverage indeed but, as it was already noted, the wording of the subsequently inserted Art. 203-a was not sufficiently harmonised with the pre-existent Art.203 and the apparent overlaps (that have not changed since the 3rd round of evaluation) may cause difficulty in determining the exact scope of the respective provisions.

271. Articles 203 and 203-a appear to regulate two different sorts of provisional measures that are different both in their names and in their actual coverage. That is, while Art.203 *("temporary confiscation"*) only covers objects forfeitable under the CC, the scope of Art. 203-a *("temporary securing"*) extends to any property related to the criminal act, regardless of whether or not this property can be subject to final confiscation. There are further differences too: while Art.203 appears to be a mandatory measure that can equally be applied by the court and also by law enforcement authorities, the measure in Art.203-a has a discretionary character and it can only be applied by the court. When it comes, however, to objects that are not only related to a criminal act but are also forfeitable pursuant to the CC, one can find an overlap between the two provisions without any statutory guidance as to which measure has to be applied.

272. While this report is not intended to reiterate all the terminological issues meticulously described in the 3rd round report, there is at least one more issue that must be mentioned. It is Art. 203-a (2)

[51] See paragraph 227 of the 3rd round MER (page 63).
[52] See quoted in paragraph 233 *idem* (page 63).
[53] See paragraph 235 *idem* (page 64).
[54] Translated as "garnishing" in the official English version but the examination of the original term (see paragraph 241 on page 65 of the 3rd round MER) proves that "freezing" is the appropriate equivalent.

by which the freezing as an apparently *sui generis* provisional measure is introduced: *"In addition to the objects under Article 203 of this Law, the court may bring a decision for freezing*[55] *the assets, accounts and funds for which there is a ground for suspicion that they are proceeds from criminal acts."*

273. The evaluators share the opinion of their predecessors from the 3rd round that none can tell with certainty what the difference is between *"temporary freezing"* in para (1) and *"freezing"* in para (2) of the same article (in the original text, the term *"freezing"* is likewise identical in both paragraphs). While para (2) implies that freezing may be ordered in relation to objects under the scope of Art. 203 (hence *"in addition…"*) the latter article does not appear to support this presumption. While it is obvious that paragraphs (1) and (2) of Art. 203 do not cover exactly the same categories, they are very likely to overlap and, again, there is no reliable statutory or other basis upon which a clear distinction could be made. As it was concluded by the previous evaluation team, the formulation of the aforementioned provisions raises so many questions that cannot be explained by mistranslation but as results of inaccuracies in the legislative process. (It needs to note that Art.196 and Art.202 of the NCPC being in force from 01.12.2013 appear to be in a likewise controversial interconnection and possible overlap, the detailed discussion of which, however, falls out of the scope of this evaluation.)

274. As it is discussed more in details in the 3rd round MER[56], these provisional measures can only be ordered by a court decision as soon as a criminal investigation against a concrete person has formally been initiated and the freezing and seizing orders can be upheld until the termination of the proceedings. In certain cases, however, provisional measures can also be taken before the commencement of a formal investigation. Art. 203(4) of the CPC empowers the Police (Ministry of Interior) to temporarily seize objects already in the course of the *"pre-investigative procedure"* (see Articles 142 and 147 of the CPC) in which context Art.142-a CPC extends this authority to the Customs Administration and the Financial Police, depending on their specific competence (which equally includes the offence of ML). As opposed to the seizure of objects, however, the temporary securing and/or freezing measures (Art.203-a CPC) cannot be taken by the law enforcement authorities in the pre-investigative proceedings as these always require a court decision and the formal initiation of an investigation.

275. Similarly to the time of the 3rd round evaluation, Art.489 CPC provides for a further measure applicable by the court during the course of the procedure for confiscation of property and property benefit, according to which the court is entitled to order *ex officio* the temporary security measures stipulated by Art.203 CPC to secure the confiscation. The previous evaluation team could see no reason why only Art.203 is referred here considering that Art.203-a would provide for an incomparably broader range of measures applicable to property that is subject to confiscation of proceeds from crime. It is likewise unclear to the evaluators of the present round why the legislators of "the former Yugoslav Republic of Macedonia" had chosen the much more restrictive Art. 203 as a point of reference for securing of proceeds subject to confiscation and why this shortcoming has remained so far unaddressed.

Initial application of provisional measures ex-parte or without prior notice (c.3.3)

276. The examiners confirm the findings of the previous evaluation team according to which there are at least two cases in which provisional measures can undoubtedly be carried out *ex parte* and without prior notice, namely, in case of seizure of objects performed by the competent law enforcement authorities in the pre-investigative procedure (which does not apply to freezing) and if the FIO initiates provisional measures pursuant to Art.36 of the AML/CFT Law (see below).

277. As it was explained by the authorities, the same goes generally for the provisional measures under Art. 203 and 203-a of the CPC in which cases the respective court orders can be obtained from the investigative judge by the prosecutor in writing. These provisions and the related Art. 203-d are equally silent as to whether any prior notice is required, but the authorities expressly advised in their replies to the MEQ that "*measures of confiscation, freezing and seizure of*

[55] Translated as "garnishing" in the official English version (see the previous footnote).
[56] See paragraph 246 of the 3rd round MER (page 66).

proceeds for which there are grounds for suspicion that they originate from crime are applied without prior notification to the perpetrator that they are undertaken against him/her".

278. In this respect, the 3rd round evaluation team had the opinion that a clear statutory provision covering *ex parte* freezing and seizing without prior notice would definitely assist the legislative framework. Notwithstanding this, the examiners of the present round need to note that the NCPC apparently addresses this issue as of 01.12.2013 since Art.196 provides for the temporary seizure of objects without a court order *"if there is a danger of procrastination and if there are reasonable grounds to suspect that those objects are related to the criminal offense".*

Adequate powers to identify and trace property that is or may become subject to confiscation (c.3.4)

279. Similarly to the time of the 3rd round evaluation, the law enforcement agencies seem to have sufficient powers to trace and identify property as required by Criterion 3.4. The investigative measures listed under Art. 144(2) CPC as well as Art. 157 CPC on certain urgent investigatory actions need to be reiterated.

280. The provisional measures regime is complemented by the preventive AML/CFT legislation that provides for the postponement of financial transactions with a view to the application of provisional measures. The current AML/CFT Law and its Art.36 that authorises the FIO to order this kind of postponement for a time period of maximum 72 hours had only been a draft at the time of the 3rd round evaluation but the AML Law then in force had already had an almost identical provision in its Art.29 which allows for a comparison and detecting if any changes have been made. The current text of Art.36 of the AML/CFT Law reads as follows:

Provisional Measures

Article 36

In case of suspicion of criminal act money laundering or financing terrorism, the Office may submit an application to the competent public prosecutor for submitting proposal for determining provisional measures. (...)

Postponement of the transaction shall last until a court decision is adopted upon the proposal, within 72 hours from the postponement of the transaction at the latest.

281. The examiners noted two substantial issues in which the new Art.36(1) differs from the old Art.29(1) the first of which is the lowering of the evidentiary standard required for the postponement of the transaction and initiation of further provisional measures. While this standard was *"existing justified suspicion"* (of the criminal offence of ML or TF) the current legislation only requires *"suspicion"* of these offences which is a definite step towards a more flexible and effective application of this provision.

282. The other difference appears, however, somewhat more problematic. Whereas the old Art.29(1) obliged the FIU to submit[57] an application to the public prosecutor in case of existing justified suspicion as mentioned above, this is no longer obligatory in the current legislation. Art.36(1) of the AML/CFT Law only provides that in case of suspicion in general, the FIO may submit[58] such an application. As it was confirmed by the authorities of "the former Yugoslav Republic of Macedonia", the lifting of the formerly overall obligation and replacing it by a measure of discretionary character had actually been intended to counterbalance the lowering of the evidentiary standard as described above nevertheless it is unclear how this discretionary power is executed in practice. As it was explained by representatives of the FIO on-site, the decision whether to submit an application to the public prosecutor must be made by a three-member committee *"depending on the nature of the case"*.

283. The subsequent steps of the procedure are similar to those in the old AML/CFT Law. That is, the public prosecutor is required to examine the application and if it is found reasonable, to submit a request, without any delay and within 24 hours from the receipt of the initiative, to the judge of

[57] In the original text: "*поднесува*" i.e. "submits".
[58] In the original text: "*може да поднесе*" i.e. "may submit".

the competent basic court for ordering provisional measures (or, if the application proves to be groundless, to notify the FIO thereof so that the transaction can continue) (Art.38). The judge is then obliged to adopt a decision, within 24 hours from the receipt of the proposal of the prosecutor, on the application of the provisional measure (or the rejection thereof) about which the public prosecutor as well as the entity and the client must be notified without any delay (Art. 39). The appeal against the court decision does not delay its execution.

284. As it was already noted in the 3rd round MER[59] the 72 hours timeframe seems to be enough to provide, in its entirety, sufficient time for the prosecution to prepare for the applicable provisional measures which, however, not necessarily goes for its division into three blocks of maximum 24 hours. This approach was likely intended to secure the pace and timeliness of the procedure by setting separate deadlines for all the authorities that are involved successively (the FIU, the public prosecutor and the court). Nonetheless, such a fragmentation of the process might also be an impediment, although this risk is significantly reduced by the lowering of the evidentiary standard as discussed above.

285. The old AML/CFT Law was criticised in the 3rd round MER for not defining the term *"provisional measures"* in the context above and for not providing further procedural rules, conditions and terms thereto. This deficiency is addressed by the current AML/CFT Law which defines the term *"provisional[60] measures"* in Art. 2(13) as follows: *"a temporary prohibition of use or disposal with money, securities and exchange, funds and other assets, temporary storage and protection on the basis of a decision issued by a court other competent authority in a procedure established by Law"*.

286. As it was noted in the 3rd round MER (on the basis of the draft of the current AML/CFT Law) this scope is significantly wider than what could ever be covered by the provisional measures regime as stipulated in the CPC. Presumably, it was intended to be flexible enough so as to adapt to any modification of the CPC (or a new CPC) and even to other possible procedural rules determined by law (including laws other than the CPC). Notwithstanding, as it was already clarified in the previous round, it is solely the provisional measures provided by the CPC (as from 01.12.2013 the NCPC) that have to be applied as the underlying subsidiary law in this context and therefore, the investigative judge would directly apply, upon the basis of a proposal from the public prosecutor, the respective articles of the CPC.

Protection of bona fide third parties (c.3.5)

287. At the time of the 3rd round evaluation, the key provision in this respect was Art. 98(2) CC according to which the proceeds (property gain) were to be confiscated from third parties that had acquired the property without due compensation, provided that they could have known or were obliged to know that it had been proceeds.

288. This provision was substantially reformulated and restructured by the 2009 amendment to the Criminal Code as a result of which the former paragraph (2) was replaced by two more detailed paragraphs (2) and (3) as follows :

> *(2)* ***The direct and indirect*** *property gain shall also be confiscated from third parties* ***who obtained it by commission of a criminal offence.***
>
> *(3) The property benefit referred to in paragraph (1) shall be as well confiscated from members of the offender's family to whom it has been transferred, should it be obvious that they have not provided any compensation corresponding to the value of the obtained property benefit, or from third parties unless they prove that they have given counter-compensation for the object or the property which corresponds the value of the obtained property benefit.*

289. The new paragraph (2) refers to third parties who obtained the proceeds of somebody else's crime by committing a criminal offence themselves i.e. the acquirement of the proceeds is an act that in itself constitutes an offence, in which case the confiscation is to be carried out

[59] See paragraph 253 of the 3rd round MER (page 68).
[60] In the official English version, it is "temporary measures".

unconditionally. In such cases, however, the principal basis of the confiscation is that the possessor of the property had committed a crime him/herself by which he/she obtained the property and therefore the property necessarily constitutes proceeds of his/her criminal offence, too. Consequently, the persons who obtained the respective property through committing a crime cannot be considered "third persons" as they are perpetrators themselves ("*second persons*") and the situation must be covered by the general rules governing the confiscation of proceeds from crime. As a result, Art. 98(2) CC has no relevance in the context of Criterion 3.1.1.b.

290. Art. 98(3) CC is thus the provision which actually deals with confiscation from third parties. Comparing it to the previous legislation (Art. 98[2] CC as it was in force at the time of the 3rd round evaluation) the differences are obvious. In the former law, the confiscation from third persons was dependent on two conjunctive conditions namely (i) the property be transferred without adequate compensation and (ii) the third party should have been aware of, or be obliged to know, the illicit origin of the property. Probably the overly discretionary character of the latter, mental condition was the reason why it was left out of the new Art. 98(3) CC which only contains conditions of physical character, based on the compensation given for the transferred property.

291. As a result, the actual knowledge or presumption of the origin of the property became irrelevant. What is important is the counter-compensation which is regulated according to whether or not the third party is a member of the offender's family. While confiscation from family members is only possible if it is obvious (i.e. the prosecution can prove) that they did not give any compensation corresponding to the value of the property they had obtained, the other third parties are significantly less protected. In case of ordinary third parties, the burden of proof is reversed as a result of which the proceeds must be confiscated unless the third party can prove that he/she has given commensurate compensation for the respective property. (By virtue of Art.98[4] CC items declared a cultural heritage or those "*to which the damaged party is personally attached*" remained forfeitable from whichever third parties, regardless whether the item was acquired for adequate compensation.)

292. As far as the confiscation of instrumentalities in the possession of third parties is concerned, it is still Art. 100-a CC to be applied, where paragraph (2) provides for a conditionally mandatory confiscation subject to specific preconditions (interest of general safety etc.). In other cases, however, instrumentalities cannot be confiscated from a third party unless that person was, or was obliged to be, aware that the respective items had been used or intended for committing the crime (Art. 100[3]).

293. As it was noted in the 3rd round MER[61] the CPC provides further protection to the rights of bona fide third parties to whom property that constitutes proceeds of crime was transferred. Art. 487 CPC stipulates that such a person (or the representative of such a legal person) must be summoned for examination in pre-trial proceedings and at the trial so that they can present evidence concerning the determination of the property benefit (in accordance with Art. 531 NCPC). On the other hand, there is no such consideration when it comes to the confiscation of instrumentalities and other objects, the only protection being that confiscation *"does not interfere with the right of third parties to compensation of damages from the offender of the crime"* (Art. 100a[5] CC). Examiners of the present round share the opinion of the previous evaluation team that the latter provision must be referring to property subject to the offence-specific confiscation regime in Art. 273(8) CC.

Power to void actions (c.3.6)

294. No changes have taken place regarding the CPC provision by which Criterion 3.6 had already been adequately addressed at the time of the 3rd round evaluation (Art. 493-b[5]) and which provides that *"The legal acts concluded upon the committing of the crime, with an intention to decrease the value of the property being subject to confiscation, shall be null and void."* The same rule is maintained in the NCPC which contains a similar provision in its Art. 541(5).

295. The evaluators noted with appreciation that Art. 493-b(5) CPC had already been successfully

[61] See paragraph 230 of the 3rd round MER (page 63).

applied in a major ML case in "the former Yugoslav Republic of Macedonia". In the respective verdict[62] the court annulled a number of contracts and other legal acts that had been concluded in order to cover the laundering activities of the perpetrators.

Additional elements (c.3.7)

296. The examiners could find no specific legislation or jurisprudence to cover R.3.7.a (authority to confiscate the property of organisations that are found to be primarily criminal in nature). Reference was made in the MEQ to corporate criminal liability but that is not relevant, in itself, in this context.

297. Civil confiscation without the criminal conviction of any person, as it is referred to in R.3.7.b (i.e. not the cases of *in rem* confiscation) is likewise absent from the jurisdiction of "the former Yugoslav Republic of Macedonia".

298. Notwithstanding these, the reversal of the burden of proof for the purposes of confiscation, as proposed by R.3.7.c has been introduced since the 3rd round of MONEYVAL evaluation. The necessary modifications were carried out by the aforementioned amendment of the Criminal Code in 2009 as a result of which a new Art. 98-a was inserted. This provision introduces the concept of "extended confiscation" as follows: *(1) The property obtained in the time period, determined by the court according to the case's circumstances which shall not be longer than five years before the commission of the crime, prior to the conviction, when based on all the circumstances the court is well asserted that the property exceeds the legal incomes of the offender and originates from such crime, shall be confiscated from the offender of a crime committed within a criminal association wherefore a property benefit for which an imprisonment sentence of at least four years is prescribed, as well as a crime in relation with the terrorism referred to in Article 313, 394-a, 394-b, 394-c and 419 of this Code for which an imprisonment sentence of minimum five years or more has been prescribed or which is related to a money laundering crime wherefore an imprisonment sentence of at least four years is prescribed.*

299. Extended confiscation thus refers to property the perpetrator had acquired in a certain time period prior to the verdict by which he/she was convicted (the actual time period is determined by the court but cannot exceed 5 years). This measure can only be applied in case of serious crimes (the offender must be convicted either for a crime committed in a criminal association or for ML or a terrorism-related offence, provided the respective forms of these offences are punishable according to the minimum level specified above).

300. The presumption is that the property the person obtained in this time period must have been derived from the serious organised or other crime that he had committed according to the verdict by which he/she was convicted and thus it is up to the defendant to prove that it was acquired in legal manner. The respective rules of the CC are accompanied and supported by procedural rules such as Art. 533 of the NCPC that regulates the application of extended confiscation.

301. It needs to note that the old CPC did not provide for any specific procedure in this respect and the NCPC only entered into force as of 1st December 2013 that is, more than four years after the introduction of the extended confiscation in the CC(2009). Nonetheless, it does not mean that the respective rules of the CC could not be implemented during this four-year period. As it was demonstrated by the authorities of "the former Yugoslav Republic of Macedonia" a practical manual had been drafted and issued for the practitioners to facilitate the application of the rules on extended confiscation until the NCPC (with its specific procedural provisions) finally entered in force.

302. By the use of the general CPC regime for provisional measures and confiscation, together with this practical manual, the extended confiscation could successfully be applied even in ML cases. Specifically, in a verdict[63] provided to and translated for the evaluators during the pre-meeting, the court applied such a measure against one of the defendants.

[62] VIII.KOK no. 17/10.
[63] KO no. 99/10.

303. Extended confiscation applies to third parties as well. In this respect, Art.98-a (2) and (3) provide in full accordance with the rules normally applicable to third party confiscation as amended in 2009.

Recommendation 32 (statistics)

304. The applicability of the confiscation and provisional measures regime can best be assessed by use of statistics of property temporarily frozen/seized as compared to property finally confiscated in criminal proceedings for the offences of ML, FT as well as any other proceeds-generating predicate offences.

305. While the authorities of "the former Yugoslav Republic of Macedonia" provided meaningful statistical information on provisional measures and confiscation that had so far been applied in ML cases (as described under the "effectiveness" chapter below) these figures appear to be taken from the case-by-case analysis mentioned above in Chapter 2.1 (R.1) rather than being derived from any official statistics maintained and periodically updated by a competent domestic authority.

306. Up to the last few days directly preceding the Plenary discussion of this report, the evaluation team was not given any sort of statistical information regarding the application of confiscation and provisional measures generally in criminal cases in "the former Yugoslav Republic of Macedonia" and therefore it could not be assessed how frequently and with what results such measures were applied in case of proceeds-generating criminal offences in general.

307. Right after the last pre-meeting held immediately before the Plenary discussion, the authorities of "the former Yugoslav Republic of Macedonia" provided statistical information on the performance of the confiscation regime in general, that is, including all criminal cases related to proceeds-generating predicate offences. The data were provided in a rather descriptive document which, however, had reportedly been based on actual statistics kept and maintained by the Prosecutor General's Office. The evaluation team decided to accept the said document and took it into account for the purposes of the assessment. (Further details are discussed below under the "effectiveness" chapter.)

308. On the other hand, the evaluation team was not given any statistics or other sort of information on the functioning of the provisional measures regime, which thus remains a shortcoming.

Effectiveness and efficiency

309. As mentioned above, the full scale of statistical figures regarding provisional measures and confiscation was only provided specifically for ML cases. (The table below is an excerpt from the annual case-by-case analysis of ML cases that indicates the number of investigations, prosecutions and convictions too. Number of convictions is left in this table for illustrative purposes.)

Table 13: Confiscation and provisional measures in ML cases

	Convictions (final)		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	cases	**persons**	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)
2008	3	19	2	€383,927 2 denar accounts of termed deposits (€167,736)	/	/	/	/
2009	1	1	2	€178,713 962 ordinary shares (€519,480)	1	€80,000	1	€178,713
2010	/	/	3	Land (2 hectares, 53 ars and 61.152 m^2)	2	79 agricultural machines	/	/

	Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	**persons**	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)
				3 buildings (831 m^2) 44,228 ordinary shares (€1,123,826) €12,620		and 15 vehicles €72,800		
2011	1	2	2	1477 m^2 land €3,334,867	1	14 vehicles	1	€40,654
2012	5	11	2	713 m^2 apartments 16,415.3 m^2 land 8,707 m^2 land (€140,911)	1	9 vehicles	3	€12,436,911.24 5385 m^2 land

310. As an explanation to the figures in the table above, the representatives of the prosecution provided the following information:

- assets indicated above (sums of money, real estate, vehicles etc.) refer to property of which the perpetrator or other person had actually been deprived in course of the proceedings (the respective data had originally been provided by the directorate that manages seized and confiscated assets)
- property items seized/frozen or confiscated as either proceeds of crime or instrumentalities or intended instrumentalities are equally and cumulatively covered (although the vast majority of the respective assets represent proceeds of crime)
- as for the provisional measures, most of them took place in the early (investigative) phase of the criminal proceedings however, in certain cases, such measures could successfully be carried out even in later stages (in a concrete case[64] it was only discovered while drafting the indictment that apart from the assets so far frozen there were other property items to which the provisional measures could be extended).

311. The figures above suggest that confiscation has been applied on a routinely basis in ML cases that ended with a successful conviction which is appreciated by the evaluation team. A successful confiscation regime necessarily requires a functioning system of provisional measures and the figures on seized and frozen assets appear to confirm that such a regime is in place, even though the limited number of cases and the diversity of statistical figures prevented the evaluators from drawing more concrete conclusions regarding the actual ratio between the assets seized/frozen and those finally confiscated.

312. In any case, these figures convincingly prove that the provisional measures and confiscation regime of "the former Yugoslav Republic of Macedonia" is successfully applicable in practice. Results like this appears to disprove, at least to a certain extent, the concerns of the previous evaluation team that the complexity of the legal framework and particularly the use of parallel regimes for instrumentalities and proceeds of crime as well as the anomalies in legal terminology may prevent the effective applicability of the respective provisions or make it very difficult.

313. As noted above, the evaluation team was given, right before the Plenary discussion of this report, additional statistical information on results of the general confiscation regime in relation to proceeds-generating offences. In this document, the domestic authorities provided detailed information on all property items confiscated between 2008 and 2013 by the courts of "the former Yugoslav Republic of Macedonia" either as proceeds, instrumentalities or products of crime. The

[64] KO no. 99/10

figures were impressive. Taking the year 2012 as an example, the courts confiscated, among others, slightly more than 300 million MKD, more than €261,000, 2394 m^2 of real estate, 14 freight motor vehicles and 35 motor vehicles in this year. By first instance verdicts that had not yet been effective in 2012 the courts confiscated further assets valuing up to 14 million MKD, €7.4 million, $511.000, further 5385 m^2 of real estate, 3 restaurants and 28 travel motor vehicles. Similar figures were provided for all years throughout the time period.

314. According to the same document, confiscation was successfully applied for a number of typical proceeds-generating offences including, among others, trafficking in human beings and smuggling of migrants, illegal production of and trafficking in narcotics and similar substances, trafficking in arms, extortion and corruption crimes. As a result, the evaluation team concluded, in line with the impression they had previously had on-site as a result of interviews with local authorities, that the confiscation regime can generally be considered, to a satisfactory level, operational as confiscation measures are taken with regularity, not only in ML cases but also in those related to proceeds-generating criminal offences, and remarkable volumes of assets are confiscated.

315. On the other hand, the evaluation team was left without any exact and reliable information as to the performance, both in terms of frequency and effectiveness, of the provisional measures regime i.e. the application of seizing or freezing orders in case of proceeds-generating offences in general. Considering the figures for confiscation, the provisional measures regime must necessarily be operational to a satisfactory extent. Nonetheless, exact statistical information would have been needed for assessing the ratio between seized/frozen assets and those eventually confiscated so as to form a more accurate opinion on the effectiveness of the entire system.

316. The evaluators note with appreciation that the practitioners and particularly the law enforcement authorities (specifically the MoI) have been furnished with various sources of guidance in order to conduct effective financial investigations. The manual "Financial Investigations and Confiscation of Proceeds from Crime" was issued back in 2006 in the framework of the CARPO project[65] for all the law enforcement agencies as well as for the public prosecutors and all representatives of the judiciary authorities. This is a detailed document describing the respective international standards and concepts (including the reversal of the burden of proof, years before the extended confiscation was introduced) as well as detailed guidance how to establish the proceeds of crime in a criminal investigation and what measures must be taken for securing that property.

317. There is another guidance document called "Standard Operating Procedures for Conducting Financial Investigations" prepared by the MoI in 2013 within the project *"Strengthening of the Capacities of the MoI"*. Its objective is to assist the procedures and actions of the police officers in identifying illegally acquired property and the related laundering activities, with a particular attention to the new rules of the recently implemented NCPC. The Standard Operating Procedures contain forms that help the police executives in conducting financial investigations.

318. The FIO provided the following statistics regarding the property that they had *"frozen"* pursuant to Art. 36 of the AML/CFT Law (or Art. 29 of the former AML Law). The figures in the table below thus represent all assets that have been involved in the transactions the FIO postponed and then initiated the formal freezing or seizure of the respective property (regardless of whether or how the competent prosecutor acted upon such an application). Some of these records are remarkably high (esp. the €75 million in 2008 or the $30 million in 2009), nonetheless, the statistics currently available to the evaluators do not provide a sufficient basis to establish what proportion of these assets were subject of subsequent provisional measures in a criminal procedure.

Table 14: Temporary measures imposed by the FIO

	Number of orders for temporary measures	amount
2008	5	€75,705,215

[65] "Development of Reliable and Functional Police Systems and Strengthening of the Main Activities for Combating Crime and Police Cooperation" (a technical cooperation project running between 2004 and 2006 jointly funded by the Council of Europe and the EU)

		$8,787
2009	2	$30,000,000 €180,000
2010	3	$132,141 £543.32
2011	4	14,913,110 MKD €9,545.33 $826,794
2012	6	€3,097,481

319. In fact, the FIO claimed that in all of these cases the public prosecutor agreed with the FIO and submitted a proposal to the competent court for imposing provisional measures which in turn was accepted, without exception, by the court that ordered provisional measures in all cases. In other words, the amounts that can be seen in this table represent property seized or frozen in a criminal procedure and hence these figures should be comparable (and even corresponding) to those in the respective columns of the first table (proceeds frozen or seized) which is not the case and therefore the reliability of the data provided in the second table cannot be verified.

2.3.2 Recommendations and comments

320. The 3rd round evaluation team had serious difficulties with the complexity of the legal framework applicable to confiscation and provisional measures with its parallel regimes both in terms of criminal substantive and procedural law. They warned that the respective measures are so inaccurately and inconsequently formulated and their scopes overlap to such an extent that makes the assessment of their interconnection and mutual applicability very difficult. As a result, they called for urgent legislative steps to minimise the confusion by achieving simplification and standardisation of the legal terms.

321. Apparently, this general recommendation has not been addressed by the lawmakers of "the former Yugoslav Republic of Macedonia" as the current regime of confiscation and provisional measures is just as complicated as it was at the time of the previous evaluation (and its complexity was further increased by the introduction of the extended confiscation). On the other hand, as mentioned above, the concerns of the 3rd round evaluation team seems to be disproved, to a certain extent, by the statistical figures made available to the evaluators of the present round. The apparent complexity and the undoubted inaccuracies of the respective provisions of the CC and CPC thus do not prevent the domestic authorities from applying them in practice which must also be recognised by the evaluation team.

322. On the other hand, there are some technical deficiencies that cannot be explained nor remedied by practice and thus require legislative solution.

323. As far as the confiscation of instrumentalities under Art. 100-a CC is concerned, the conditions set by paragraphs (2) and (3) are still formulated imprecisely and also unnecessarily restrictively, particularly when compared with the specific provisions related to certain criminal offences in the Special Part of the CC stipulating the unconditional and mandatory confiscation of instrumentalities. It is thus reiterated that the domestic authorities should consider the overall mandatory and unconditional confiscation of objects used for or intended for use in criminal offences. It needs to be underlined that the specific, mandatory confiscation rules in Art. 273(13) CC does not refer to the instrumentalities of the ML offence (as it covers the *"corpus"* of the offence *i.e.* the property that has been laundered) which should expressly be provided for, or else its confiscation remains conditional and discretionary. The same goes for Art. 394-c (12) CC which only covers instrumentalities intended for use in a TF offence but not those that have actually been used for this purpose.

324. While it is a minor deficiency, the examiners need to turn attention to Art.96-m (3) CC with the misleading cross-reference in its text (to the non-existent Art. 101-a CC) that should urgently be corrected.

325. As it was already noted by the previous evaluation team, value confiscation remained

completely inapplicable for instrumentalities or intended instrumentalities in general. The examiners thus reiterate the clear recommendation the previous evaluation team made in the 3rd round MER in this respect.

326. One of the weakest points of the system remained the uncertainty regarding the exact range of provisional measures and the related terminology leading to potential overlaps between the respective articles. The examiners reiterate the recommendation made in the previous MER that a clear relationship should be established between the respective provisions and particularly between Articles 203 and 203-a CPC along with the elimination of overlaps or apparent duplications in the regulation. In addition, the examiners recommend prescribing it by positive law that measures under Art. 203-a should also be applied by courts in procedures under Art. 489 CPC. It remains a deficiency of the provisional measures regime, and should therefore be remedied, that only *"temporary confiscation"* under Art. 219 is mandatory while the measures with a considerably larger scope in Art. 220 are only applicable upon the discretion of the court.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• The confiscation regime is still too complicated which may hamper its effective application; this refers particularly to the provisional measures (Art. 203 and 203-a CPC) the respective coverage of which is inaccurately defined; • Confiscation of instrumentalities is in most of the cases only discretionary and the same goes for instrumentalities of money laundering offences; • No value confiscation for instrumentalities and intended instrumentalities; • In lack of statistics or any other data related to the application of seizing and freezing/securing orders in general, the effectiveness of the provisional measures regime in case of proceeds-generating criminal offences (i.e. beyond ML related criminal cases) could not be assessed.

2.4 Freezing of Funds Used for Terrorist Financing (SR.III)

2.4.1 Description and analysis

Special Recommendation III (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

327. In the 3rd round of MONEYVAL evaluations, "the former Yugoslav Republic of Macedonia" was found non-compliant with the requirements of Special Recommendation III. At that time, the evaluation team found it difficult to identify, first and foremost, what pieces of legislation had actually been intended to address these requirements. References the domestic authorities had then made to either or both the AML/CFT Law then in force or the CPC, proved to be irrelevant and, indeed, neither of these laws had ever been applied in this respect as it is discussed more in details in the 3rd round MER[66].

Freezing assets under S/Res/1267 (c.III.1) and under S/Res/1373 (c.III.2)

328. A new piece of legislation specifically intended to provide for the implementation of the respective UNSCRs including the designation, competences and coordination of the responsible state bodies had already been adopted at the time of the 3rd round on-site visit and was therefore be taken into account in the previous MER as well. It was the Law on International Restrictive Measures (IRM Law) that came into force in June 2007.

329. After a thorough analysis, however, the 3rd round evaluators found that IRM Law did not establish a practical administrative procedure for freezing accounts of names on the respective

[66] See paragraph 270 of the 3rd round MER (page 71).

lists as it only served as the legal basis for introducing such a procedure. Specifically, the IRM Law authorised the Government to adopt, upon the proposal of the Ministry of Foreign Affairs, so-called Decrees *i.e.* pieces of secondary legislation for the implementation of a restrictive measure. Such Decrees were to be adopted on a case-by-case basis and the procedural rules (manners of and exceptions from the implementation etc.) would have also been determined on an *ad hoc* basis.

330. As a result, such Decrees would not have provided 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. Furthermore, as it was also described in the 3rd round MER neither of Criteria III.7 to III.13 were, to any extent, addressed by the IRM Law or any other piece of legislation. It was therefore recommended[67] that a comprehensive set of detailed and generally applicable rules for an administrative procedure should be drafted and adopted in "the former Yugoslav Republic of Macedonia" practically on the conceptual base that had already been provided by the IRM Law then in force.

331. Instead of amending, improving and/or completing the IRM Law, however, the lawmakers decided to draft a completely new law with exactly the same title that was adopted on 23rd March 2011 and entered into force as of 1st April 2011. The new Law on International Restrictive Measures ("Official Gazette of the Republic of Macedonia" No. 36/2011 hereinafter: 2011 IRM Law) shows remarkable similarity with the old IRM Law inasmuch as it primarily provides, similarly to its predecessor legislation, a basis of authorisation for the issuance of governmental secondary legislation without any detailed rules on roles, responsibilities and procedures.

332. The new law, in almost verbatim correspondence with the previous one, regulates *"the procedure for introduction and abolition of restrictive measures, their implementation, coordination of implementation of restrictive measures"* (Art.1) that have *"the objective of maintaining international peace and security, respecting human rights and fundamental freedoms, and developing democracy and the rule of law"* (Art.2) with an applicability "*to one or several states, international organisations, natural and legal persons and to other entities"* (Art.3) and were introduced by, first and foremost, *"legally binding Resolutions adopted by the United Nations Security Council under Chapter VII of the United Nations Charter*" (Art. 2[a]).

333. While this approach must obviously be welcomed, the evaluators need to note that the new definitions do not have any actual effect on the conceptual deficiencies of the law, that is, the general lack of clear and readily functional procedural rules. As a result, the scope of the 2011 IRM Law still does not go beyond the mere authorisation for issuing relevant secondary legislation, the only difference being that now it is defined more precisely and more in line with the spirit and wording of SR.III what is the area in which secondary legislation could and should be issued for the implementation of the respective UNSCRs but nothing about the *"effective laws and procedures"* that are required by Criteria III.1 to III.3.

334. This can be best illustrated by the title of Chapter II (Art.6) of the 2011 IRM Law which appears to deal with, on the face of it, the procedure for introduction and abolition of restrictive measures while it only prescribes the procedure by which the relevant secondary legislation[68] can be adopted (thus "procedure" means a legislative process in this context). The procedure is quite similar to the one described in the former IRM Law (Art.4) with only minor differences that have no impact on the main characteristics of the regime (e.g. the duration of the restrictive measure should also be defined by the secondary legislation). The abolishment of a restrictive measure requires the adoption of another governmental Decree.

335. Procedural rules on freezing of terrorist assets are provided only to a very limited extent by the 2011 IRM Law. Once a governmental Decree is adopted on the introduction of a restrictive

[67] See paragraph 281 *idem* (page 74).

[68] The form of this secondary legislation was translated as "Decree" in the English version of the previous IRM Law while "Decision" in that of the new one, but both laws use the same Macedonian term "*одлука*" in the original texts. For the sake of consistency, the term "Decree" will be used in this MER.

measure, it is up to the FIO to immediately communicate this decision to the relevant financial institutions as well as to the Agency for Real Estate Register and the Central Depository of Securities (Art.9[1]) which are then obliged to *"immediately check and freeze assets of natural and legal persons subject to financial restrictive measures, if these persons have had business relations with them or have utilized their services, or shall refuse to establish such relations"* as well as to inform the FIO thereof (Art.9[2]). A similar procedure is followed when implementing a Decree that abolishes a previously imposed financial measure (Art.9[3]). Nonetheless, there are no further procedural rules as to the execution of such a freezing measure that would adequately provide for roles, responsibilities, formalities and deadlines by responding to a range of unanswered questions such as:

- who brings a formal decision on the freezing of assets (it appears that the financial institutions themselves are supposed to decide on the freezing of funds upon a general authorisation that stems from the respective governmental Decree, which may raise further questions as the financial institutions e.g. commercial banks cannot be considered as governmental authorities that bring decisions and impose coercive measures);
- how this freezing is carried out (whether the funds remain at the respective financial institution or it has to be transferred to a governmental account, what proprietary rights of the owner are affected);
- as far as real estate is concerned: who brings the formal decision on freezing, whether and how the Real Estate Register is authorised to bring such decisions on its own, how this freezing is carried out (questions as above) what happens to cases of joint ownership (where only a proportion of the real estate belongs to the designated person and is therefore subject to freezing);
- and last but not least, the questions related to Criteria III.7 to III.10 as discussed below.

336. Art. 6(3) of the 2011 IRM Law prescribes that these Decrees, just like all decisions and decrees issued by the Government are to be published in the "Official Gazette of the Republic of Macedonia" hence their public availability is provided but only on a subsequent basis. The present round evaluation team was made aware of a number of governmental Decrees having been adopted pursuant to the 2011 IRM Law which undoubtedly shows the actual applicability of the new Law, even if its scope suffers from limitation mentioned above and even if the vast majority of the Decrees issued on the basis of this Law were not at all related to the freezing of terrorist assets.

337. The analysis of the online database of the FIO shows that the 2011 IRM Law has already served as a basis for issuing at least 97 governmental Decrees (up to January 2013) the vast majority of which was related to the implementation of financial measures against certain countries unrelated to SR.III. The evaluators found altogether 6 Decrees which were, to any extent, related to the freezing of terrorist assets: these were all decisions by which the respective EU legislation (Council Regulation 881/2002, Common Position 931/2000/CFSP etc.) and particularly the lists of designated persons and entities relevant to these pieces of legislation as well as updates to these lists were formally implemented in the law of "the former Yugoslav Republic of Macedonia".

338. Although these pieces of legislation were only available to the evaluators in Macedonian original, they could nevertheless form an opinion on their format and coverage (also taking into account a similar Decree which was provided in English – it was issued by the Government on 15th January 2013 to introduce restrictive measures against Iran in accordance with the EU Council Decision 2012/635/CFSP).

339. The examination of these Decrees did not convince the evaluation team as the structure and formulation of these pieces of legislation proved to be as generic as that of the 2011 IRM Law itself. Normally, these Decree simply declare the implementation of the respective EU legislation, name a range of ministries and the FIO (without any further specification) as responsible authorities and, finally, provide that the implementation of the restrictive measure shall be performed as determined by the underlying EU legislation – which, however, does not contain any detailed procedural rules in this respect (particularly in relation to a non-EU Member State) as this should normally be dealt with by the national implementing legislation. Consequently, these

Decrees do not appear to provide an adequate standard for issuing secondary legislation because of the lack of detailed rules, including procedural rules, regarding "the manner of implementation of a restrictive measure" as required by Art.6(1)c of the 2011 IRM Law. Schematic and inexpressive secondary legislation would not be able to remedy, to any noticeable extent, the aforementioned formal and conceptual deficiencies of the 2011 IRM Law.

340. As noted above, the absence of effective laws (that is, legislation that goes beyond the mere authorisation for issuing implementing decrees) and procedures (clear and readily functional procedural rules) to freeze funds or other assets owned by or related to persons designated by the relevant UN Security Council Resolutions has not yet been remedied for which reason Criteria III.1 to III.3 cannot be considered as being met. In this respect, while the evaluators could find at least the starting point of a dedicated legal structure for the conversion into domestic law of designations under UNSCR 1267 or 1988, the designations made pursuant to UNSCR 1373 can only be addressed by the 2011 IRM Law if based on the legal acts of the European Union or "other international organisation" (Art. 2(1) b-c).

Freezing actions taken by other countries (c.III.3)

341. The 2011 IRM Law does not provide the possibility to consider designations by third countries and the "the former Yugoslav Republic of Macedonia" has not yet established a national designating authority for the purposes of UNSCR 1373.

Extension of c.III.3 to funds or assets controlled by designated persons (c.III.4)

342. One of the possible restrictive measures available under the 2011 IRM Law, is the category of "*financial measures*" which means, pursuant to Article 3(4) the *"provisional ban on use or disposal with assets owned by natural and legal persons, or ban on making assets available for use or disposal with by natural and legal persons to which restrictive measures apply".* At this point, however, the 2011 IRM Law goes more into details than its predecessor legislation specifying in Art.5(4) that this measure applies to

a) assets which are fully or partially disposed with or used by natural and legal persons subject to restrictive measures, and/or natural and legal persons that finance terrorism or terrorist organisations;

b) assets which originate from assets that are fully or partially disposed with or used by natural and legal persons subject to restrictive measures, and/or natural and legal persons that finance terrorism or terrorist organisations;

343. It is quite apparent that this provision was added to the new law with the intention to extend its coverage towards the standards set by Criterion III.4 on the required scope of the freezing actions, even if certain aspects of the latter remained uncovered (such as the notion of controlled assets as well as the direct or indirect ownership or control). Furthermore, the new law provides a comprehensive definition of *"funds"* (Art. 5[5]) that fall under the scope of the provision above, according to which *"assets" shall mean money, funds or other payment instruments, securities, deposits, other property of any type, such as tangible or intangible, movable or immovable, other rights to assets, claims as well as public and legal documents of ownership and of assets in a written or electronic form or instruments that provide the right to ownership or interest in such assets.*

344. Thus, in principle, the standards of Criterion III.4 are adequately addressed by the new provisions in Art.5(4) and (5) of the 2011 IRM Law as quoted above, as a results of which the freezing mechanism would theoretically be able to cover the contents of the term "*funds or other assets*" as it is defined by the Glossary to FATF Methodology. On the other hand, no such freezing mechanism has so far been adequately established in either statutory or secondary legislation of "the former Yugoslav Republic of Macedonia".

Communication to the financial sector (c.III.5)

345. As opposed to its predecessor legislation, the 2011 IRM Law already provides a system for communicating the actions taken under the freezing mechanisms to the financial sector and other

obliged entities. As noted above, all governmental Decrees issued upon the basis of the new law must be published in the "Official Gazette of the Republic of Macedonia" (Art.6[3]) not only in hard copy but also on its official website (www.slvesnik.com.mk). The MFA maintains a continuously updated registry of such decisions on its website (www.mfa.gov.mk/?q=node/307) which are also made available on the FIO's webpage (http://usppft.gov.mk/?q=node/52).

346. Apart from the latter database, the FIO has other obligations that are relevant in the context of Criterion III.5. Pursuant to Art. 9 of the 2011 IRM Law, the FIO is obliged to immediately inform, electronically or in writing, the relevant financial institutions, the Agency for Real Estate Register and the Central Depository of Securities about any Decree that introduces (or abolishes) a financial restrictive measure, on the basis of which these institutions shall act immediately in order to check and freeze (or to defreeze) the respective assets. As a result of these provisions, "the former Yugoslav Republic of Macedonia" can be considered basically compliant with the formal requirements of Criterion III.5 even if the effectiveness of the communication regime could not be assessed.

Guidance to financial institutions and other persons or entities (c. III.6)

347. At the time of the 3rd round evaluation, it was already envisaged that guidance would be prepared and issued in line with Criterion III.6 after the adoption of the IRM Law but. According to the new 2011 IRM Law, the FIO prepared and issued the Guidelines of Implementing International Restrictive Measures No. 02-7/57(12) of 23.05.2012 (hereinafter: IRM Guidelines) by which financial institutions and other obliges entities are given guidance to the application of international restrictive measures, including what these measures are, to whom they apply, how these measures and particularly the financial measures are implemented in "the former Yugoslav Republic of Macedonia", where one can find the regulations pertaining to restrictive measures and the list of designated persons etc.

348. Although the development and issuance of the IRM Guidelines doubtlessly address the requirements of Criterion III.6, the evaluators need to make some remarks at this point. While the IRM Guidelines appear to adequately answer some general questions on the subject and provides for practical details e.g. regarding the formal requirements of notifications the obliged institutions submit to the FIO, the dominant part of these Guidelines appears to simply reiterate the text of the 2011 IRM Law with no particular added value. Furthermore, it contains some basic procedural rules that should have been provided by statutory law e.g. that the FIO is obliged to inform the Ministry of Foreign Affairs in case it is notified by a financial or other institution of the application of a financial restrictive measure against a certain person (the 2011 IRM Law is silent on this obligation which, on the other hand, supports the presumption that decisions on freezing are brought by the financial institutions themselves). As a summary, Criterion III.6 is definitely met to a certain extent but the compliance is limited as the IRM Guidelines cannot be considered sufficiently clear and adequate.

De-listing requests and unfreezing funds of de-listed persons (c.III.7); Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8);

349. The legislation of "the former Yugoslav Republic of Macedonia" does not address, to any extent, Criterion III.7 that requires effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds of de-listed persons or entities and Criterion III.8 that requires similar procedures for unfreezing the funds of persons or entities inadvertently affected by a freezing mechanism (although the 2011 IRM Law provides that the Government can also abolish a financial restrictive measure, such references have no relevance in this context).

Access to frozen funds for expenses and other purposes (c.III.9)

350. Criterion III.9 is implemented by Art.10 of the 2011 IRM Law which provides that

> *(1) In the course of implementation of financial restrictive measures, upon the request of natural or legal persons subject to financial restrictive measures, the competent court may allow a partial use of assets to the extent necessary to cover the basic needs, such as: treatment of seriously ill persons, child delivery, burial costs, payment of tax and fees to state institutions,*

costs for subsistence of minors and similar.

(2) The competent court shall determine the conditions under which partial use of assets referred to in paragraph (1) of this Article is allowed.

(3) The competent court shall inform the Ministry of Foreign Affairs about such rulings within eight days.

351. The evaluators nevertheless note that the Law remains silent on a number of issues. It does not define whether extraordinary (i.e. not *"basic"*) expenses can also be taken into consideration, what the term *"partial"* means in this context and which court shall be *"competent"* for the procedure, and neither are there any further procedural rules regarding the deadlines for such an application or for the court decision.

Review of freezing decisions (c.III.10)

352. There are no provisions defining appropriate procedures through which a person or entity whose funds have been frozen can challenge that measure with a view to having it reviewed by a court.

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3, c.III.11)

353. As for Criterion III.11 which requires ensuring that Criteria 3.1 – 3.4 and Criterion 3.6 (in R.3) also apply in relation to the freezing, seizing and confiscation of terrorist-related funds or other assets, reference can be made to what is discussed above under Recommendation 3 in terms of the general framework and mechanisms on seizure and confiscation.

354. In this context, it needs to note that the new Art. 394-c (12) CC (together with the broad definition of "property") provides, to a greater extent than the previous legislation, for the mandatory and unconditional confiscation of the property intended to use for the financing of terrorism as well as the instrumentalities intended for use in a TF offence. Nonetheless, as it was discussed above, the same provision is formulated in a restrictive language that appears to exclude assets that have already been used (and not only intended) for the financing of terrorism and the same goes for the instrumentalities that have actually been used in the commission of a TF offence which, however, can be confiscated according to the general rules, on a conditional and discretionary basis.

355. It is a further deficiency of the regime that value confiscation does not apply to instrumentalities and intended instrumentalities, which rule seems to refer to any property that can be confiscated pursuant to the aforementioned Art. 394-c (12) CC.

Protection of rights of third parties (c.III.12)

356. Similarly to the time of the 3rd round of MONEYVAL evaluations, the evaluators could not find legal provisions to comply with the requirements of Criterion III.12 on the protection of bona fide third parties. While the 2011 IRM Law underlines in Art. 12(2) that no compensation may be claimed for damages arising from the implementation of this Law against the State or the bodies responsible for the implementation of the restrictive measures, it is entirely silent on the third party interests. The MEQ made a reference to the general rules of criminal confiscation in this respect which, however, must be wrong as the freezing actions under the 2011 IRM Law cannot be considered as coercive measures in a criminal procedure.

Enforcing obligations under SR.III (c.III.13)

357. Criterion III.13 is addressed by Chapter IV (Art.13) of the 2011 IRM Law („Coordination of the Implementation of Restrictive Measures"), which provides that the Government shall establish, upon a proposal of the Ministry of Foreign Affairs, a Coordination Body for Monitoring of Implementation of Restrictive Measures composing of five members, one from each Ministry involved (Ministry of Foreign Affairs, Ministry of Defence, Ministry of Interior, Ministry of Economy and Ministry of Finance) and it is chaired by a representative of the Ministry of Foreign Affairs, according to their Rules of Procedure adopted on 25th September 2012. As stated by the authorities, the Coordination Body meets regularly, monitors the implementation of international

restrictive measures within its competences, and takes actions to improve the awareness on the international restrictive measures and administrative capacities. The evaluators were also informed of a regional seminar (2011) and a study visit to Estonia (2012) that were organised by the Coordination Body.

358. The 2011 IRM Law also provides for a set of sanctions applicable to natural and legal persons for the failure to meet the obligation to enable the implementation of restrictive measures and to cooperate with each other as prescribed in Art.7. Such an act is considered a misdemeanour and sanctioned by fine according to Art.16. Whereas there are no other provisions in the Law, the violation of which would also be considered a misdemeanour, this Art.7 appears to be broad and generic enough so as to encompass any breaches in this respect (e.g. the failure to comply with the requirement to check and freeze assets pursuant to Art.9). As a result, Criterion III.13 can be accepted as adequately met.

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14) & Implementation of procedures to access frozen funds (c.III.15)

359. Although the authorities of "the former Yugoslav Republic of Macedonia" claimed that the guidelines provided in the Best Practices Paper for SR.III had been used in the drafting phase of the 2011 IRM Law and the IRM Guidelines, the evaluators were not in the position to verify this statement.

360. Art.10 of the 2011 IRM Law which provides that *the competent court shall determine the conditions under which partial use of freeze assets. S*ince this provision is applicable to any assets frozen pursuant to the 2011 IRM Law, the evaluators consider it equally applicable to the additional element of III.15.

Recommendation 32 (terrorist financing freezing data)

361. There were no assets frozen under SRIII requirements.

Effectiveness and efficiency

362. Art.15 of the 2011 IRM Law provides for a wide range of record keeping obligations as regards the records of the implementation of restrictive measures, in which respect paragraph (2) provides that the format and manner of keeping such records shall always be prescribed by the official in charge of the responsible body designated under the respective governmental Decree. Since the responsible body might be different in different cases, this provision implies that records might be kept in different formats and manner (depending on the responsible body) the actual purpose of which was not clear to the evaluation team.

363. The FIO keeps updated statistics for international restrictive measures, based on the data it receives from the notifications submitted by the obliged institutions and other entities. According to the Guidelines on the Manner and Format of Keeping Records for Implementation of Restrictive Measures, the FIO maintains information about the actual restrictive measure (decision for introduction/abolishment of restrictive measure), the Official Gazette in which it was published, the date of introduction /termination of the validity, full identity information about the individual or the legal entity against which the financial measures were implemented, their assets and property in "the former Yugoslav Republic of Macedonia" etc.

364. The evaluators learnt that in the last five years, there have only been 2 cases where measures had to be applied against a concrete person as a result of international restrictive measures (one in 2013 and another one in 2013). In both cases, the decision merely consisted of the refusal to establish business relationship with the person i.e. no assets were identified and frozen. Neither of these 2 cases was related to the financing of terrorism; in fact, no assets related to designated persons or entities have so far been detected and, therefore, been frozen in "the former Yugoslav Republic of Macedonia".

2.4.2 Recommendations and comments

365. As far as the freezing of assets of designated persons and entities pursuant to SR.III is concerned, most of the fundamental deficiencies the previous evaluation team noted remain valid

for the 4th round of MONEYVAL evaluation.

366. There is still no legislation to provide for a comprehensive, effective and directly applicable legal framework, with publicly known procedural rules (covering roles, responsibilities and deadlines) for freezing the assets of persons included in the UNSCR lists. In particular there is no provision concerning the requirements originating from UNSCR 1373 including the appointment of a national designating authority as well as procedural rules for de-freezing and de-listing of the affected persons and entities.

367. The 2011 IRM Law primarily provides for the legal basis and legislative authorisation for issuing, on a case-by-case basis, governmental Decrees for the application of the respective financial sanctions (including those relevant for SR.III) as it contains only some basic procedural rules that are formulated in such an overly generic and indistinct manner that they could hardly be applicable. On the other hand, the pieces of secondary legislation that were made available to the evaluators appeared equally indefinite and schematic in this respect, which raises the question whether there are adequate procedural rules anywhere in the law of "the former Yugoslav Republic of Macedonia". Without an adequate, practical and calculable set of procedural rules, the provisions of the substantive law remain generally powerless.

368. Certainly, the 2011 IRM Law can be considered as a development in a number of aspects. It provides for more and better definitions so as to extend the scope of the law towards the FATF standards, for communicating actions towards the financial industry and for providing them with guidance. It prescribes monitoring and record-keeping obligations, threatens the breaches with sanctions and provides for access to the frozen assets pursuant to the respective UNSCRs. These are all appreciated by the evaluators who, on the other hand, need to note certain deficiencies of these provisions and, first of all, to turn attention to the fact that these particular improvements could not solve the generic conceptual deficiencies of the legislation.

369. As a result, while most of the reporting entities appeared aware of the existence of the UNSCR lists, the evaluators noted serious uncertainty among them as regards what measures should be applied in case of a positive match including the legal basis for, and deadlines of such measures.

370. The examiners therefore recommend that a specific, complex and target-oriented legislation is drafted and adopted (preferably by amending the current IRM Law) so as to address all aspects of SR.III that are currently not, or not adequately covered, particularly in terms of detailed, comprehensive and calculable procedural rules with roles, responsibilities and deadlines throughout the process.

371. The authorities should take measures to extend this legislation to freezing under procedures initiated by third countries and funds or assets controlled by designated persons.

372. A national designating authority for the purposes of UNSCR 1373 should be appointed.

373. The authorities are recommended to adopt provisions protecting the interests of bona fide third parties affected by the freezing mechanism.

374. Publicly known procedures for considering de-listing requests and unfreezing assets of de-listed persons should be implemented. Procedures 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 should be equally adopted.

375. The authorities are invited to create and publicise the procedure for court review of freezing actions.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• Lack of clear, comprehensive and reliable procedural rules for freezing of terrorist funds or other assets of designated persons and entities in accordance with UNSCRs 1267/1988 and 1373; • No legislation available for freezing under procedures initiated by third

		countries and funds or assets controlled by designated persons; • No designation authority in place for UNSCR 1373; • No protection is provided to the interests of bona fide third parties; • No procedures for considering de-listing requests and for unfreezing funds or other assets of delisted persons or entities and persons or entities inadvertently affected by a freezing mechanism; • No procedure available for court review of freezing actions.

Authorities

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

2.5.1 Description and analysis

Recommendation 26 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

376. "The former Yugoslav Republic of Macedonia" was rated PC for Recommendation 26 based on the following findings:

- The Some parts of the AML Law referred only to money laundering but did not provide a clear legal mandate for the FIU to deal with terrorist financing issues. In practice the FIU's role in combating financing of terrorism was considered very limited.
- The FIU had no timely access to a police database, criminal register or a court register; in such cases, it had to submit written requests to such authorities. This may unnecessarily prolong the process to gather information.
- The provisions regulating the exchange of information between the FIU and investigative bodies were too unspecific and there was some ambiguity of the AML Law whether it is allowed to exchange information with other state bodies even without a suspicion of any criminal activity.

Legal framework

377. The general framework defining the FIO work is composed mainly of the:

- AML/CFT Law (The Law on Prevention of Money Laundering and other Proceeds from Criminal Act and Financing of Terrorism);
- The Rulebook on internal organisation of the FIO;
- the Rulebook for the contents of the reports submitted to the FIO;
- the Rulebook for the form and the content of the data that obliged entities submit to the FIO and the way of their electronic submission;
- the Quality Procedure of the Commission Dealing with Cases,
- the Quality Procedure for Initial Analysis of Data Obtained from Entities,
- the Quality Procedure of the Department for Prevention of Money Laundering,
- the Quality Procedure in Dealing with Cases for the Department for Prevention of Terrorism Financing

Establishment of an FIU as national centre (c.26.1)

378. In "the former Yugoslav Republic of Macedonia" the Financial Intelligence Unit is established by force of Art. 3 of the AML/CFT Law, which states that the FIO shall be established as an administrative type of FIU, within the MoF. The FIO is *"an authority of the state administration and shall implement its competences on the entire territory of the Republic of Macedonia having the seat in Skopje"*.

379. Since the 3rd Round Evaluation, following functions and responsibilities have been added within the scope of the FIO's work:

- to notify the competent state authorities in case suspicion of any crime (apart from ML and TF);
- to issue written orders for temporarily postponement of transactions;

- to submit monitoring orders;
- to submit a request for instigation of a misdemeanour procedure to the competent court;
- to supervise the entities in their application of the measures and actions stipulated by the AML/CFT Law;
- to determine lists of risk indicators;
- to plan and provide training for the FIO's employees;
- to provide clarification in the application of the AML/CFT Regulations.

380. Art. 3 of the AML/CFT Law describes the FIO competences, which broadly covers the core functions of an FIU: to seek, collect, process, analyse, keep and provide data obtained from the reporting entities; to collect financial, administrative and other data and information necessary in performing its duties; to prepare and submit reports to the competent state authorities, whenever there are grounds for suspicion of commission of money laundering or financing terrorism; to issue written postponement orders; to submit order for monitoring of the business relation to the entity, to cooperate with relevant domestic and international bodies etc.

381. In addition to the above, the FIO may: promote initiatives or provide opinions on laws and bylaws regarding AML/CFT matters; assist and participate in professional trainings of the employees of the reporting entities; establish lists of indicators for risk analysis and identification of suspicious transactions (in cooperation with the private sector and the supervisory bodies); plan and deliver trainings for capacity building of the employees in the FIO; and provide explanations in the enforcement of the AML/CFT provisions.

382. The FIO shall perform the activities within its competence, in accordance with the AML/CFT Law and with the ratified international agreements regulating the prevention of money laundering and terrorism financing.

383. Every year, the FIO is required to prepare a report on the activities within the scope of its competence including a plan for the following year and shall submit it to the Minister for Finance and to the Government of the Republic of Macedonia.

384. The internal structure of the FIO is regulated by the *Rulebook on internal organisation of the FIO* (the Internal Rulebook) issued in 2010 and amended in 2012. The document describes the organisational chart of the FIO and lists the responsibilities of each sector and division.

Guidance to financial institutions and other reporting parties on reporting STRs (c.26.2)

385. The reports that should be submitted to the FIO are described in Art.s 29 and 29-a of the AML/CFT Law:

- STRs and CTRs (both in one transaction and in several connected transactions) in cases the amount exceeds €15,000 in denar counter-value or more (Art. 29);
- Specific reports set for four categories of reporting entities as defined in Art. 29-a of the AML/CFT Law:
  - The notaries shall submit the data on notary acts, confirmed private documents and verified signed contracts for property equal or exceeding €15,000, in denar counter-value;
  - The banks shall submit to the FIO the data collected for the settled loans in amount of €15,000 or more in denar counter-value;
  - The insurance companies shall submit to the FIO the data collected for the concluded policies in amount of €15,000 or more in denar counter-value;
  - Legal and natural persons whose business activity is buying and selling of vehicles shall submit to the FIO the data collected for the concluded contracts on buying and selling of new vehicles in amount of €15,000 or more, in denar counter-value.

386. According to the requirements of the Art. 31 (1) and (2) of the AML/CTF Law, reports regarding suspicious transactions shall be submitted to the FIO immediately in electronic form or via telecommunication means (telephone, fax), and in case this is not possible, in other written forms. The reports submitted via telephone must be confirmed via fax, electronic or other document within three days following their submission.

387. According to Art. 31 para. 4 of the AML/CFT Law, the Minister of Finance shall prescribe the contents of the reports regarding the transactions that must be submitted to the FIO (according to Art. 29), including the suspicious transactions. In March 2009, the MoF adopted Rulebook 38 "on the Content of the Reports Submitted to the FIO".

388. Art. 2 of Rulebook 38 on the Contents of the Reports Submitted to the FIO, prescribes that *"when there are doubts that the client, the transaction or the end owner is connected to money laundering or financing terrorism"*, the report that the banks submit to the FIO contains[69]: data relating to the entity submitting the report (name, address, telephone number, date of submission etc.), data on persons to whom the suspicion refers to (full ID elements, address of residence or seat, personal identification number, or unique tax number etc.), data on the person performing the transaction (name, date and place of birth, address, numbers of identification documents etc.), data on the account or accounts used (number of the account, date of opening, type, ID data and documents of the authorised person on the account, information on the operations performed in the account etc.), data on transaction (persons performing the transaction on his/her own behalf of a third party, proxy, type of transaction, amount, date of the transaction etc.), reasons for suspicion, account analysis, data on persons empowered on other accounts (than the one involved in the STR) and data on other services provided by the bank to the suspected person. A reporting form dedicated for banks is annexed to Rulebook 38.

389. Art. 3 of Rulebook 38 provides the reporting format and the data required for the other reporting entities (except banks) as listed in Art. 5 of the AML/CFT Law, in case there are doubts that the client, the transaction or the beneficial owner is connected to money laundering or terrorism financing. The reporting form contains: data relating to the entity submitting the report, data on the person the suspicion refers to and the reasons for suspicion. Significantly less information is required in the reporting form in case of these entities. There is no requirement to include into the report information about the details of the suspicious transaction itself, but only about the suspicion indicators. As in the case of the banks, a template of the report is annexed to the Rulebook.

390. There is no indication in Rulebook 38 as to which address or if by regular post or by secure post (in case of written forms) the reports should be sent to the FIO. There is no indication as to what *"other written forms"* should mean. There is no guidance on the documentation required to be attached to the form, although Art. 29 (1), a) of the AML/CFT Law provides that the entities shall be bound to submit to the FIO the data, information *and documents* in the case of suspicion.

391. The authorities explained that Rulebook 38 only proscribes the content of the reports the entities deliver to the FIO and not the manner of delivering the STRs. In practice, the banks deliver all data to the FIO electronically, in XML format through secured connections (using dedicated software) and the STRs are directly imported in the FIO's Investigation Case Management (ICM) application. For the electronic delivery of the reports to FIO by the banks, there are user guides supplied to every bank. The remaining entities submit the reports either by mail (post services), or by delivering the reports directly to the FIO's premises. The details on the address of delivery of the STRs are to be found on FIO's webpage. There are no secure protocols to encrypt the STR available for the non-banking sector and for the DNFBPs and thus, those entities shall not report electronically.

392. Unlike the ST reporting system, which separates the banks from all the rest of the reporting entities, the CTR reporting guidance is provided for all reporting entities in Art.s 4 (single cash transaction) and 5 (related cash transactions) of Rulebook 38. The cash reports contain data relating to the reporting entity; on the person(s) performing the transaction and on the transaction itself.

[69] The authorities explained that the absence of the phrase "shall" or "must" is due to a language particularity but that in the Macedonian original the meaning is compulsory. The evaluators were informed that there is a general requirement from international bodies, including the EU to the "the former Yugoslav Republic of Macedonia" authorities to revise all the English translations of the legal documents to include the "shall" or "must" words to clarify the mandatory nature of the texts.

393. In October 2010 the "Rulebook on the Content and Form of the Data Submitted by the Entities to the FIO and the Manner of their Electronic Submission" (Rulebook 140) was issued. Rulebook 140 applies to the data submitted to the FIO in form of reports and it is applicable to the cases and entities defined under Art. 29-a of the AML/CFT Law (please see explanations above): banks, notary public, insurance companies and legal entities and natural persons whose activity is buying and selling vehicles.

394. Rulebook 140 stipulates that the reports are submitted electronically through the website of the FIO, on the fifth day of the month for the transactions performed the previous month. The access to the form of the reports shall be granted through username and password, issued by the FIO. There is no indication on the URL of the webpage of the FIO, nor on the procedure of filling in the reports or on the manner of obtaining the username and password.

395. The information required from the notaries public include: data referring to the notary submitting the report (name, surname, working position, address, telephone number, electronic mail, unique register number and unique tax number); data referring to the client (name, surname, PIN, address, passport number for foreigners, person representing the client etc…); and data regarding the content of the report (type of report: identification number, date, value and description). A report template is attached to Rulebook 140 although the reporting is supposed to be done electronically.

396. In case of banks, the following data are required according to Rulebook 140: data referring to the client (similar as above) and data on the loan (identification number, date of approval, amount of loan, date of payment, paid amount, loan description, security for loan, total value of the security and date of repayment). The report is delivered by the banks in "HTL" format.

397. It is to be noted that unlike in case of the notaries, insurance companies and vehicles dealers as described below, there is no information required on the bank submitting the report and there is no form attached to Rulebook 140, just the indication to submit the report in "HTL" format. The evaluation team consider those provisions as confusing for the reporting entities since all reports should be sent electronically.

398. The authorities explained that in accordance with Rulebook 140, the banks deliver the loans data electronically in XML format, through the FIO's webpage. The FIO has delivered to the banks a user guide in which the content of the XML document and the way of filling the boxes in the XML are explained.

399. The information required in case of insurers includes: data on the company submitting the report, (name, working position, address, telephone number, electronic mail; entity; URN and UTN); data referring to the client; and data on the content of the report (identification number, date of concluding the policy, date of expiry of the policy, amount of the insurance policy and type of insurance). A report template for the insurance companies is attached to the Rulebook 140.

400. The data required from the legal entity or the natural person whose activity is buying and selling vehicles includes identification of the entity submitting the report and data regarding the content of the report (identification number of the contract, date of signature, value of the contract, currency, type of vehicle, brand of vehicle and model). A report template is attached.

401. In order to further assist the reporting entities in their ST reporting obligations, lists of suspicion indicators were created for the following entities: banks, exchange offices, fast money transfers and sub-agents, saving houses, factoring companies, insurance companies, lawyers, leasing companies, voluntary pension funds management companies, public notaries, Post Offices and the legal entities that perform telegraphic transmissions or delivery of valuable shipments, legal entities which receive movable property and real estate as collateral, real estate agencies, consulting services providers, legal entities which activity is sale and purchase of vehicles, civil associations and foundations, accounting companies, audit companies and certified auditors and games of chance in gambling room.

402. The evaluators were informed that during the training seminars organised by the FIO, guidance on the manner of reporting is constantly provided to the private sector.

Access to information on timely basis by the FIU (c.26.3)

403. According to Art. 34 of the AML/CFT Law, when performing its competence, the FIO can request data and documents from all state bodies, financial institutions and other legal or natural persons. The requested bodies, institutions and persons are obliged to submit the required data to the FIO within 10 working days from the date of receipt of the application, electronically or via telecommunication means (telephone, fax), and where that is not possible, by *"other written means"*.

404. The FIO has direct on-line access to the Central register, the Employment Service Agency, the Customs Administration and the Land Register. The rest of databases available are accessible upon e-mail request:

Table 15: FIO's access to databases

No.	Institution	Connection Type	Provided Data
1	Ministry of Interior	Mail communication with encrypted data and defined structure. (on request)	Personal Identification (personal data of the persons, parents, passport number), Vehicle (data for the person who owns the vehicle, brand of the vehicle, type of the vehicle, registration plate) Criminal records.
2*	Employment Service Agency	Direct on-line access	Persons Employment History
3	Public Revenue Office	Internet access through web page with username. (on request)	Annual Tax Report Data for Legal Entities
4	Customs Administration	direct on-line access with VPN Connection	Cash entering and leaving the country border line, export-import of goods and customs declarations
5	Agency of Financial Support of Agriculture and Rural Development	Mail communication with encrypted data and defined structure.	Monthly report with data for financial support of agriculture
6	Pension and disability insurance fund of Macedonia	Mail communication with encrypted data and defined structure	Persons Pension Fund Data
7*	Real Estate Register	Direct on-line access	Title deeds with complete data for natural and legal persons, along with data for the persons who are owners and co-owners, part of the property, property mortgages…
8*	Central Register	Direct on-line access	current status and history of legal entity, bank accounts as reported, scanned documents as attached by the legal entity, natural persons who appear as general managers and owners of legal entities.

405. In addition, the FIO has access to the information received from notary publics, banks, insurance companies and persons intermediating vehicles sales/purchase according to Art. 29-a of the AML/CFT Law as described under criterion 26.2 above.

406. During the on-site visit, the authorities indicated that in practice the FIO has access to all databases managed by the State authorities, but those databases are not integrated and thus, no automatic search can be performed in the course of the analytical work. For these databases, although the legal delay of 10 working days applies, the FIO has the possibility to swiftly receive the answers using e-mail channels and in practice no delays were met.

407. However, the evaluation team is of the opinion that the number of databases the FIO has on-line

access to is very limited and the analysis process entirely depend on case-by-case requests sent to various institutions which impede effectiveness.

408. The evaluation team was informed that in "the former Yugoslav Republic of Macedonia" a database containing the on-going criminal cases and persons is under creation. The evaluators are of the opinion that this lack of information could hamper the analysis performed by the FIO. The authorities argued that the MoI, in accordance with the Police Law and the Unique Methodology for Collecting and Processing the Offences and the Reported Persons, is equipped with an electronic system in which are recorded data related to committed crimes and reported perpetrators for the committed crimes, which can be used for further statistics and analytical processing.

Additional information from reporting parties (c.26.4)

409. According to Art. 34 (3) of the AML/CFT Law, the FIO can request data and documents from all state bodies, financial institutions and other legal or natural persons. The requested bodies, institutions and persons are obliged to submit the required data to the FIO within 10 working days from the date of the receipt of the application in electronic manner or via telecommunication means (telephone, fax), and where that is not possible, by other written means. There are no instructions as to what are the instances that might be considered as making the electronic submission of the information *"not possible"* or on the description of *"other written means"*.

410. In addition, Art. 29 (3) of the AML/CFT Law stipulates that if the submitted data is insufficient, the FIO may require additional information and documents from the entities. If the FIO immediately requires additional information, the entities shall be bound to inform it within 4 hours and submit the required data in a manner determined in Article 31 of the AML/CFT Law.

411. Taking into account the different time frame stipulated by Art.s Art. 29 (3) and 34 (3) and the referral made to Art. 31 which regulates the form of the STRs and other reports, it appears that Art. 29 (3) refers to the situations where the STRs are incomplete and not the all information necessary in the analytical process was submitted. The authorities explained that in practice they make use of the provisions of Art. 29 (3) (which provides for a much shorter delay), in urgent cases.

412. It is to be noted that the failure to reply to the FIO request for additional information as required by Art. 34 (3) it is not subject to sanctions[70].

Dissemination of information (c.26.5)

413. The authority of the FIO to disseminate financial information to the domestic investigative bodies is provided in Art. 3 (2) item 3 and 4 of the AML/CFT Law, which stipulates that the FIO *"has the mandate to prepare and submit reports supported with its opinion to the competent state authorities, whenever there are grounds for suspicion of commitment of the crime of money laundering or financing terrorism and to notify the competent state authorities of the existence of grounds for suspicion of commitment of any other crime"*.

414. Also, according to the Art. 34 (5) of the AML/CFT Law, the FIO may exchange information with the competent authorities responsible for carrying out investigation of money laundering or financing terrorism, and with the AML/CFT supervisory bodies.

415. In addition, Art. 35 of the AML/CFT Law prescribes that, whenever there are grounds to suspect a *"committed criminal act of money laundering or financing of terrorism"*, the FIO must immediately prepare and submit a report to the competent state authorities which shall take the decisions for further actions. The FIO report shall contain data on the person and actions

[70] The sanctions for failure to comply with the AML/CFT obligations are provided in Chapter VIII of the AML/CFT Law, but the specific Art. Art. 34 (3) is not included in the possible breaches listed there. The authorities explained that the sanctions corresponding to Art. 34 **(2)** in fact refers to the obligations in Art. 34 **(3)** and that it is a technical mistake in the Law due to re-numbering of the articles. However, the wording in the AML/CFT Law is missing Art. 34 **(3)** and even if it is a technical mistake, it cannot be ignored by the evaluation team.

suspected to be connected with money laundering or financing of terrorism. In case of *"grounds for a suspicion related to other criminal act"*, the FIO shall prepare and submit written notifications to the competent state administrative bodies. The AML/CFT Law does not provide any indication regarding the competent authority to which the FIO cases should be disseminated.

Commission for Work on Cases (CWC)

416. According to the "Quality Procedure on the Commission for Work on Cases" adopted in 2013 by the FIO, the authority competent to receive the FIO analysis is determined by the Commission for Work on Cases. The CWC shall be created by FIO Director's decision and shall consist of a President, Vice-President and two members and deputy members who are employed in the two divisions of in the Sector for Prevention of Money Laundering and Inspection Supervision of the FIO.

417. Chapter I of the "Quality Procedures on the CWC" defines the aim of the CWC by stating that it shall take decisions on: *"opening a case, further actions upon the cases and on monitoring the work of the cases defined"*.

418. The CWC receives the results of the analysis performed by all operative sections of the FIO and assesses the content of the reports. If there are suspicions of money laundering or terrorism financing, the responsible employee of the FIO will prepare a ***Report*** (on suspicious activities). Where there is suspicion for other criminal offences, the employee shall prepare a ***Notification***.

419. The CWC shall decide upon the authority competent to receive the FIO's analysis/notifications based on a set of criteria defined by the *"Quality Procedures on the CWC"* which provide for three situations: Reports on activities suspected of ML; Reports on activities suspected of TF and Notifications on Suspicious activities reporting for other crimes.

420. The Reports on activities suspected of ML shall be disseminated:

- To the MoI if an organised group is involved in the case, that is, more natural persons and legal entities are involved and/or if activities of foreign nationals were carried out on the territory of the "the former Yugoslav Republic of Macedonia";
- To the Financial Police Office (FPO) if there are grounds for suspicion for committed criminal offences in the area of financial crime;
- To the Public Prosecutor's Office (PPO) if there are suspicions for which the FIO considers it possess enough data which confirm the suspicion for *"money laundering"*.

421. The Reports on activities suspected of TF shall be disseminated:

- if in the case there is an organised group involved, i.e. there are more natural and legal persons involved and/or if there are activities of foreign citizens on the territory of the "the former Yugoslav Republic of Macedonia" , than the Report is delivered to the MoI;
- if there are suspicions for which the Office considers that there are enough data by which the suspicion of *"financing terrorism"* is confirmed, the Report shall be delivered to the PPO.

422. The evaluation team considers that the provisions of the *"Quality Procedures on the CWC"* are unclear and incomplete. In case of organised crime involvement, there is no indication as to which structure of the MoI the FIO Reports should be disseminated. In addition, if there are indications of laundering the proceeds of the organised crime, the provisions are conflicting as *"money laundering"* suspicions should be directed to the PPO, while the *"organised crime"* cases should be directed to the MoI. The same conflict appears in case of the ML generating from *"financial crimes"* predicates, as the procedures require dissemination to FPO for *"financial crimes"* and to PPO in case of ML. The authorities mentioned that the CWC will decide on a case by case basis and that the Reports may be delivered to more than one institution. However, the evaluators maintain the opinion that the dissemination instructions should be more precise in the internal procedures.

423. The same ambiguity resides in the dissemination instructions related to TF offences. From the technical guidance it is not clear who is the law enforcement body authorised to receive the TF cases where an organised crime group is involved *and* there are enough data to confirm TF

suspicions. The evaluators were informed that in practice all terrorism financing STRs shall be delivered to the Administration for Security and Counterintelligence within the MoI, although this structure is not mentioned in the QP which is an internal document of the FIO. Having in mind the confidentiality and the sensibility of the TF related STRs, the organisational unit responsible to receive them should be clearly indicated in the internal procedures.

424. The CWC shall decide upon sending a ***Notification*** to the competent authority in cases where other crime is suspected:

- if there are grounds for suspicion for tax evasion and/or other crimes in the area of financial crime where one or more natural persons and legal entities are involved, then the ***Notification*** is delivered to the FPO;
- if there are grounds for suspicion for tax evasion where one or more natural persons and legal entities are involved, then the ***Notification*** is delivered to the PRO;
- if an organised group is involved in the case, that is, more natural persons and legal entities are involved and/or if activities of foreign nationals were carried out on the territory of the "the former Yugoslav Republic of Macedonia", the Report is delivered to the MoI;
- when the suspicion refers to committed customs offence, the ***Notification*** is delivered to the Customs Administration; and
- when the suspicions refer to persons who come from foreign country or if suspicious transactions were performed from and to other country, the Office delivers spontaneous notification to the FIO.

425. It remains unclear when the Notification is sent to the PRO and when the Notification is sent to the FPO in cases of tax evasion suspicions. Also, it is unclear what happens in cases that are not covered by the above options, such as crimes outside the organised crimes groups which are neither customs related nor fiscal related.

426. The evaluation team was provided with the following statistics on disseminated cases:

2008 – 28 cases (25 – money laundering, 3 – terrorism financing);
2009 – 37 cases (35 – money laundering, 2 – terrorism financing);
2010 – 30 cases (28 – money laundering, 2 – terrorism financing);
2011 – 25 cases (22 – money laundering. 3 – terrorism financing);
2012 – 36 cases (29 – money laundering, 7 – terrorism financing).

427. The FIO provided the statistical data on the number of the submitted ***Notifications*** for suspicious transactions for other crime to the law enforcement. The main beneficiaries were MoI and FPO as it will be further described under ***"Effectiveness"*** below.

Operational independence and autonomy (c.26.6)

428. The FIO is a central body under the umbrella of the MoF, with capacity of legal entity, exercising its mandate on the entire territory of the "the former Yugoslav Republic of Macedonia", with headquarters in Skopje. The structure of the FIO is set up internally through the Internal Rulebook[71] approved by MoF decision.

429. As described under criterion 26.1., the mandate of the FIO, as administrative Financial Intelligence Unit comprises: reception, request, processing, analysis, storage and submission of information received from the reporting entities according to the AML/CFT Law. The FIO has competencies in issuing written orders to the reporting entities for provisional measures, submits requests for imposing provisional measures to the relevant public prosecutor, submits order for monitoring of the business relation to the entities, submits request for initiation of misdemeanour procedure to the relevant court and has the competence to cooperate with the entities, relevant bodies, other domestic and international bodies involved in AML/CFT area.

430. The authorities informed the evaluation team that the FIO can independently sign memorandums of cooperation with the state bodies of the "the former Yugoslav Republic of

[71] Rulebook on Internal Organisation of the Office for Prevention of Money Laundering and Financing Terrorism.

Macedonia" (i.e. Memorandum for Cooperation with the National Bank in 2010, Memorandum for cooperation with the Public Prosecution and the MoI, the Customs Administration, Public Revenues Office, FIO and the Financial Police Office etc.). The FIO has signed 49 MoUs with foreign FIUs so far, out of which 29 were signed after 2008.

431. According to Art, 3 (7) of the AML/CFT Law, the assets for funding the FIO shall be provided from the budget of the "the former Yugoslav Republic of Macedonia". The evaluators were informed on-site that the Director of the FIO has the final decision on all the budgetary expenditures and on the employment of the FIO personnel.

432. Pursuant Art. 4 of the AML/CFT Law, the FIO is managed by a Director who is appointed and dismissed by the Government of the Republic of Macedonia, upon the proposal of the Minister of Finance, for a mandate of 4 years. In case of his/her absence or unavailability, the Director may authorise a civil servant to *"sign acts referred to FIO's activity"*. The Director shall be appointed on the basis of his/her professionalism and competence but no formal procedure to evaluate the professionalism and competence of the candidates to the position of the Director of the FIO was adopted. During the on-site interviews, the evaluators were informed that in practice, the decision on the Director's appointment is made by the Minister of Finance who shall select a person from the FIO's employees.

433. According to the AML/CFT Law, the mandate of the Director shall *cease* in the following cases: after 4 years; death; resignation; dismissal; if convicted for a criminal act and sentenced to imprisonment for at least 6 month; when the court imposed prohibition to perform acts in a management position, or in case he/she lost the professional capacity.

434. Furthermore, the Director can *be dismissed* due to: illegal operation; incompetent or negligent implementation of the function and lack of positive results in the overall operation of the FIO; in case of long-term severe illness that prevents him/her in the implementation of the obligations; and upon his/ her request.

435. The FIO Director manages and represents the FIO, organises and ensures legal, efficient and professional implementation of the FIO activities, adopts resolutions, orders and internal orders, guidelines, plans and programs, warnings with recommendations, decides about the rights, duties and responsibilities of the FIO employees who do not have the status of civil servants and does other activities determined by Law.

436. The wording of Art. 4 of the AML/CFT Law raises the question as to the potential risk of interference or undue influence in the dismissal of the FIO Director based on a loose provision referring to *lack of positive results*. During the on-site mission, the evaluation team asked what are the parameters or the criteria available to determine *"the lack of positive results"* (which might have a broad interpretation and leave room for abuse). The authorities stated that there is no written provision in rules or regulation to determine this concept, but argued that since 2006 only one FIO Director was changed (as the mandate reached the term provided by the Law) and the current FIO Director has been in position since 2008[72]. Although the evaluation team agrees that no such dismissal had happened in the past, the risk remains and is compounded by the fact that the mandate of a FIO Director, though in theory of a duration of four years, may be revoked by the appointing authority at any time invoking the *"lack of positive results"*.

437. Another concern is raised by the provisions according to which the FIO Director decides about the rights, duties and responsibilities of the FIO employees who do not have the status of civil servants. During the on-site interviews, the evaluation team was informed that, with minor exceptions (the auxiliary personnel such as the drivers), the FIO employees are civil servants although this status is not expressly provided in the AML/CFT Law but in the Rulebook on Systematization of Work Positions in the FIO and understood as such through practice. In other

[72] At a later stage, during the pre-meeting in January 2014, the authorities explained that the "positive results" of the FIO's work can be perceived by the comparison between the activities planned in the working programme and the activities achieved and presented in the annual report. The Government evaluates this data and, on the proposal of the Minister of Finance, may decide to dismiss the director if the case may be.

words, the FIO Director is not able to decide about the rights, duties and responsibilities of the FIO employees which are civil servants and actually work in the core analysis/dissemination activity of the FIU. The evaluators were told that the FIO employees who are civil servants will follow the rules provided in the Law for Civil Servants, but when analysing this piece of legislation it resulted that is a general one, setting rights and obligations for a broad category of officials and do not refer to the actual activity of the FIO.

438. The statute of civil servants of the FIO employees is mentioned (not defined) in the Rulebook on internal organisation of the Office for Prevention of Money Laundering and Financing Terrorism (Internal Rulebook) which determines the activity of the FIO, the organisational chart, the management of the organisational units, authorisations and responsibilities of the civil servants at the work places, and the manner of work in the FIO. It is to be mentioned that, the internal Rulebook is approved by the Minister of Finance and not by the FIO Director.

439. Furthermore, the evaluation team noted that the current FIO Director was appointed as acting Director (not as Director) which seemed a temporary nomination or, in any case, not a pure nomination according to the Law. During the interviews, the authorities mentioned that the only reason for such nomination is that by not being definite, it allows the person to act as director for more than the four year time limit provided in the AML/CFT Law, and that there is no difference in powers, duties or salary of the FIO Director[73].

Protection of information held by the FIU (c.26.7)

440. The information protection is regulated by the Art.s 28 and 33 of the AML/CFT Law, which provide that the data acquired on the basis of the AML/CFT Law shall be confidential and may be only used for the detection and prevention of ML and TF. The data and reports which are received, analysed and processed by the FIO are confidential and the officers shall not be allowed to use them for any other purposes, except for those determined by the AML/CFT Law. There are no sanctions provided in the AML/CFT Law concerning the failure to keep confidentiality of the FIO information by the FIO employees.

441. All FIO employees that have access to classified information according to the Law on Classified information are required to have security certificates issued by the Directorate for Security of Classified Information which is periodically renewed (after verifications performed by the relevant institutions). The security clearances ranked as *"confidential"* shall be renewed every 10 years, while *"highly confidential and state secret"* –every 5 years in accordance with the Law on Protection of Classified Information. The obligation to maintain the confidentiality remains applicable to the holders of the security certificate after the validity of the certificate has expired (Art. 59 of the Law on Protection of Classified Information). There is no time limit expressed in the Law, thus it can be concluded that it is a lifetime commitment.

442. Although, there are no sanctions provided in the AML/CFT Law concerning the failure to keep confidentiality of the FIO information by the FIO employees, such sanction could be seen in the Law on Classified Information. In particular, if a person does not handle the classified information according to this Law, he should be fined between 1,000 and 50,000 MKD or imprisonment between 5 and 90 days.

443. Seeking to ensure the safety of the information, the FIO implemented different security measures:

- The FIO is located in special premises which are entirely separate from the offices other institutions;
- Surveillance cameras are installed at the FIO main entrance and at the entrances of all offices;
- The employees use magnetic cards for entry and exit as well as finger print and once inside they have to use magnetic card;
- Persons who are not employees of the FIO can enter the FIO premises only if previously

[73] The evaluators were informed that in November 2013 the FIO Director was re-appointed with full powers.

announced and approved and every entry is registered in a separate ledger.

444. In order to ensure the IT systems security, the FIO developed and implemented an *"Operational Guideline for Safety of Information and Information Communication Technology (ICT) systems management".* This Operational guideline provides the framework for introduction an integrated access to information safety and management consisting in three levels:

- *Level 1* - Risk analysis per information resources;
- *Level 2* - Procedures for information security management which includes information security policies in the FIO which are further developed in procedures (*i.a.* Minimum security requirements in the case of third party access; Physical access control procedure; Back up procedure; Malicious software protection procedure; Procedure for reporting of safety incidents and dealing with such incidents; Rules for protection of the user access etc.) and
- *Level 3* - Procedures for management with the ICT system, including procedures for the FIO's ICT system management (*i.a.* Procedure for incidents management; Procedure for changes management; Procedure for versions management etc..)

445. For the electronic storage of information and for the protection of that information, the FIO has developed a secure data management system. The evaluators were informed that the reports database containing all incoming documents is stored and processed in a special isolated local network that is not technically accessible through Internet and other systems.

446. All user actions within the system in all user forms and all data levels are recorded in an electronic journal.

447. According to what is stated above, criteria 26.7 should be considered as largely met.

Publication of periodic reports (c.26.8)

448. Accordance to Art. 3 of the AML/CTF Law, the FIO shall prepare yearly a report on the activities within the scope of its competence, which shall include a plan for the following year. This report shall be submitted to the Minister for Finance and to the Government of the Republic of Macedonia. The Office may also file other reports upon request of the Minister for Finance or the Government of the Republic of Macedonia.

449. The authorities clarified that *"other reports"* include any information which is required by the Minister of Finance and shall be provided by FIO (preparation of analysis on the FIO's area of competence, opinions on Regulations and Laws if required etc…). The Minister may also require a report for a particular activity performed by the FIO, and may require to be delivered a report for its activities within a shorter term than year (quarterly, semi-annual etc.).

450. The evaluators received the Annual Reports of the years 2008 – 2012 which include the following information:

- Changes of the AML/CFT legal framework;
- Implementation of the money laundering and terrorism preventions measures and it results, including statistics about the number of entities, number of reports received, data analysis and the number of reports/ information submitted to the relevant bodies;
- Money laundering and terrorism financing typologies and trends;
- Supervision over the implementation of the money laundering and terrorism financing measures;
- International cooperation of the FIO;
- Cooperation with the entities, supervisory bodies, other state bodies and institutions,
- Capacity building of the FIO.

451. All annual reports of the FIO are available on its the official website.

452. Criteria 26.8 should be considered as met.

Membership of Egmont Group & Egmont Principles of Exchange of Information among FIUs (c.26.9 & 26.10)

453. The FIO is a member of the Egmont Group since 2004 and signed 49 MoUs with foreign Financial Intelligence Units[74] out of which 29 were signed since the last evaluation report.

454. The international information exchange of the FIO is regulated by five separate laws and subsidiary regulation: The AML/CFT Law; the Internal Rulebook; the "Quality Procedure on the Delivery of Data and Information Request to the Financial Intelligence Units of other Countries and International Organisations" (for out-going requests), the "Quality procedure on Acting upon Data and Information Requests of Financial Intelligence Units of other countries and international organisations" (for in-coming requests) and the "Quality Procedure for the CWC".

455. Art. 44 of the AML/CFT Law provides the power of the FIO to conclude agreements with authorised bodies from third countries and international organisations and the information exchange. The FIO may, within the international cooperation, request data and submit the data received to the authorised bodies and organisations of third countries, spontaneously or upon request and under condition of reciprocity. The FIO may exchange data and information provided by authorised bodies from third countries with the domestic bodies competent to conduct investigations, after obtaining their prior consent.

456. The FIO shall be bound to provide all appropriate data and information upon the receipt of a request in accordance with the competences set out in the AML/CFT Law. The data and information received from the foreign partners in the virtue of the AML/CFT Law are confidential.

457. The authorities indicated that the Financial Intelligent Units members of the Egmont Group are considered as equivalent authorities. The AML/CFT Law does not require the existence of an international agreement or a MoU for information exchange.

458. According to the Internal Rulebook, the international information exchange is carried out by the Division for international cooperation and system development which:

- cooperates with international bodies of separate countries competent for fight against money laundering and financing terrorism;
- acts upon their requests and performs exchange of data and information that refer to money laundering and financing terrorism;
- participates in the harmonisation of the domestic legislation with the international standards;
- monitors the plan and program for implementing the international strategies for preventing money laundering;
- cooperates with the authorised bodies of the "the former Yugoslav Republic of Macedonia" in preparing the annual report of the FIO and participates in preparing manuals and guides that treat the topic of international cooperation and system development;
- keeps statistics for international cooperation and system development;
- organises trainings and seminars related to international cooperation and system development.

459. In addition to the above described Rulebook, two other "Quality Procedure" documents regulate the international requests for information: the Procedure on the Delivery of data and information request to the financial intelligence units of other countries and international organisations (for out-going requests), and the Procedure on Acting upon data and information requests of Financial Intelligence Units of other countries and international organisations (for in-coming requests).

[74] Bulgaria, Slovenia, Serbia, Croatia, Albania, Romania, Ukraine, Bosnia and Herzegovina, Poland, Russia, USA, Czech Republic, Kosovo (see footnote 2), Luxembourg, Republic of Moldova, Montenegro, Aruba, Belgium, Georgia, Taiwan, Monaco, The Netherland Antilles, Mexico, Guatemala, Turkey, United Arab Emirates, Peru, United Kingdom, Portugal, Belarus, Nigeria, Latvia, San Marino, Norway, Argentina, Canada, Estonia, Armenia, British Virgin Islands, Malawi, Hungary, Israel, Australia, Finland, Holland, Andorra, Bermuda, Bahamas.

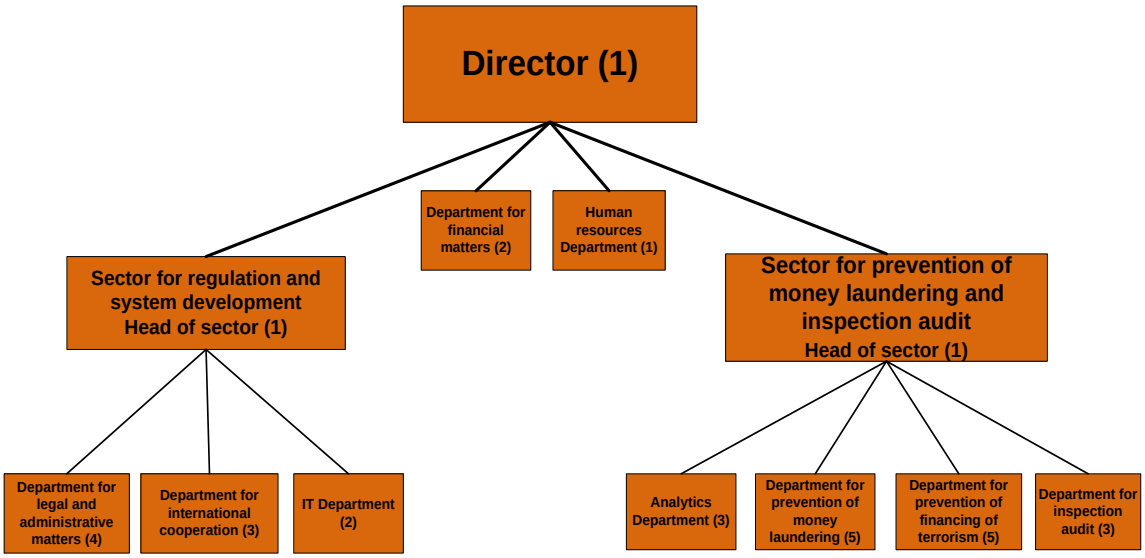
460. Furthermore, the international information exchange is also regulated by the "Quality Procedure" for the CWC which decides upon the actions to be taken in respect of the international requests for information and the information delivered by the FIO.

461. The above analysis emphasises a very dense and convoluted regulation of the information exchange in the FIO which might impede swift reaction to international requests in some cases. However, from technical point of view, the EGMONT Group Principles for Information exchange appears to be largely in place.

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

462. The FIO internal organisation and structure is described in the Internal Rulebook, according to which its work is organised in two main sectors: the Sector for Regulation and Development of the System (which includes: the Department for Legal and Administrative Affairs; the Department for International Cooperation and System Development and IT Department) and the Sector for Prevention of Money Laundering and Inspection Supervision (which includes the Department for Prevention of Money Laundering; the Department for Prevention of Financing of Terrorism; the Department for Inspection Supervision and the Department for Analytics. The HR Department and the Financial Issues Department operate under direct mandate of the Director.



463. A total of 51 staff is provided for the FIO in the Rulebook on Systematization of Work Positions in the FIO. At the time of the on-site visit only 30 positions were actually occupied, out of which 16 analysts performing functions related to the core-mandate of the FIO. 16 new staff was employed since the last evaluation. The Rulebook on Systematisation of Work Positions in the FIO provides for special requirements for each and every position of the employees within the unit. Most of the employees must have economic, legal and other relevant background.

464. The funds for financing of the FIO activities are secured from the Budget of the "the former Yugoslav Republic of Macedonia" (the FIO Budget in 2008 was 22,368,000 MKD, the FIO Budget in 2009 was 29,353,000 MKD, the FIO Budget in 2010 was 28,000,000 MKD, the FIO Budget in 2011 was 25,020,000 MKD, the FIO Budget in 2012 was 24,300,000 MKD, the FIO Budget in 2013 is 35,500,000 MKD out of which 38% is foreseen for the staff salaries).The FIO manages its funds independently.

465. In addition to the regular budget, for the implementation of specific activities such as technical capacity building (purchase of hardware and software), administrative capacity building (training of the FIO staff), public awareness raising and capacity building of the entities and other bodies involved in the AML/CFT system (delivery of trainings and printing of brochures), funds were received from the EU and Norway.

466. The FIO has the following IT hardware capacities: 10 servers and 50 PCs, 4 switches, 1 router,

2 multi-functional scanners, 4 printers and one plotter. The software used in the FIO includes: Investigation Case Management; Suscriptor (electronic archives software); DocuShare (Document Management System); i2 Analyst Notebook 8 (6 licenses), and ASK MK – Introduction of financial intelligence system (initial phase)[75].

467. According to Art. 17-a of the Law on the Civil Servants, the employees of the FIO (other than the Director), are hired, and dismissed, by the order of the Director of the FIO. According to Art. 58 of the Law on Organisation and Work of the Bodies of the Administrative State Authorities (Official Gazette of RM 58/2000, 44/2002 and 82/2008), the structure of the FIO is proposed by the Director and approved by the Minister of Finance. Last amendments brought to the Internal Rulebook date from June 2012.

468. At the time of the on-site visit the evaluation team was informed that all working places are appropriately equipped with hardware devices in order for the users to fulfil their function according the requirements of the AML/CFT Law.

Integrity of FIU authorities (c.30.2)

469. As stated above, the AML/CFT Law does not expressly specify the status of civil servants of the FIO employees, but this status is prescribed by the Rulebook on Systematization of Work Positions in the FIO.

470. The Law on Civil Servants stipulates that a civil servant shall be the person employed in the civil service who *"performs expert, normative-legal, executive, administrative, administrative-supervising, planning, material-financial, accounting, IT and other activities within the competences of the body in accordance with the Constitution and law"*. The Civil Service, in terms of this Law, shall be the bodies of the state and local authority and other state bodies, established in accordance with the Constitution and other laws.

471. All FIO employees must hold a clearance certificate for access to classified information issued by the Directorate for Security of Classified Information which is renewed (after verification performed by the relevant institutions) every 10 years in case of *"confidential"* clearance and every 5 years for *"highly confidential and state secret"* clearance. In addition, the FIO employees are obliged to comply with the Operational Procedures which determine the workflows and define the working processes in the FIO.

472. The FIO staff are civil servants which comply with the Code of Ethics of the Civil Servants which provides a wide range of professional and moral requirements *i.a.* the respect of the public interest, the equality of treatment between the with the private and legal entities, high professional level, objectivity, independence in decision making, interdiction to misuse of authorisations and the status of a civil servant, transparency etc.

473. When performing on-site inspections, the FIO employees must comply with the Behaviour Code and Professional Ethics Code of the Department for Inspection Supervision. The latter is approved by the FIO Director, and provides the working principles; the supervisors' conduct during inspection; the actions to be taken in various situations (including the ones related with the conflict of interests); the prohibition to accepts gifts; the dressing code; the confidentiality and use of official information; the conduct in private life etc.

474. In their capacity of civil servants, the FIO staff are evaluated twice a year in accordance the

[75] In order to improve own IT capacities, in 2012 the FIO started to implement the "Introduction of financial intelligence project". The main purpose is to use and adapt the ASK system for AML/CFT which was developed for the similar services in Norway. The users of this system will have an efficient tool and will be able to generate reports required for successful fight against organised crime and financing of terrorism. The project will also enable *i.a.* the Development of software solution for collection of data, automatic processing and categorisation, analysis of cases and generation of reports; the Development of web application for submission of data by the entities they have suspicions about ML or FT; Application of an automatic scoring and clustering of the clients; Data visual analysis module; Module for generation of final intelligence reports that will be submitted to the investigative authorities, and a Module for data sharing with external database through the so called communication adapters.

special system of criteria, which includes evaluation of the work results (knowledge and implementation of the regulations and practices, implementation of the work objectives, timely implementation of the work, quality implementation of the duties, and working structure) and personal qualities (creativity, initiative and interest in the work, ability for team work, ability to work under pressure and communication skills).

475. During the on-site visit, the FIO employees appeared to the evaluation team as professional and motivated.

Training of FIU staff (c.30.3)

476. The FIO staff take part in the trainings, organised by national, foreign and international organisations and authorities.

Table 16: Total number of trainings provided to the FIO staff in "the former Yugoslav Republic of Macedonia" and foreign states[76]

Year	Number of seminars	Number of participants from FIO
2010	26	54
2011	24	49
2012	22	45

477. The subjects covered in training seminars were related to development and use of IT tools, abuse of the Internet and E-money systems by the criminals, tactical analysis, international cooperation, financing of terrorism, corruption prevention and financial investigations.

478. With the financial support of international organisations, study visits were organised to Norway, Estonia, Slovakia, Slovenia, Romania, Bulgaria, Austria, Finland, Latvia, Holland, Denmark, Poland and Italy.

Recommendation 32 (FIU)

479. FIO collects and keeps various statistics on all aspects of its work. These statistics are provided for in the respective parts of this report. They are comprehensive and informative. These statistics are also published in the annual report.

Effectiveness and efficiency

480. There is no consolidated working methodology for the FIO describing the analysis process from the receipt of the STRs to the dissemination of the cases to law enforcement authorities. The analysis procedure and the decision chain is to be found in separate Rulebooks and Quality Procedures (QP) which regulate segments of the analytical methodology: QP on Initial Checks, QP on Analysis of the Data Provided by the Entities, QP for Work in the Department for Prevention of ML (DPML), QP for Work in the Department for Prevention of FT (DPFT), the Internal Rulebook and the QP for CWC.

Initial checks

481. According to the discussions held on-site, it resulted that the STRs are received and subject to preliminary analysis in the Analytics Department (DA) within the Sector for Prevention of Money Laundering and Inspection Audit (SPMLIA). The Person Responsible for the Initial Checks (PRIC) shall perform the preliminary analysis of the STR mainly by performing checks in the databases managed by the FIO (cash reports, previously reported STRs and cases, loans database, the database of the notarial contracts on sales/purchase of real estate, the database of sales/purchase of vehicles and the database of concluded life insurance policies in amount of 15.000 Euros or more) and the databases the FIO has direct access to: Central Register, Customs declaration database and the Real Estate Register. Internet searches (including WorldCheck) must be also performed. In addition, case by case written requests are sent to the MoI for the criminal records of the natural persons and to PRO for controls performed and annual tax declarations.

[76] A detailed table of trainings in Annex 2 to this report.

482. Following the initial checks, the PRIC presents (orally) the case in front of the CWC who shall decide upon the further steps to be taken in respect of the case. The commission shall decide to which Department the case shall be distributed (DPML or DPFT) and to which particular analyst. From that point, the analysis is continued according to the specific QP for work in DPML or in DPFT. The Commission may decide to put the case on hold if it considers that there are no suspicions for any committed criminal offences (*ad acta*).

483. However, it has to be said that the QPs do not confirm the process described above. Firstly, the QP on Initial Checks does not make any referral to the department in charge with the initial or preliminary analysis but speaks about the PRIC which seems to be any FIO employee since there is no specification. The scope of the QP on Initial Checks is limited to the description of the tasks to be accomplished by the PRIC and does not describe the actual trail of the STR within the FIO structure from reception to dissemination. This procedure is obligatory for PRIC, who - after receiving the STR from the entities; requirement for exchanging information by the competent authorities; initiative for opening a case by the DA; information requirement and spontaneous information for suspicious activities delivered by a foreign FIU - performs the initial analysis and implements initial measures for the natural persons and legal entities involved.

484. Secondly, according to the QP on Analysis of the Data Provided by the Entities (which regulates the work of the DA), the unit has the task to collect, process, analyse, deliver and keep data received through cash transactions from banks, reports for import and export of cash above €10,000 from Customs Administration and reports received on the base of Article 29-a of the AML/CFT Law (banks, insurance companies, notaries and car dealers). Thus, the DA has the initiative to open a case for the DPML/DPFT work, as a result of a threshold report and not following the submission of an STR. Although not expressly provided in the QP on Initial Checks, following the scope of the QP on Analysis of the Data Provided by the Entities it appears that this procedure applies only to the DPFT and DPML and not to the DA.

Table 17: Number of cases initiated by the DA within the FIO

Year	Cases
2009	18
2010	8
2011	5
2012	9

485. The two QP for work on ML and TF cases (which is supposed to be the continuation of the QP on Initial Checks) explain: the manner the employees in the DPML/DPFT act upon; the receipt of an STR; a requests for exchange of information received from the competent state authorities; cases opened on the initiative of the DA and (spontaneous) information on suspicious activities received from the Financial Intelligence Units of other countries. In this context, it seems that the actions taken by the DA in the initial analysis of the STRs is based purely on practice and is not formally regulated by the internal procedures since the QP on Initial Checks clearly leaves this unit outside the scope of its application.

The prioritisation

486. According to QP on CWC, after receiving the results from the initial checks, in addition to the allocation of the case to a particular analyst, the CWC shall determine the priority of the case according to a set of criteria. High priority cases shall be the cases where there are: persons from the lists of terrorists and terrorist organisations; persons with criminal record; persons who were previously subject to analysis of the FIO; persons on whom the MoI or the FPO asked for data; cases where the amount exceeds €100,000; and cases where there are greater number of indicators for suspicious transactions. Mid-priority cases are the ones involving politically exposed persons; persons who can be found in the database of the FIO; and involving persons who come from countries that FATF indicated as having dysfunctional systems for prevention of money laundering and financing terrorism. The rest of the cases shall be categorised as having low-priority status.

487. While welcoming the implementation of a prioritisation system for the STRs which allows an effective allocation of the resources of the FIO for the most important reports, the evaluation team is of the opinion that some of the criteria are overlapping and some leave risky areas in a lower range of prioritisation. For instance, cases involving PEPs should be placed in the high priority category while persons who were previously subject to analysis of the FIO (placed in the high priority category) and persons who can be found in the database of the FIO (placed in the mid-priority category) seem to cover the same grouping. The authorities explained that in fact in the high risk category are included persons who have been subject to STR analysis in the FIO, while the persons *"who are found in the FIO database"* include the ones who were reported within the Currency Transaction Reports or within the Reports delivered to FIO by the entities in accordance with Article 29-a, but not within an STR. The evaluators are of the opinion that this matter should be clarified formally in the text of the QPs.

The work on cases

488. Both the DPML and the DPFT have specific procedures for describing the analytical process.

489. After opening a case, checks on the persons involved shall be initiated, that shall include collecting data and information from appropriate sources. The available sources of information for the employee who is working on a case shall be the following:

- The Public Revenue Office, where the data for submitted Annual Tax Reports by the natural persons and the data for executed tax controls over the legal entities by PRO shall be requested from;
- Central Register of the Republic of Macedonia, where data for the Annual Accounts submitted by legal entities involved in the case shall be requested from;
- Central Securities Depository, where data for the type and the number of securities, disposed by the persons involved in the case as well as data for the executed sale and purchase of securities, shall be requested from;
- Agency for Real Estate Register, where data for the real-estate owned by persons involved in the case, history of changes, shall be requested from;
- The Commercial Banks on the territory of the Republic of Macedonia, where data for more aspects of the business cooperation of the persons involved in the case (accounts revision, credit information, deposits, lease of safety-deposit box etc.) shall be provided from;
- The Lists of Terrorists and Terrorist Organisations from the United Nations, European Union, OFAC;
- and other relevant sources necessary according to the typology of the case.

490. The result of the analytic work is a report that shall be submitted to the competent authority containing: a short description of the case; analysis opinion regarding the validation or removal of the suspicion; a detailed description of the performed checks and analysis; and the indicators for the crime of money laundering or financing terrorism occurring in the particular case. The opinion of the analyst shall be established from the collected data and the analyses performed, and it shall contain the indication for suspicion of the possible predicative crimes[77], and the description of the *"executed crime of money laundering or financing terrorism and how this crime is performed in the actual case"*.

491. In practice, the ***Report*** is a MS Word document describing banking accounts, commercial activities of companies, securities transfers, real estate trade, findings of the case and containing graphics and tables illustrating the connections between persons and financial flows. The authorities explained on-site that in cases of ML, the underlying predicate offence may or may not be indicated into the report. Although the evaluators accept that this could be a practice, analysing the QP for Work on Case (both for DPML and DPFT) it results in the obligation to establish the predicate offence which is not in line with the international standards, as it places an unreasonable burden on the FIU (in the case of TF is even unreasonable).

[77] The QP further describes them as "previously executed crime which afterwards shall be considered as the basis for execution of the crimes of money laundering or financing terrorism"

492. In case there are grounds for suspicion of other committed crime, a ***Notification*** shall be delivered to the competent authority, depending on the criteria established with the QP on CWC (as described above under 26.5). In the content of the Notification shall be included: data regarding the legal entities or natural persons to whom the report is referred to; case description according to the information delivered in the suspicious transactions report and any additional data which indicate a suspicious transaction.

493. The evaluators noted that the number of analysts in the two Departments (dealing with ML cases and dealing with TF cases) is the same (5 analyst) while the number of the STRs are significantly higher in case of ML related reports. The authorities replied that the TF Department is more of a formal nature and that in fact, the DPFT deals equally with ML cases and STRs and the analysts are trained both for ML and TF fields.

494. During the on-site interviews, the evaluators were told that following the analysis performed in DPML and DPFT, the documents related to the case are sent by e-mail to the members of the CWC who will decide upon the authority that shall receive the Reports and the Notifications.

495. The CWC usually meets once a week and during the meeting, the analysts shall present orally the conclusions to their cases, including a proposal as to which competent authority should receive it. The CWC shall fundament its conclusions both on the written documents and on the oral presentation of the case. In urgent cases, CWC can meet more frequently as it is in the case of postponement of transactions.

496. It was also discussed on-site that unlike the analysts performing the initial checks, the analysis in the DPML and DPFT may extend the analysis to other persons related to the case (which are not mentioned in the initial STR) and require additional information from banks, PRO etc..

497. The work on the case in the DPML and DPFT may continue after the delivery of the Report to the competent state body or foreign FIUs, where additional data shall be collected and analysed. In this case, the additional data shall be sent as addition to the Report. Meetings or working groups (teams) for work on the case may be organised, if needed.

498. Certain *ad acta* cases may be reactivated, if the FIO receives up-dated information or new suspicious reasons, activities or transactions in in relation to persons previously included in the STRs.

499. In cases where the suspicions are related to foreign countries or foreign natural persons, the FIO employee working on the case shall prepare an information note for the FIU of the respective country.

Postponement of transactions and monitoring of bank accounts

500. According to Art. 36 of the AML/CFT Law, in case of suspicion of money laundering or financing terrorism, the FIO may submit an application to the competent public prosecutor for submitting proposal for determining provisional measures. The FIO shall submit a written order to the entity for temporary postponement of the transaction. The postponement of the transaction shall last until a court decision is adopted upon the proposal, within 72 hours from the postponement of the transaction at the latest.

501. If in the course of the analytical process the employee, expects a *"financial transaction for which there is a suspicion of money laundering or financing terrorism to be performed within the case"*, shall report to the director of the FIO and to the CWC immediately or within 24 hours from the finding, and after the approval, he/she shall submit an application to the competent public prosecutor for submitting proposal for determining provisional measures.

502. The FIO has submitted 20 proposals for establishing temporary measures (2008– 5, 2009 – 2, 2010 – 3, 2011 – 4, 2012 – 6). For more information about the postponement (including statistics) the reader is referred to Recommendation 3 criterion 3.4 of this report.

503. According to Art. 35-a of the AML/CFT Law, when there is a doubt for money laundering or financing terrorism, the FIO may submit an order for the reporting entity to monitor the business relation with the client. The entity shall inform the FIO on the transactions which are performed or

should be performed within the frames of the business relation in accordance with the directions given in the order. The monitoring of the business relation may last three months at the longest and in legitimate cases the duration may be prolonged by one month, to a maximum of six months. Until now, six monitoring orders have been issued in 2012 by the FIO.

Disseminations

504. The FIO keeps statistics on the STRs and CTRs received, and on the cases disseminated to LEA. As apparent from the Table 19 below, between 11% and 20% of the incoming STRs are disseminated to competent authorities for ML suspicions. All the STRs are analysed as part of a stand-alone case or as part of an already opened case.

Table 18: CTRs and STRs received by FIO

Reports	2008		2009		2010		2011		2012		2013[78]	
	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
STRs	123	11	307	2	241	4	163	7	229	9	26	4
CTRs	97,299		83,274		83,813		87,883		87,696		12,843	
Cases disseminated	25	3	35	2	28	2	22	3	29	7	3	0

505. The FIO does keep statistics on the actual categories of beneficiary of the disseminated cases as emphasised in the Table 20 below. No indictments for TF were reported by the "the former Yugoslav Republic of Macedonia" authorities.

Table 19: FIO (ML and TF) Reports/Notifications split up on beneficiaries

Competent body	Reports/ notifications 2008	Reports/ notifications 2009	Reports/ notifications 2010	Reports/ notifications 2011	Reports/ notifications 2012	Reports/ notifications 2013[79]
MoI	14/14	24/40	24/67	20/47	30/56	19/80
PPO	3/3	2/2	2/2	2/4	-/1	2/3
FPO	11/6	11/31	4/21	3/24	6/19	1/26
Customs Administration	-/2	-/9	-/1	-/5	-/7	-/1
PRO	-/5	-/21	-/34	-/22	-/20	-/8
Security Exchange Commission	/	/	-/1	/	-/2	/
Basic Courts	/	/	-/1	/	/	/
Agency for management of confiscated assets	/	/	/	/	1	/
Intelligence Agency	/	/	/	/	/	-/5
Spontaneous disseminations to foreign FIU		-/7	-/13	-/5	15	-/6
TOTAL:	**28/31**	**37/110**	**30/140**	**25/107**	**36/121**	**22/129**

506. While noticing the steady increase in both the number of Reports and Notifications sent to the LEA by the FIO, the evaluation team is unclear what was the legal basis for sending two

[78] Until 01.03.
[79] Until September 2013

Notifications and one Report to the Security Exchange Commission, Basic Court, the Agency for Management of the Confiscated assets and the Intelligence Agency.

507. According to the statistics provided by the MoI (and corrected in light of the case-by-case analysis subsequently provided by the prosecutors) 4 convictions have been achieved based on FIO disseminations between 2008 and 2012 and at least 3 more in 2013. These disseminations have resulted following an STR or following a request for information submitted by a law enforcement authority.

Table 20: ML criminal cases initiated, indictments and convictions based on FIO dissemination

Year	2008	2009	2010	2011	2012	2013[80]
Total ML criminal charges	5	9	5	2	5	6
ML charges based on FIO disseminations	4	5	4	1	4	5
ML indictments based on FIO disseminations	3	3	2	2	2	3
ML final convictions based on FIO disseminations	1	1	0	0	2	3

508. For the purposes of the assessment of the effectiveness of the FIO work and of the reporting regime, the next table focuses on cases actually based on transaction reports submitted by the reporting entities. The ratio between the STRs received by the FIO and the judicial proceeding generated by them can thus be seen in the table below. (The numbers of STR-related indictments and convictions were revised in light of the case-by-case analysis subsequently provided to the evaluation team.)

Table 21: STRs received by the FIO

Statistical Information on reports received by the FIO					Judicial proceedings							
year	cases opened by FIO		notifications to law enforcement/ prosecutors		indictments				Convictions			
					ML		FT		ML		FT	
	ML	FT	ML	FT	cases	persons	cases	persons	cases	persons	cases	persons
2008	123	11	25	3	1	4	0	0	0	0	0	0
2009	307	2	35	2	2	4	0	0	1	1	0	0
2010	241	4	28	2	2	6	0	0	0	0	0	0
2011	163	7	22	3	0	0	0	0	0	0	0	0
2012	229	9	29	7	1	19	0	0	1	5	0	0

509. The statistical figures convincingly demonstrate the activity of the FIO in the initiation of criminal procedures for the offence of ML. In every year, the FIO had been involved in the majority of the cases where a formal criminal investigation was launched by the law enforcement

[80] Until September 2013

authorities. Notwithstanding, the case-by-case analysis showed that these figures contain, on the one hand, purely STR-based cases (reports from banks or other obliged entities, Table 21) and, on the other, cases where the FIO proceeded either upon information obtained from foreign counterparts or at the request of the law enforcement (i.e. the MoI) by collecting data and preparing financial analysis, the results of which were then reported back to the law enforcement for further investigation (referred to above as "FIO disseminations" in Table 9).

Table 22: Reports submitted by the FIO to the Financial Police

	Submitted reports by FIO	Submitted criminal charges	Ongoing cases
2009	11	11 (tax evasion (Art.279), counterfeiting or destructing of business bocks (Art.280), damage or privilege of the creditors (Art.257), fraud in receiving credit (Art.249), causing bankruptcy by unscrupulous operation (Art. 255))	/
2010	4	1 for money laundering (Art. 273)	3
2011	3	3 (1 for money laundering (Art.273), 2 for tax evasion (Art.279), damage or privilege of the creditors (Art.257), counterfeiting or destructing of business bocks (Art. 280))	/
2012	6	4 (1 for money laundering (Art.273), 3 for tax evasion (Art.279), abuse of official position(Art. 353))	2

Table 23: Notifications submitted to the Financial Police Office by FIO for other offences

	Submitted notifications by FIO	Submitted criminal charges	Ongoing cases	unconfirmed crime
2009	31	3(tax evasion (Art.279), counterfeiting or destructing of business bocks (Art. 280))	10	18
2010	21	5(abuse of official position(Art.353), tax evasion (Art.279), not executing an order (Art.353), fraud (Art.247))	11	5
2011	24	3 (tax evasion (Art.279), abuse of official position(Art. 353))	16	5
2012	19	3(abuse of official position(Art.353), fraud (Art.247), tax evasion (Art. 279))	14	2

2.5.2 Recommendations and comments

Recommendation 26

510. The FIO is established as an administrative type of FIU, within the MoF. The guidance on the reporting forms and reporting procedures is prescribed in Rulebook 38. Indications on the physical and electronic address where the STRs should be sent are provided indirectly through the FIO webpage. The authorities are recommended to further detail the procedures to be followed when reporting, by clearly indicating to which address (if electronically to which electronic address), if by regular post or by secure post (in case of written forms), the STRs should be sent to the FIO, and on what *"other written forms"* should mean. In addition, specifications regarding the documentation required to be attached to the STRs should be included in the guidance.

511. Security protocols to encrypt the STR should be put in place and made available for the non-banking sector and for the DNFBPs, allowing them to submit reports electronically.

512. The electronic reporting rules are provided in Rulebook 140 which stipulates that the threshold reports are submitted electronically through the website of the FIO. The access to the form of the reports shall be granted through username and password, issued by the FIO. However, there is no indication on the URL of the webpage of the FIO, nor on the procedure of filling in the reports or on the manner of obtaining the username and password. Although guidance on such reports is

provided to banks, a publicly known document should be available for all parties concerned by Rulebook 140. The authorities are recommended to address this deficiency.

513. The FIO has direct and indirect access to the different databases and can request additional information from all obligated entities and state bodies. The authorities should consider extending the number of databases the analysts have on-line access to, in order to improve effectiveness. Sanctions should be available in the AML/CFT Law for failure to reply to the FIO request for additional information.

514. The authorities competent to receive the FIO analysis are determined by the CWC. FIO analysts shall prepare a Report (on suspicious of ML/TF activities) or a Notification (in case suspicion for other criminal offences).The authorities should address the shortcomings identified by the evaluation team (and described in detail under the analytical part) related to the criteria of dissemination of the cases (Reports and Notifications) to a specific LEA, both for ML and TF suspicions.

515. The AML/CFT Law contains legal safeguards to ensure the FIO's autonomy and independence. The evaluators were told that the FIO Director has the final decision on the budget expenditures. The statute of civil servants of the FIO employees is mentioned (not defined) in the Internal Rulebook which determines the activity of the FIO, the organisational chart, the management of the organisational units, authorisations and responsibilities of the civil servants at the work places and the manner of work in the FIO.

516. At the time of the on-site visit, the evaluation team noted that the current FIO Director was appointed as *acting* Director (not as Director) which seemed a temporary nomination or in any case, not a pure nomination according to the Law[81]. Risks to the FIO's independence may reside in the fact that the mandate of a FIO Director, though in theory of duration of four years, may be revoked by the appointing authority at any time invoking the *"lack of positive results"*. The authorities should take appropriate measures to clarify the matter.

517. The information exchange between the FIO and foreign FIUs is regulated by a very dense and convoluted set of regulation which might impede timelines of the information exchange. The authorities are encouraged to amend the Internal Rulebook of the FIO to simplify the cooperation and information exchange.

518. The analytic process in the FIO and the decision chain is to be found in five Quality Procedures (QP) which regulate segments of the analytical process: QP on Initial Checks, QP for Analysis of the Data Provided by the Entities, QP for Work in the Department for Prevention of ML (DPML), QP for Work in the Department for Prevention of FT (DPFT), Internal Rulebook and the QP for CWC, and in the Internal Rulebook. The authorities explained on-site that in case of ML cases, the underlying predicate offence may or may not be indicated into the report, but the QP contains such an obligation. Although the evaluators accept that this could be a practice, the authorities are recommended to eliminate the provision requiring the indication of the predicate offence from the QP for Work on Case (DPML).

519. While welcoming the implementation of a prioritisation system for the STRs which allows an effective allocation of the resources of the FIO for the most important reports, the evaluation team is of the opinion that some of the criteria are not clearly differentiated and some leave risky areas (e.g. PEPs) in a lower range of prioritisation. The authorities are recommended to revisit the prioritisation system.

Recommendation 30

520. The FIO is well structured and professional. The material resources provided to the FIO seem to be adequate as all working places are appropriately equipped with hardware devices in order for the users to fulfil their functions according the requirements of the AML/CFT Law. However, the number of i2 licences is insufficient for all financial analysts within the FIO.

[81] The evaluation team was informed that in November 2013 the Director was nominated according to the AML/CFT Law.

521. All the positions available in the FIO structure should be occupied by employees.

522. The authorities should consider revising the human resources allocation between DPML and DPTF to match the actual number of specific reports.

Recommendation 32

523. The evaluators were provided with a sufficient number of statistics related to FIO activity: STRs and threshold reports, cases disseminated to the LEA, number of Notifications sent to competent authorities, ML investigations and convictions etc.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	• No guidance on the documentation required to be attached to the STR form; • Unclear and incomplete criteria for allocation of disseminated cases (both for ***Reports*** and ***Notifications***): conflicting provisions in case of money laundering suspicions derived from OC; conflicting provisions in case of the ML generating from *"financial crimes"* predicates; • Unclear criteria for the authority competent to receive the disseminations in case of financing terrorism; • Risks to the FIOs independence reside the fact that the mandate of a FIO Director, though in theory, of a duration of four years, may be revoked by the appointing authority at any time invoking the *"lack of positive results";* **Effectiveness** • Failure to reply to the FIO request for additional information according to Art. 34 (3) it is not mentioned in Art. 49 in relation to sanctions; • Low number of databases the FIO has on-line access to impede effectiveness; • Inconsistent dissemination system in case of TF suspicions.

2.6 Cross Border Declaration or Disclosure (SR.IX)

2.6.1 Description and analysis

Special Recommendation IX (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

524. The "former Yugoslav Republic of Macedonia" was rated PC for Special Recommendation IX based on the following findings:

- Apart from cash and cheques no other bearer negotiable instruments are covered by legislation concerning the physical cross-border transportation of currency and bearer negotiable instruments;
- In case of cross-border transportation of means being property 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), the Customs do not have authority to confiscate such property;
- The range of sanctions (approx. €4,200 to €5,000) of the Law on Foreign Exchange Operations with regard to infringements as described by criterion IX.8 is insufficient and does not allow to apply a proper and adequate reaction to deviant behaviour in relation to all kind of perpetrators (residents, non-residents, legal entities);
- Customs officer did not receive special training to detect cash couriers;
- There are no explicit provisions allowing the Customs or any other authority from "the former Yugoslav Republic of Macedonia" to notify the Customs Services or other competent authorities of the country of origin or the country of destination about unusual cross-border movement of gold, precious stones or metals with a view of establishing the source,

destination and purpose of the movement of such items in order to take appropriate action;

- The sanctions regime is not covering all situations concerning persons who are carrying out a physical cross-border transportation of bearer negotiable instruments that are related to terrorist financing or money laundering contrary to the obligations under SR IX (criterion IX.9).

c.IX.1

525. At the time of the 4 round evaluation, the declaration of cash at the border is governed by the following legislation:

- Law on Customs Administration;
- Customs Code;
- AML/CFT Law;
- Law on Foreign Currency Operations;
- Law on Criminal Procedure;
- Criminal Code;
- Law on International Restrictive Measures;
- Decision on Conditions and Amount of Cash foreign currency and cheques permitted to be taken out or brought into the Republic of Macedonia;
- Rulebook on the types of documents and data labelled as official, business or other secret, manner of their storage and protection in the Customs Administration.

526. The obligation for compulsory declaration on bringing in and taking out effective money, cheques and monetary gold is regulated by Article 29 paragraph 4 from the Law on Foreign Exchange Operations (LFEO) which stipulates that *"when crossing the borders, residents and non-residents are due to compulsorily declare to the competent customs bodies the amount of effective domestic or money in foreign currency, cheques and monetary gold being brought in or taken out and exceed the amounts determined with the acts from paragraph 1 and 2 of this Article"*.

527. The cash and checks declaration system in "the former Yugoslav Republic of Macedonia" is prescribed in the Government Decision 77 on Conditions and Amount of Cash foreign currency and cheques permitted to be taken out or brought into the "the former Yugoslav Republic of Macedonia" (from 2002 amended in 2003 and 2008) and it differentiates the obligations between residents and non-residents.

Residents

528. According to Art. 1 of the Government Decision 77, the residents are allowed to bring in the country cash in foreign currency up to €10,000 euros. For amounts exceeding €10,000 the provisions of the AML/CFT Law shall be applied. No referrals to the actual Article(s) of the AML/CFT Law that shall apply are mentioned in the Decision 77. For the sums above the threshold, the Customs Administration shall give the residents a written confirmation. There is no referral to the bearer negotiable instruments other than checks. From the wording of Art. 1 of the Government Decision 77, it results that its obligations apply only for euro currency and not for equivalents in any other foreign currency.

529. When leaving the territory of the country, the residents shall be obliged to declare the amounts in foreign currency and checks of values between €2,000 and €10,000 to the Custom Authority. The residents can take out the cash foreign currency within the value interval mentioned above, on the basis of a confirmation letter issued by a bank or an exchange office or on basis of a confirmation letter for collected foreign currency from a foreign currency account. The confirmation letter shall be valid 90 days from the issuing date. For the residents, taking out of the country cash in foreign currency above €10,000 is forbidden.

530. According to the NBRM Decision Nr. 41/2007, on the Terms and the Amount of Cash Domestic Currency and Monetary Gold that may be taken in or out of the "the former Yugoslav Republic of Macedonia", the residents may, when traveling from and to abroad, take in or out of

the country cash denominated in domestic currency in the amounts not exceeding Denar 120,000 (app. €1,960) per person, and checks denominated in Denars in the same total amount. Although there is no express prohibition, the authorities explained that the above provision contains an implicit prohibition of taking in or out of the "the former Yugoslav Republic of Macedonia" of national currency above Denar 120,000.

Non-residents

531. According to Government Decision 77, the non-residents can freely bring in and take out of "the former Yugoslav Republic of Macedonia" cash in foreign currency up to the sum of €10,000.

532. When the entering in the country, non-residents shall be obliged to declare the amount of cash in foreign currency exceeding €10,000 to the Customs Administration. Subsequently, the amount which non-residents take out of the "the former Yugoslav Republic of Macedonia" shall not exceed the amount declared at the entrance.

533. When entering into the country, the Customs Administration shall give the non-residents a written confirmation for the amount of the cash in foreign currency which they are bringing into the "the former Yugoslav Republic of Macedonia" which the travellers shall be obliged to give for review to the Customs Administration when they leave the "the former Yugoslav Republic of Macedonia".

534. According to Art. 10 para 9 of the Law on Customs Administration (LCA), the Customs Administration is responsible for the control of the import and export of cash in domestic and foreign currency, cheques and monetary gold across the border line of "the former Yugoslav Republic of Macedonia" but no declaration obligation is mentioned. Yet again, there is no referral to the bearer negotiable instruments other than checks.

535. According to the NBRM Decision 41/2007, the non-residents may, when traveling from and to abroad, take in or out of the country cash in domestic currency in the amount not exceeding Denar 120,000 (app. €1,960) per person and checks denominated in Denars in the same total amount. The non-residents may, when traveling from and to abroad, take in or out of the country cash in domestic currency in the amount exceeding the amounts above only if presenting a document that the cash has been purchased from a domestic or foreign bank or withdrawn from an account in a domestic or foreign bank. When presented to the Customs Administration, the certificate shall not be older than 30 days from the issuance date. The non-residents shall, when coming in or out of the country, report those sums to the Customs Administration.

536. There are no sanctions available neither in the NBRM Decision 41 nor in the Government Decision 77 for non-compliance with its requirements.

537. According to 19 (1) of the AML/CFT Law, the Customs authorities shall compulsory register each import and export of cash or securities across the customs line of the "the former Yugoslav Republic of Macedonia", if the amount of cash or securities exceeds the maximum stipulated by law or another regulation. There is no referral to any declaration obligation in the AML/CFT Law or to the "laws or other regulation" which would be applicable in this respect.

538. While travelling in and out "the former Yugoslav Republic of Macedonia", the evaluation team did not see any sign or billboard requiring the declaration of cash or other bearer instruments at the frontier.

c.IX.2

539. Art 43 of the LFEO provides that the Customs Administration is assigned as the body, which monitors the implementation of this Law and regulations brought on the basis of the same, within their authorities.

540. According to Art. 28 and 29 of the LCA, a customs officer may throughout the entire customs area undertake any operative actions for gathering information and evidence for perpetrated customs offences (which also includes identification of forged declarations) and crimes in the area of customs operation. A customs officer may identify and check the identity of each person: entering, leaving or about to leave the customs area, and entering, leaving or remaining in a

customs controlled zone. The customs officer may require these persons to answer any question related to his/her luggage, any item contained therein or carried with him/her, present for inspection his/her personal luggage and any item contained therein for examination, and answer any question asked by the Customs officer in respect to his/her journey and related circumstances.

541. Pursuant the provisions from Art. 10 of the LCA and Article 145 (1) of the Law on Criminal Procedure, authorised persons from the Customs Administration can implement pre-investigative and investigative procedure in a case of suspicion for a perpetrated criminal act in the area of work of the Customs Administration.

542. There are no clear procedures in place for the Customs Administration regarding the procedures in case of non-disclosure or false declaration of national currency over the threshold provided by the NBRM Decision Nr. 41/2007 or by the Government Decision 77/2002.

c.IX.3

543. According to Art. 37 (1) of the LCA, a customs officer may detain the goods being imported or exported until he assesses that the goods have been handled in accordance with the Customs Law and any other laws the enforcement of which is within the jurisdiction of the Customs Administration. A customs officer may also detain the documents pertaining to these goods. Paragraph 5 of the same article provides that when a customs officer detains or temporarily seizes documents, goods or means of transport, he shall give a certificate to the person or persons from whom the documents, goods or means of transport were detained or seized. The authorities indicated that *"goods"* cover any kind of items, including money and financial instruments and this is confirmed by the statistics provided (see Recommendation 32 below).

544. The authorities added that in case of ML or TF suspicions or in case of a false declaration, the custom officers can implement a procedure in accordance with Article 145-a of the CPC which provides that the authorisations entrusted in the MoI, in the pre-investigative procedure and in the investigation, are also entrusted by law to the authorised persons of the Custom Administration in the cases when they work on disclosing crimes and their offenders and for gathering evidence necessary for criminal prosecution of the criminal offenders in cases of money laundering and other income from crimes (Article 273 of Criminal Code). Art. 145 (2) (2) provides the authorisations entrusted in the MoI, in the pre-investigative procedure and in the investigation include the power to stop, ask for verification of the identity and to perform a necessary inspection or search of persons, vehicles and luggage when there are grounds to suspect that traces of a crime or objects which can be used as evidence could be found.

c.IX.4

545. According to Art. 19 of the AML/CFT Law, the Customs Administration must report to the FIO the importing or exporting of cash or securities of the bearer exceeding €10,000 in denar counter value, within three working days from the recording at the latest.

546. The Customs Administration shall compulsory register each import and export of cash or securities across the customs line of the "the former Yugoslav Republic of Macedonia", if the amount of cash or securities of the bearer exceeds the allowed maximum stipulated by law or another regulation. In the registration process, the customs officer shall compulsory collect information regarding:

- the identity of the person which on their own behalf or on behalf of another party imports or exports cash or securities of the bearer, including information on the name and surname, date and place of birth, number of travel document and nationality;
- the identity of the owner of cash or securities;
- the identity of the beneficiary owner;
- the amount and currency of the cash or securities of the bearer which is imported or exported across the customs line;
- the statement on the origin of the cash or securities signed by the person importing or exporting cash or securities of the bearer;
- the purpose for importing or exporting the cash or securities of the bearer; and

- the place and time of crossing the customs line.

547. The Customs Administration shall compulsory report to the FIO in electronic manner or by telecommunication means (telephone, fax), and where this is not possible, by other means in writing, the importing or exporting of cash or securities of the bearer exceeding €10,000 in denar counter value, within three working days from the recording at the latest.

548. The Customs Administration shall compulsory report to the FIO the importing or exporting of cash or securities of the bearer regardless of the amount, whenever there are grounds to suspect money laundering or financing terrorism, within 24 hours after detecting suspicion of the importing or exporting of cash or securities.

549. The *"Guidelines on the Modus Operandi of the Application for Foreign Currencies Control Registers"* (AFCCR) prescribe the rules for record keeping of cash (foreign currencies, denars, monetary gold and securities) declared at entrance into/exit from the "the former Yugoslav Republic of Macedonia" and the communication between the Customs Administration and the Financial Intelligence Directorate (former name of the FIO). The Guidelines stipulates that the customs officers deployed at the border crossing points shall register the importation and exportation of cash which amount exceeds the amount allowed by the AML/CFT Law and the Government's Decision 41 on the conditions and limit of effective money and cheques allowed to be imported into or exported from the country.

550. At the moment of registration into the AFCCR, the customs officers collect data on: the identity of the person that on his behalf or on behalf of other person imports or exports cash or stocks, including data on name and surname, date of birth, number of passport and citizenship; the identity of the owner of the cash or stocks, the identity of the final owner; the amount and the foreign currency of the cash or stocks imported or exported through the border line; the place and time of passing the border.

551. In all cases of import and export of cash, when there is an eventual doubt, or when there is a false declaration, the data should be registered in the application form, which shall be sent electronically to the FIO.

552. The Guidelines do not contain provisions related to detection and reporting of ML/TF suspicions but to foreign currencies related offence, when the customs officers shall enter data on the identity of the persons on whom undeclared cash is found, data on the identity of the persons on whom behalf the cash is transferred, as well as the exact amount and quantity of the cash for payment, and send electronically the registered data to the FIO and the Commission on Offences and Sanctions.

553. Neither the Guidelines nor other internal documents of the Customs Administration contain detailed procedures or instructions on the manner of detecting ML/TF suspicions.

c.IX.5

554. As described above, the Customs Administration shall compulsory register each import and export of cash or securities across the customs line of the "the former Yugoslav Republic of Macedonia", if the amount of cash or securities of the bearer exceeds the allowed maximum stipulated by law or another regulation and shall report to the FIO in electronic manner or by telecommunication means (telephone, fax), and where this is not possible, by other means in writing, the importing or exporting of cash or securities of the bearer exceeding €10,000 in denar counter value, within three working days from the recording at the latest.

555. The Customs Office shall compulsory report to the Office the importing or exporting of cash or securities of the bearer regardless of the amount, whenever there are grounds to suspect money laundering or financing terrorism, within 24 hours after detecting suspicion of the importing or exporting of cash or securities.

556. In 2009 the Customs Administration and the FIO developed a software application "Foreign Currency Application" in which the data on the registered cross-border movement of cash and securities is maintained.

557. The database includes the following information: name and surname of the passenger, travel document number, nationality, information about the authorising person, type of transfer, type of asset, origin declaration and purpose of the transfer, type of asset (cash, securities, gold and jewellery and precious stones), amount of quantity, transport information (type of transport, registration, final destination), transfer route, reasons for suspicion for suspicious cross-border transfer, the customs office where the information was prepared, date and time of preparation, and some other information.

558. According to the requirements of the "*Guidelines for working with the application for foreign currencies control register"*, the templates *"Certificate for bringing in effective money in foreign currency on the Republic of Macedonia"* and *"Declaration for origin of money and securities"* were adopted. The forms are handled by the customs bodies to passengers who declare bringing in or out money or securities and constitutes as evidence of the amounts being brought in or taken out of "the former Yugoslav Republic of Macedonia".

559. All information from those forms is saved by the Application for foreign currencies control register.

c.IX.6

560. According to the requirements of the Art.s 10 and 21 of the LCA, the Customs Administration cooperate with other state bodies in order to achieve better efficiency in the work of the customs authorities.

561. Also the Customs Administration signed a number of Memorandums and Protocols:

- Agreement between the MoI and the Customs Administration which regulates the submission of personal data from the Ministry of Interior to the Customs Administration;
- Protocol signed between the MoI – Bureau for Public Security and the Customs Administration for cooperation in the prevention and fight against organised crime;
- The Protocol for Cooperation in the prevention of organised and other forms of financial crime in the "the former Yugoslav Republic of Macedonia" with the Public Revenues Office, the Financial Intelligence Unit and the Financial Police, which regulates he manner of cooperation, coordination and joint actions for prevention of organised and other forms of financial crime in the "the former Yugoslav Republic of Macedonia".
- Memorandum for Cooperation with the Basic Public Prosecution,
- Memorandum for Cooperation with the Public Revenues Office.
- Memorandum for cooperation on the manner of coordination of the international cooperation, signed between the MoI, MoF – Customs Administration, MoF – Financial Police Office, Ministry of Justice and the Public Prosecution of the Republic of Macedonia.

562. The memorandums and protocols regulate the manner of cooperation, coordination and joint activities between the parties the respective area of cooperation, harmonisation of the work and improving cooperation, opportunities for joint risk analyses, activities and actions, establishment of joint working groups, joint use of the technical means and equipment, professional and technical support, exchange of information and data, training of staff, resolution of the disputes and cooperation and sharing of information.

563. The evaluators were informed that within the Customs Administration (the Sector for Investigations and Control), a special unit (Office) was established for coordination and information exchange with other bodies in charge of border control at the operational level (Border Police, MoI – Bureau for Public Security and other inspection bodies). This unit is equally in charge with the coordination of the activities of the mobile custom teams, inspectors for investigation of the Customs Administration and with other operational teams from other state bodies.

564. In addition, the Department for Risk Management at the Customs Administration continuously upgrades the procedure of risk management in order to enhance the effectiveness and efficiency of the customs service overall, through the identification and application of all measures needed for limiting the risk by selecting vehicles, people and customs consignments with higher risk profiles.

To this goal, it collects and processes data from organisational units of the Customs Administration, data from other organs competent for implementation of laws, from international sources and other relevant information for planning and organising activities in the area of analysis and risk.

565. The requirements of this criterion are met.

c.IX.7

566. According to Art. 10 (1) (19) of the LCA, the Customs authorities of the "the former Yugoslav Republic of Macedonia" have the power to cooperate with foreign customs administrations and international organisations. In practice, the Customs Administration cooperates with different international organisations: WCO, TILO-ECE, SELEC, Balkan-Info.

567. The cooperation with the customs authorities from foreign countries is carried out through the signed international treaties providing for mutual administrative assistance in the area of prevention, investigation, identification and sanctioning of customs misdemeanours. The treaties were signed by the Government of the Republic of Macedonia, or the Customs Administration and the governments or customs administrations of other countries[82].

568. As evaluators were informed the agreements include *i. a.* the manner of information exchange and the activities related with the implementation of the ML/TF preventions measures. The cooperation with the Regional Intelligence Liaison Office (RILO) in the framework of the World Customs Organisation (WCO), which includes the submission of data on the seized cash and cheques into the Customs Enforcement Network (CEN) database, was mentioned as an example.

569. The international cooperation is carried out also on the basis of the Stabilization and Association Agreement signed between the "the former Yugoslav Republic of Macedonia" and the European Communities and their member states, as well as the Free Trade Agreements signed with a number of countries and territories (CEFTA, EFTA, Ukraine, Republic of Moldova, Croatia, Albania, Serbia, Montenegro and others).

570. The Department for Investigation (within the Control and Investigation Sector), cooperates with foreign Customs administrations for operational issues. The communication is based on the international agreements which "the former Yugoslav Republic of Macedonia" has signed with EU, CEFTA, EFTA, Turkey, UNMIK, Albania, Russia, the Republic of Moldova, and according to the agreement for cooperation in preventing and combating cross-border crime, with SELEC.

571. Besides the requests for administrative assistance in customs matters, customs administrations share information for detected crimes or other types of fraud, especially serious types of crimes, such as drugs, weapons, cultural heritage or excise goods.

572. According to the statistics provided by the authorities, from 1 January 2008 to 31 December 2012, the Macedonian Customs Administration submitted 1,229 requests to foreign Customs administrations for verification of invoices for imported goods. In the same period, Macedonian Customs received 1,212 requests from foreign Customs administrations.

573. The table below provides information for the requests received by the Macedonian Customs Administration from other foreign Customs Administrations for checking the data related to customs goods which were imported, exported or transit in the country.

Table 24: Requests received by the "the former Yugoslav Republic of Macedonia" Customs Administration

Year	Request received by Customs
2008	42
2009	36

[82] The mentioned agreements are signed with the governments or customs administrations of the following countries: France, Albania, Turkey, Russian Federation, Denmark, Holland, Italy, Slovenia, Bulgaria, Poland, Slovakia, Finland, Kosovo (see footnote 2).

2010	31
2011	29
2012	48

574. The table below provides statistics on the information requests sent by the Customs Administration to other foreign Customs administrations for checking the data related to customs goods which were imported, exported or transit in the "the former Yugoslav Republic of Macedonia". Information on the movement of goods or their value are the most frequently requested data for determining the eventual predicate criminal acts such as "customs frauds", "smuggling" or other criminal acts which can generate incomes.

Table 25: Requests sent by the "the former Yugoslav Republic of Macedonia" Customs Administration

Year	Request made by Customs
2008	209
2009	434
2010	246
2011	207
2012	133

575. There are no statistics concerning information exchange carried out by the "the former Yugoslav Republic of Macedonia" Customs Administration on AML/CFT matters.

c.IX.8 and c.IX.9

576. According to Art. 56-a (22) of the LFEO the legal entity, resident or non-resident, shall be fined with Denar equivalent of €6,000 to €10,000 for committing a misdemeanour, if it takes cash domestic and foreign currency, checks and monetary gold in and out of the country, contrary to the conditions determined by the Government of the Republic of Macedonia and the NBRM.

577. If the legal entity that perpetrated the misdemeanour acquired significant property gain or caused significant property damage, it shall be imposed with a fine in the amount up to ten times the above-mentioned sum.

578. A fine of €1,500 to €3,000, in denars equivalent, shall be also imposed to the responsible person in the legal entity. A fine five times higher shall be imposed on the responsible person legal entity if he/ she perpetrated the misdemeanour for personal gain.

579. If the misdemeanour was perpetrated by an individual, either resident or non-resident, a fine will be imposed amounting from €1,500 to €3,000, in denars equivalent. If the misdemeanour was perpetrated for personal gain, the individual will be imposed with a fine two times higher.

580. The authorities stated that the above provisions make reference to the Decision of the NBRM Nr. 41/2007 and Government Decision 77/2002.

c.IX.10

581. According to Art. 57 of the LFEO, in addition to the fine, special misdemeanour measure will be imposed consisting in the seizures of objects used or intended to perpetrate the misdemeanour, or have occurred with the actual perpetration of the misdemeanour. Upon exception, the perpetrator of the misdemeanour (individual, either resident or non-resident), will be deprived of at least 20% of the total value of the objects used, intended to be used or occurred with the actual perpetration of the misdemeanour, if the motives or other circumstances point out that it is not justified to completely seize the object.

582. The authorities explained that in practice, the Commission for deciding on misdemeanours within the Customs Administration adopts a special misdemeanour measure - confiscation of goods - and delivers the information for further action to the NBRM, which moves the assets on the account of the Budget of the "the former Yugoslav Republic of Macedonia".

c.IX.11

583. The Law on International Restrictive Measures (LIRM), regulates the procedure for introduction and abolition of restrictive measures, implementation, coordination, record keeping and other issues pertaining to the restrictive measures. In its Art. 6 provides for the obligation of the Government to adopt a Decision introducing a restrictive measure, which shall specifically define *i.a.* the type of restrictive measure and the bodies responsible for its implementation, according to their respective legally prescribed competences.

584. The Customs Administration is not mentioned in the LIRM but the authorities invoked Art. 9[83] of the Law on Customs Administration as designating the Custom Administration as the body in charge of the implementation of restrictive measures.

585. However, taking into consideration the provisions of the two legal acts, the evaluation team is of the opinion that the designation of the Customs Administration in SRIII related matters is highly questionable.

586. The evaluators were informed on-site that the Customs Administration establishes relevant risk criteria which are used for the controls made in cooperation with the Border Police. The Module for Risk Profile of the system contains the individuals which are included in the lists of the restrictive measures according to the LIRM.

587. However, taking into consideration the shortcomings identified in respect of SRIII, the mentioned mechanism causes some concerns as to the real-time application of the monitoring and checks that would allow the implementation of criterion IX.11.

c.IX.12

588. The evaluators were not advised of any specific legal provision dealing with the unusual movement of gold, precious metals and stones nor on a methodology describing how to proceed in cases such assets are identified at the border. According to the authorities, the control of such goods is performed according to common customs legislation. Customs controls are targeted based on risk assessment but include a random element as well as.

589. In practice, if unusual cross-border movement of gold, precious stones or metals is identified, the custom officers can cooperate and submit the information to the foreign custom administrations and can carry out investigative and intelligence measures in order to prevent, identify and investigate custom misdemeanours and criminal acts. The information exchange can be done upon a request submitted by a foreign administration or on the basis of data available, risk analysis, additional checks, etc.

590. The Customs administration continuously feeds the CEN database of the World Customs Organisation with statistics of seizure of cash, gold, coins, drugs and other commodities in accordance with the established rules.

c.IX.13

591. The system for reporting cross border transactions is subject to safeguards to ensure proper use of the reported or recorded data. All the customs declarations are recorded in the AFCCR, which is regulated by the "Guidelines on the Modus Operandi of the Application for Foreign Currencies Control Registers".

592. The access to the AFCCR is limited. The Guidelines provide the list of categories of customs officers who have the authority to access it and their disciplinary liability in case of non-observance of the requirements of the Guidelines.

593. The protection of information pertaining to cross-border transactions of objects, cash and

[83] *The Customs Administration shall carry out the activities within its jurisdiction in accordance with this Law, the Customs Law, the Customs Tariff Law, the Law on Excise, the Law on the Tax Procedure, the Law on Customs Measures for Protection of the Intellectual Property Rights and other laws regulating the import, export and transit of goods, as well as the performance of all other activities that are vested within its jurisdiction with other laws.*

securities, including the data on the persons-carriers, is also foreseen in the Law on Personal Data Protection and the Law on Classified Information.

594. The information from these databases usually has the status of classified information and can be managed only by persons holding security certificate. The sharing of this information between the Customs Administration and other bodies is done in strictly prescribed manner in accordance with the protocols.

c.IX.14

595. The Training Department is the body in charge of planning and delivering trainings for the custom officers. Annual plans for areas are developed targeting area where further trainings are necessary and should be organised.

596. There are continuous trainings for the custom officers in all areas of custom operations, including AML/CFT trainings.

597. In 2009, a specialised training was delivered on identification of cash couriers for 28 custom officers. From 1 January 2009 to 31 January 2013 a total of 43 trainings were delivered for 101 customs officers on the fight against organised crime and other types of crime, including money laundering and terrorism financing.

598. The evaluators were not provided with information concerning any training programme deployed by the authorities concerning ML/TF risk identification with a view of STRs submission to the FIO.

c.IX.15

599. N/A

Additional elements

c.IX.16 and c.IX.17

600. There are no Guidelines or any "best practice" document available for the customs officers concerning the matters related to declaration of cash at the frontier, the identification of possible suspicious situations, the manner of detecting possible undeclared or falsely declared cash or the manner of reaction in such circumstances.

601. There were no billboards or signs requiring the cash declaration obligations in Skopje Airport.

602. The Customs Administration uses some risk assessment and checks incoming/outgoing passengers to certain countries, but these seem to be driven more by the import/export related payments and obligation rather than specifically for AML/CFT purposes.

603. Seeking to develop the cooperation and information exchange system the agreements were signed with TAV Macedonia (airports), Macedonian Posts and Macedonian Railways. The information exchange and the cooperation between the Customs authorities and the FIO appear to be good. However, the system of the sharing of information in reality not includes all the data required by the standards as not all the bearer negotiable instruments are subject to disclosure.

604. All the information concerning cash declarations is stored and administrated by the Customs Administration in a computerised database (the AFCCR). The FIO access to this database is done electronically.

Recommendation 30 (Customs authorities)

605. The Customs Administration has a Sector for Control and Investigations with a number of sub-departments:

- Office for analytics and statistics (3 persons employed);
- Intelligence Department (10 persons employed);
- Department for Coordination and Communication (14 persons employed);
- Department for risk management (7 persons employed);
- Department for operative affairs (51 persons employed);

- Investigations Department (16 persons employed);
- Department for Control of Trade Companies (12 persons employed).

606. The custom offices in this Sector are authorised to collect and analyse information, implement additional controls in companies, implement pre-investigative and investigative procedures for perpetrated criminal acts in the mandate of the Customs Administration, and other activities.

607. The Investigations Department is in charge of carrying out investigative procedures in the area of AML/CFT and it is divided in two sub-departments: Sub-department for fight against economic crime and Sub-department against smuggling. At the time of the on-site visit the Investigations Department had 15 inspectors and was managed by a Manager. It carries out its activities independently or in cooperation with the mobile custom teams, customs field officers or other organisational units of the Customs Administration, or with other state bodies.

608. In charge of implementation of the AML/CFT Law are also the Custom Offices in Skopje, Kumanovo, Shtip, Gevgelija and Bitola that control and register the taking in and out of cash or securities across the customs line of the "the former Yugoslav Republic of Macedonia" beyond the legally prescribed threshold.

609. The LCA, Section II, Chapter V (Articles 50-71) prescribes the rights, obligations and responsibilities of the custom officers in their working relations. The Rulebook on Jobs Systematization in the Customs Administration sets the job positions in the Headquarters and other Custom offices, including the total number of officers, the qualifications and skills required for specific posts and the job description of the custom officers.

610. The Collective Agreement on the working relations in the Customs Administration includes a specific Rulebook for appraisal, awarding and management of disciplinary procedures for the customs officers.

611. Since January 2008 a system for evaluation of the custom officers has been introduced and a self-evaluation system was introduced since 2012.

612. A new Code of Behaviour entered into force in August 2010, adopted in accordance with Article 72 of the LCA which was signed by the Director of the Customs Administration and the President of the Independent Trade Union of the Customs Administration. This Code establishes the basic principles of behaviour and work of the custom offices, in order to ensure the legality, professional integrity and efficiency in the implementation of the customs specific duties, with respect of the Constitution, laws, bylaws of the Customs Administration, ratified international treaties and the revised Arusha Declaration for good governance and integrity of the customs.

613. A Sector for Professional Responsibility operates in the Customs Administration. This Sector includes Department for Internal Inspection, Department for Internal Investigations and Department for Integrity. The main tasks of this Sector are to provide control and audit of the work of the custom officers, and to initiate disciplinary procedures for irregularities that have been identified in the work and behaviour of the custom officers.

614. For trainings deployed for the Customs officers the reader is referred to criterion IX.14.

Recommendation 32

615. The Customs Administration introduced a system for records and statistics of the identified criminal acts and misdemeanours. The criminal charge database is maintained and regularly updated by the Sector for Control and Investigations and includes data about all the criminal charges pressed since 1 January 2004. It contains information about the perpetrator, the place and date the act was perpetrated, the type, quantity and value of the goods – subject of the criminal act, duties that have been avoided, the legal grounds, the reference number of criminal charge and other information.

616. In the period 2005-2012, the Customs Administration pressed a total of 882 criminal charges for various criminal acts against 1,130 persons (417 legal entities and 720 individuals). However, no criminal charges were pressed regarding money laundering and other proceeds or financing of terrorism matters.

617. In 2009-2012 the following reports were made for cross-border transfer of cash and securities:

Table 26: Cash declaration at the border

2009		
DECLARED ON ENTRANCE	Amount	currency
841 cases over €10,000		
	35,984,017.50	EUR
	2,901,194.00	USD
	1,303,700.00	CHF
	47,000.00	AUD
	33,700.00	CAD
	60,700.00	DKK
	244,000.00	NOK
	25,000.00	SEK
	146,905.00	MKD
DECLARED ON EXIT		
7 cases of declared foreign currencies, all above €10,000		
	361,000.00	EUR
2010		
DECLARED ON ENTRANCE	Amount	currency
719 cases over €10,000		
	33,970,262.00	EUR
	2,022,612.00	USD
	1,098,790.00	CHF
	30,150.00	AUD
	100,000.00	DKK
	588,000.00	NOK
	17,000.00	FIN
DECLARED ON EXIT		
16 cases of declared foreign currencies, all above €10,000		
	5,900.00	USD
	695,000.00	EUR
2011		
DECLARED ON ENTRANCE	Amount	currency
590 cases over €10,000		
	26,256,526.00	EUR
	1,415,110.00	USD
	1,477,400.00	CHF
	20,000.00	AUD
	16,825.00	GBP

	50,000.00	FRF
	17,200.00	MKD
DECLARED ON EXIT		
1 case of declared foreign currencies, all above €10,000		
	19,300.00	EUR
2012		
DECLARED ON ENTRANCE	Amount	currency
486 cases over €10,000		
	17,529,916.00	EUR
	1,364,350.00	USD
	1,701,840.00	CHF
	10,000.00	AUD
	40,000.00	CAD
	26,300.00	ESP
	26,000.00	GBP
	2,600,000.00	JPY
	161,300.00	NOK
	140,000.00	MKD
DECLARED ON EXIT		
5 cases of declared foreign currencies, all above €10,000		
	50,000.00	CHF
	147,300.00	EUR
	118,650.00	EUR (cheques)

618. The evaluation team was provided with statistics split-up between incoming and outgoing reports, value of the declarations, and assets seized or restrained based on SRIX requirements (false declaration or non-declared cash).

Table 27: Cash restrained at the frontier

Year	Number of detected foreign exchange misdemeanours	Detected undeclared cross-border money	Solved cases (verdicts)	Imposed fines	Confiscated money (with a verdict)
2008	48	€836,404 $187,450 19,300 CHF 32,000 AUD 155,700 MKD	18	€9,000	€225,900 $24,600 1,700 CHF
2009	13	€192,955 204,000 CHF £5,175 155,700 MKD	47	€18,500	€183,905 $ 1,200 81,650 CHF

2010	17	€198,400 $4,500 263,000 CHF	18	€13,500	€222,400 $ 4,500 146,000 CHF
2011	14	€163,900 $25,650 95,200 CHF	13	€7,500	€98,700 43,800 CHF
2012	25	€451,210 $22,200 40,650 CHF €192,821.31 (cheques) 100 DKK 900,000 MKD	16	€13,500	€425,200 $ 15,600 1,600 CHF €192,821.31 (cheques)
Total	117	€1,842,869 $239,800 595,150 CHF 32,000 AUD £5,175 100 DKK €192,821.31 (cheques) 1,055,700 MKD	112	€62,000	€1,156,105 $45,900 USD 274,750 CHF €192,821.31 (cheques)

Effectiveness and efficiency

619. The effectiveness of the cross-border declaration system is demonstrated by the statistics. The interviews with the FIO representatives indicated that the database on the cash declarations at the border is comprehensive and available in a timely manner. The legal shortcomings on the coverage of the bearer instruments identified in the 3rd round report remain valid. In addition, Government Decision 77 makes reference to the obligation to declare the amounts above the threshold expressed in Euro, and no reference is made *to "equivalent in other currencies"*. However, from the statistics provided by the authorities results that declarations were made in practice for sums expressed in other currencies.

620. The AML/CFT Law provides the obligation of the Customs Administration to keep records of the declared sums if the amount of cash or securities exceeds the allowed maximum stipulated by law or another regulation (without any referral to which Law or Regulation). In addition, the Customs Administration shall compulsory report to the FIO in electronic manner or by telecommunication means (telephone, fax), and where this is not possible, by other means in writing, the importing or exporting of cash or securities of the bearer exceeding €10,000 in denar counter value, within three working days from the recording at the latest. The evaluators were persuaded that the declaration system is in place and the database managed by the Customs Administration is available to the FIO.

621. The Customs Administration has the obligation to report to the FIO the importing or exporting of cash or securities of the bearer regardless of the amount, whenever there are grounds to suspect money laundering or financing terrorism, within 24 hours the detection. However, the level of awareness on risk situations or instances that could raise suspicions on money laundering and financing of terrorism leaves room for improvement. There was no guidance available for the Customs officers on the manner of detecting ML/TF suspicions.

622. According to the statistics provided by the authorities, a limited number of STRs were submitted by the Customs Administration to the FIO: 2008 - 8 STRs; 2009 - 3 STRs; 2010 - 2 STRs; in 2011 - 3 STRs; in 2012 - 3 STRs. The level of STRs reported to the FIO appears rather low.

623. The sanctioning regime remains the same as at the time of the third round of evaluations. Administrative sanctions are available for false declaration or non-declaration. Between 2008 and 2012 sanctions were imposed for breaches to the declaration regime.

624. The temporary seizing procedure in the cases of the investigation of misdemeanours, related with transportation of the currency or other bearer negotiable instruments through the state border of "the former Yugoslav Republic of Macedonia" is provided by the LFEO. From the provided legal acts, the period of temporary seizure of the currency or bearer negotiable instruments is not clear. The legal possibility to confiscate the temporary seized currency or bearer negotiable instruments is missing.

625. The authorities participated in one international joint customs operation – ATHENA III which aimed at identifying/targeting illicit cash couriers. The operation was coordinated by the Customs Administration and the FIO and other relevant bodies participated.

2.6.2 Recommendations and comments

626. The authorities are strongly recommended to take legislative measures in order to provide the disclosure/declaration obligations for all bearer negotiable instruments above the threshold, regardless of the currency they are expressed in. Although it appears that cross border declarations were made for sums expressed in other currencies than Euro, the authorities are encouraged to clarify in the Government Decision 77 that the sums above the threshold expressed in other currencies are subject to declaration obligations.

627. Procedures for the Customs Administration regarding the cases of non-disclosure or false declaration of currency and bearer negotiable instruments over the threshold should be adopted.

628. Specific provisions giving the Customs Administration the competence to stop or restrain the currency or bearer negotiable instruments for a reasonable period of time in order to ascertain whether evidence of ML or TF may be found in case of false declaration should be adopted by the "the former Yugoslav Republic of Macedonia" authorities.

629. Guidelines on the procedure or the manner of detecting ML/TF suspicions at the border should be provided to the customs officers to assist them in detecting and reporting STRs to the FIO.

630. The designation of the authority in charge with the application of SRIII requirements at the border should be clearer reflected in the appropriate laws or regulations.

631. Procedures should be available for the customs officers for cases of unusual movement of gold, precious metals and stones describing the steps to be taken if such assets are identified at the border.

632. More training programs targeting ML/TF risks and red flags, with a view to the STRs submission to the FIO are necessary for the Customs officers.

633. A more proactive approach of the Customs authorities on AML/CFT matters is necessary in order to ensure the effective implementation of the requirements of Special Recommendation IX.

2.6.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**PC**	• Bearer negotiable instruments are not covered by the declaration system; • No clear procedures for the Customs Administration regarding cases of non-disclosure or false declaration of currency over the threshold; • The designation of the Customs Administration in SRIII related matters is highly questionable;

		• No specific legal provision dealing with the unusual movement of gold, precious metals and stones nor a methodology describing how to proceed in cases such assets are identified at the border; • No information concerning any training program deployed by the authorities concerning ML/TF risk identification with a view of STRs submission to the FIO; **Effectiveness** • No sign or billboard requiring the declaration of cash or other bearer instruments at the frontier.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

634. Since the 3rd round MER[84], several legislative and regulatory measures have been adopted by the authorities:

- Adoption of a new Law on Money Laundering Prevention and other Criminal Proceeds and Financing Terrorism and subsequent amendments. Although this law was adopted before the adoption of the 3rd MER, it was not taken into account then as it was not be in force and effect within two months after the on-site visit. It entered into force in January 2008.
- Adoption of a new Law on Banks (Official Gazette No. 67/2007, with subsequent updates), which entered into force in June 2007.
- Amendments to the Law on Fast Money Transfer as of May 2007.
- Adoption of a new Law on Investment Funds as of January 2009.
- Adoption of a New Law on the National Bank of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" no. 158/2010 as amended, issued on 09.12.2010)

635. Upon the changes in the AML/CFT Law and related laws, some supervisory authorities revised their regulations and issued new regulations:

- Decision on the manner and the procedure for introduction and implementation of the bank's program for prevention of money laundering and terrorist financing ("Official Gazette of the Republic of Macedonia" no. 103/2010 issued on 07.09.2010)
- Decision on Currency Exchange Operations as of February 2009 and Guidelines for the implementation of the Decision on Currency Exchange Operations adopted by the Governor of the National Bank in March 2009.

Legal status of the NBRM Decision 103

636. Considering that the NBRM Decision 103 is relevant for the analysis carried out in this part of the report, as it complements the provisions of the AML/CFT Law, the evaluators need to make some remarks concerning the legal status of this Decision.

637. The NBRM Decision 103 has as scope *"the manner and the procedure for introduction and implementation of the bank's program for prevention of money laundering and terrorist financing"*, was issued in July 2010 and amended in April 2011. The NBRM Decision is a single piece of legislation, although there is no consolidated version available. The NBRM Decision 103 indicates that it has been issued on the basis of: Art. 64 para (1) item 22 of the Law on the NBRM ("Official Gazette of the Republic of Macedonia" no. 2/2003), which is the ***old NBRM Law,*** no longer in force; and Art. 46 (5) of the AML/CFT Law. The quoted article of the AML/CFT Law only allows the NBRM to prescribe a manner and procedure for adequate establishment and application of the ***programmes*** for prevention of money laundering for the entities they are supervising.

638. Following the adoption of the amendments to the AML/CFT Law, the NBRM adopted the Decision on amending the NBRM Decision 103 ("Official Gazette of the Republic of Macedonia" no. 60/2011 issued on 21 April 2011). This amending Decision was issued on the basis of Art. 47 para (1) item 6 of the ***new NBRM Law*** ("Official Gazette of the Republic of Macedonia" no. 158/2010). According to this Article, the NBRM Council shall adopt bylaws issued by the NBRM. Based on paragraph 2 of Article 68 of the Law on the NBRM, acts that have general application shall be adopted in the form of Decisions. Thus, provided that the NBRM Decision 103 was issued under a valid Law (the ***new NBRM Law***), from the aspect of authorisation, it would have constitute *"Regulation"* as defined by the FATF Glossary.

639. Although issued under a Law which is no longer in force (the ***old NBRM Law***), the authorities argued that the legality of the NBRM Decision 103 is demonstrated by the amendments brought through the Decision issued on 21 April 2011 by virtue of the ***new NBRM Law.*** To this argument the evaluators note that pursuant to Art. 126 (1) of the ***new NBRM Law***, the NBRM should have adopted a new bylaw (i.e. an entirely new NBRM Decision) within 9 months from the date the

[84] adopted on 16 July 2008

new NBRM Law had entered into force (that is, 17 December 2010 + 9 months = 17 September 2011), not a short technical bylaw to amend, in a handful of technical issues, the pre-existent Decision. The NBRM clearly failed to meet this statutory requirement.

640. In addition to the legislative procedures described above, the evaluation team note that the scope of the NBRM Decision 103 is limited to ***the manner and the procedure for introduction and implementation of the bank's program for prevention of money laundering and terrorist financing.*** This scope is confirmed by the referral as legal basis for its issuance to Art. 46 (5) of the AML/CFT Law which (as emphasised above), only allows the supervisory authorities to prescribe a manner and procedure for adequate establishment and application of the ***programmes*** for prevention of money laundering for the entities they are supervising. Thus, even if accepting to the largest extent possible the explanations given by the authorities, in the context of this analysis, the NBRM Decision 103 can be considered as *"Regulation"* only for the purpose of Recommendation 15. For all the rest of the Recommendations it can constitute, at a maximum, a form of guidelines, as by providing instructions on what the internal AML/CFT programs should contain, it indirectly assists the entities under its supervision on issues that are part of the internal programs, such as CDD measures or reporting obligations.

Scope of application

641. According to Art. 5 (1) AML/CFT Law, obliged entities are the financial institutions and subsidiaries, branch offices and business units of foreign financial institutions performing actions in the "the former Yugoslav Republic of Macedonia" in accordance with the regulations.

642. *"Financial institutions"* are defined by Art. 2 (5) AML/CFT Law as follows:

- *Banks according to the Law on Banks;*
- *Exchange offices according to the Law on Foreign Exchange Operations;*
- *Savings houses according to the Law on Banks;*
- *Brokerage houses in accordance to the Law on Securities and Exchange;*
- *service providers for fast money transfer according to the Law on Fast Money Transfer and Post Offices and other legal entities who perform financial transactions, telegraph transfers of money or delivery of valuable shipments;*
- *insurance companies, insurance brokerage companies, companies for representation in insurance, insurance brokers and insurance agents performing actions for life insurance, i.e. performing actions of representation and mediation in the insurance process upon conclusion of life insurance contracts in accordance with the Law on Insurance Supervision;*
- *investment fund management companies according to the Law on Investment Funds;*
- *companies for management of voluntary pension funds according to the Law on Voluntary Fully Funded Pension Insurance*
- *and other legal entities or natural persons who in accordance with Law perform one or more activities related to the approval of credits, issuing electronic money, issuing and administering credit cards, consulting, financial leasing, factoring, forfeiting, provision of financial consulting services and other financial activities.*

643. Therefore, the definition of *"financial institutions"* provided above is in line with the description provided in the Glossary of Definitions used for the FATF Recommendations with one exception. Only one type of fully funded pension insurance is covered by the AML/CFT Law. The voluntary fully funded pension insurance is included in its definition of financial institutions, whereas the mandatory fully funded pension insurance is not covered.

644. Mandatory fully funded pension insurance is provided by the pension funds established and further regulated and supervised according to the provisions of the Law on Mandatory Fully Funded Pension Insurance and covers mandatory pension and disability insurance. Those people who are subject to mandatory pension and disability insurance under the Law on Pension and Disability Insurance must contribute to such pension funds. The authorities of "the former republic of Macedonia", *i.e.* MAPAS, explain the exclusion with the manner of contributing to mandatory pension insurance which is part of the social insurance system.

645. According to Art. 2 (1) of the Law on Banks, a bank is a *"legal entity, licensed by the Governor of the National Bank of the Republic of Macedonia, established in accordance with the provisions of this Law, the principal activity of which is to accept deposits and other repayable sources of funds from the public and to extend credits on its own behalf and for its own account"*.

646. Notwithstanding the narrow definition of Art. 2 no. 1 of the Law on Banks, Art. 7(1) of the Law on Banks lists the activities which may be performed by banks:

1. *accepting deposits and other repayable sources of funds,*
2. *lending in the country, including factoring and financing commercial transactions,*
3. *lending abroad, including factoring and financing commercial transactions,*
4. *issuance and administration of means of payment (payment cards, checks, traveller's checks, bills of exchange),*
5. *issuance of e-money, if regulated by special law,*
6. *financial leasing,*
7. *currency exchange operations,*
8. *domestic and international payment operations, including purchase and sale of foreign currency,*
9. *fast money transfer,*
10. *issuance of payment guarantees, backing guarantees and other forms of collateral,*
11. *lease of safe deposit boxes, depositories and depots,*
12. *trade in instruments on the money market (bill of exchange, checks, deposit certificates),*
13. *trade in foreign assets, including trade in precious metals,*
14. *trade in securities,*
15. *trade in financial derivatives,*
16. *asset and securities portfolio management on order and for the account of clients,*
17. *providing services of a custodian bank,*
18. *purchasing and selling, underwriting and placement of securities issue,*
19. *intermediation in sale of insurance policies,*
20. *intermediation in concluding credit and loan agreements,*
21. *processing and analysing information on the legal entities' creditworthiness,*
22. *economic and financial consulting, and*
23. *other financial services specified by law allowed to be performed exclusively by a bank.*

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

647. Limited information was provided on the ML/FT risks in "the former Yugoslav Republic of Macedonia" since no formal national AML/CFT risk assessment was undertaken since the 3rd round evaluation. Nonetheless, some steps have been taken by the authorities to assess the country risks by taking part in the on-line IMF project *"Preliminary Assessment of risk of money laundering"* in December 2011. The goal of this project was the preliminary identification of ML threats, vulnerabilities and consequences in each of the eight participating countries, in order to estimate the adequacy of national AML policies and resources allocation.

648. The authorities informed the assessment team that such research is planned to start in October 2013.

649. Based on the data and information collected by the FIO and on the analysis of detected cases, links between criminal groups active on the territory of "the former Yugoslav Republic of Macedonia" and criminal groups active in Central and Eastern Europe and Middle East were identified. "The former Yugoslav Republic of Macedonia" is also a transit country for the international channels for trafficking in human beings from high migration-risk countries to the countries of Western Europe.

650. In case of ML, the most often identified typologies relate to: use of fast money transfer services; smurfed transactions to fall under the threshold for identification and reporting obligations; purchasing of movable and immovable property on behalf of other persons; use of forged invoices to transfer money on different accounts without economic purpose and use of legal entities from

off-shore countries.

651. The AML/CFT Law provides for the obligation for all reporting entities to implement CDD measures based on risk assessment. In the absence of a national risk assessment, banks employ internationally standardised indicators together with individual observations related to particularities of the national risks and trends. Other financial institutions and DNFBPs implement the risk based approach to a lesser extent. In order to provide obligated entities with sector specific suspicion indicators characteristic for various industries, a series of by-laws has been issued by the FIO.

652. With respect to terrorism financing, the authorities adopted in September 2011 a National Strategy of the Republic of Macedonia for fight against terrorism which is a general framework for the actions in the fight against terrorism and contains guidelines for improving existing measures and establishing new mechanisms and instruments for preventing and combating terrorism. Coordinator of activities related to the preparation of the Action Plan is the MoI. The Strategy envisages implementation of planned measures and activities for a period of 5 years, from 2011 to 2015.The document briefly introduce only general key-points about detecting and identifying terrorism, measures for prevention of terrorism financing, and expected results.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

653. In the 3rd round evaluation, "the former Yugoslav Republic of Macedonia" received a NC rating for Recommendation 5. The rating was based on the following deficiencies:

- the absence of the prohibition to open anonymous or numbered accounts, as well as accounts in fictitious names;
- the absence of requirement to identify a customer when carrying out occasional transactions that are wire transfers in all the circumstances covered by the Interpretative Note to SR VII;
- the absence of legal obligation which covers customer identification when the financial institution has doubts about the veracity or adequacy of previously obtained identification data and obligation to obtain information on the purpose and nature of the business relationship;
- the absence of requirements to conduct on-going monitoring and enhanced CDD and to conduct CDD on existing customers;
- the absence of requirements to verify, in case of customers that are legal persons or legal arrangements, that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person;
- the absence of legislation which provides for a concept of "beneficial owner" as required by the Methodology and the absence of requirement to take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources;
- Too general and not in line with criterion 5.14 the possibility to establish the client's identity on the day when the transaction was carried out (unless there is a suspicion of money laundering) in case of a suspicion that the transaction is connected with terrorist actions of the client or party involved in a transaction, or that the money or asset subject to transaction are intended for financing terrorism.

Anonymous accounts and accounts in fictitious names (c.5.1)

654. Art. 26 of the AML/CFT Law prohibits banks from opening and maintaining anonymous accounts. As noted in the 3rd MER, no anonymous accounts, numbered accounts or bearer shares existed in "the former Yugoslav Republic of Macedonia".

655. Although there is no requirement prohibiting other non-banking financial institutions from opening and maintaining anonymous accounts, Art. 3 of the Law on Payment Operations (LPO)

indicates that payment operations bearers shall be the NBRM, banks and foreign bank branches, the Treasury at the MoF and the Treasury of the Health Insurance Fund of Macedonia. Art. 6 of above Law stipulates that the banks and foreign bank branches, as payment operations bearers, shall *i.a:* open and keep transaction accounts of the participants in payment operations; make payments from accounts and keep transaction accounts registry within their system. According Art. 2(4) of the LPO *"transaction account"* shall be understood as a unique and unrepeatable numeric data identifying the participant in the payment operations, and serving to make payments. Thus, since only banks and foreign bank branches can open and maintain *"accounts",* a specific prohibition on the anonymous accounts for other (non-banking) financial institutions would be meaningless (since they cannot – by Law – open and maintain *"accounts"*). Having in mind above provisions, the evaluation team concluded that indirectly, the Macedonian legislation prohibits keeping anonymous accounts by non-banking financial institution.

656. During the on-site visit, the evaluation team was informed by the authorities that even though the AML/CFT Law does not make explicit reference to accounts in fictitious names, the established practice for mandatory identification of clients and verification of their identities oblige the banks not to open accounts in fictitious names. Moreover, the banks are constantly in the process of up-dating information on their existing clients to ensure that no accounts in fictitious names are kept. Nonetheless, the evaluation team is still of the opinion that the Macedonian legislation does not contain any specific provisions that prohibit financial institutions from opening and maintaining accounts in fictitious names.

Customer due diligence

When CDD is required (c.5.2)*

657. Art. 8 of the AML/CFT Law provides for a general requirement for financial institutions to apply CDD measures, in the following cases:

- *when establishing a business relationship;*
- *when carrying one or several linked transactions amounting to €15.000 or more in denar counter-value;*
- *when there is a suspicion of money laundering or financing terrorism, regardless of any exception or amount of funds, and*
- *when there is a doubt about the veracity or the adequacy of previously obtained client identification data.*

658. According to Art. 2 (19) of the AML/CFT Law, *"transaction"* shall mean *inbound payments, outgoing payments, money transfers, conclusion of agreements, procurement and sale of goods and services, sale and assignment of founding investments, sale and assignment of stocks and shares, registration of securities and exchange or transfer of securities and exchange or other assets or other activities carried out by the entities in accordance with the legal authorisations, which are used to transfer money or assets in a single transaction or within the scope of a concluded agreement.*

659. Even though the legislation does not specifically refer to occasional transactions, the evaluation team is of the opinion that the general requirement stipulated in Art. 8, in conjunction with the definition of the *"transaction"* cover all transactions, including the occasional ones.

660. In addition to this general requirement, there are supplementary provisions in the AML/CFT Law for specific financial institutions.

Fast Money Transfer providers

661. Art. 21 of the AML/CFT Law obliges entities, which within their vocation or profession perform fast money transfer, in addition to other measures, to determine the identity of a client, a sender *i.e.* beneficial owner, prior to each transaction exceeding the amount of €1,000 or another equivalent currency, in accordance with Art.s 10[85] and 12-d.

[85] Identification and verification of the identity of the client

Foreign Exchange offices

662. According to Article 20 of the AML/CFT Law, the entities which, within the frames of their vocation or profession, perform exchange operations, in addition to the general measures stipulated by the Law, shall be bound to determine the identity of a client in accordance with Art. 10 prior to each transaction exceeding the amount of €500 in denar counter-value.

Brokerage firms and banks licensed to operate with securities

663. According to Art. 23 of AML/CFT Law, the brokerage firms and banks licenced to operate with securities, in addition to other measures prescribed by the Law, shall be bound to identify a client, a principal and a beneficial owner of the trading in securities in the total amount exceeding €15,000 in denar counter-value.

664. As was stated previously, Art. 8 of the AML/CFT Law provides for the general requirement for financial institution to apply CDD measures, however Art. 23 requires brokerage firms and banks licenced to operate with securities to identify their clients when the total amount exceeds €15,000. According to the authorities' explanation, Art. 23 of the AML/CFT Law shall apply in addition to other (more general) requirements and adds the obligation of keeping numbered register of these transactions. However the evaluators are of the opinion that the two requirements might confuse these financial institutions as to what measures should be applied since Art. 8 requires to apply all CDD measures while Art. 23 requires only to identify a client.

Identification measures and verification sources (c.5.3)*

665. Pursuant to Art. 9 (1) (a) of the AML/CFT Law, the CDD measures shall include identification of the client and the verification of his/her identity.

666. As stated in Art. 2 (6) of the AML/CFT Law, *"client"* shall mean any legal entity or natural person who carries out activities related to investments, crediting, exchange, transfer and other types of money transfer or participates in the conclusion of legal matters for acquiring money or property and other forms of disposing of money or property.

667. Taking into account the definition of *"a client"* provided by the AML/CFT Law, it can be concluded that financial institutions are required to identify and verify all customers, whether they are permanent or occasional, and whether natural or legal persons or legal arrangements. However, the requirement stated in Art. 9 does not oblige the financial institutions to verify customer's identity using reliable, independent source documents, data and information.

668. According to Art. 10 of the AML/CFT Law, identification and simultaneously verification are conducted on the basis of the following sources:

- **When the client is a natural person**: shall be identified and his/her identity verified by submitting an original and valid document, personal identification card or passport or a copy of a personal identification card or passport certified by a notary public to determine the name, surname, date and place of birth, place and address of living and residence, the unique registration number or identification number and number of the ID card or passport, the issuing authority and the date of validity of the ID card or passport. If any of the data cannot be determined from the document enumerated above the entity may request another public document or certified statement from the client on the demanded data and its accurateness.
- **When the client is a foreign natural person**: shall be identified and his/her identity confirmed on the basis of the data specified in his her original valid identification document, personal identification card or passport or a copy of the valid identification document certified by a notary public or authorised institution in his domicile country to determine the name, surname, date and place of birth, place and address of living and residence, the unique registration number or identification number and number of the ID card or passport, the issuing authority and the date of validity of the ID card or passport. If any of the data cannot be determined from the document enumerated above the entity may request another public document or certified statement from the client on the demanded data and its accurateness.

- **When the client is a domestic legal person**: shall be identified and its identity verified with the submission of original or certified documents by a public notary for registration at the central register. The following documents should be provided: name, registered office, tax number of a legal entity, a founder/s and a legal representative.
- **When the client is a foreign legal person**: it shall be identified and its identity verified with an original document for registration issued by a competent authority, or a copy certified by a notary public or competent institution of a domicile country. In cases when the legal person is not subject to registration by a competent authority, the determination of identity shall be made by providing an original or a copy certified by a public notary or competent institution of the domicile country of a document on its establishment adopted by the management body or entry of the name, i.e. the title, address or seat and activity.
- On the basis of internal acts, financial institutions may also request other data required for the identification and verification of the identity of a client or a beneficial owner.

669. There is no obligation for a client who is a foreign natural or legal person to submit the documents used in the process of identification or verification accompanied by an official translation in Macedonian language. Both the authorities and the private sector confirmed the evaluator's considerations, by stating that that some languages in the region are similar to the Macedonian language so the documents might be understood by an employee and that in fact a translation is required only if the identification documents are not understandable by the FI representative.

670. In addition to the AML/CFT Law, the NBRM Decision 103 sets out the minimum standards that banks and savings houses should apply in order to establish an adequate internal programme. The Decision does not establish any mandatory CDD related obligations for banks, but only advises what specific issues should be included in the banks' internal programmes.

671. Item 7 of the NBRM Decision 103 provides the requirement for the banks (including branch offices of foreign banks and savings houses), to identify and verify the identity of a client, a principal, or a beneficial owner, at least in a manner and on the basis of documentation and data stipulated in the AML/CFT Law. Also banks are required to ensure that:

- *it possess accurate sources of information, documentation and data;*
- *it possess data on the basis of which it will be able to determine and verify the identity of the beneficial owner of the client, which also includes determining its ownership and management structure;*
- *it possess accurate information on the identity of the principal and the proxy.*

672. Pursuant to item 9 of the NBRM Decision 103, the banks (including branch offices of foreign banks and savings houses), can verify the identity of a client, a principal or a beneficial owner using the following independent sources of data:

- *determining of the permanent address by using other sources of data (telephone bills, electricity, data that are at disposal of the Information Service etc.);*
- *contacting the client and the beneficial owner by telephone, letter, or e-mail;*
- *contacting the embassy (consulate, liaison office) of the country the non-resident comes from;*
- *obtaining the latest financial statement on the operations of the client – legal entity, audited by authorised auditor, if possible;*
- *using the data that of the public registries (Central Register, Central Securities Depositary etc.);*
- *visiting the client and the beneficial owner, if possible;*
- *verifying the client's status (whether bankruptcy or liquidation procedure was initiated);*

673. The objective of these provisions is to provide the banks (including branch offices of foreign banks and savings houses) with other additional sources of information when there is a need for additional verification of the identity, *i.e.* for clients whose identity cannot be surely determined on the basis of the documents listed in the AML/CFT Law (including persons who might

represent higher ML/FT risk).

674. According to item 8 of the NBRM Decision 103, when identifying and verifying the identity of a foreign client, principal or beneficial owner (non-resident) banks shall adequately apply the rules valid for the domestic clients.

675. Additionally, in order to facilitate the identification obligations by the banking sector, the NBRM introduced a standardised form *"application of clients' identification/ revision"* used by banks.

676. Considering that this NBRM Decision 103 does not constitute "Regulation" for R5 purposes[86], the criterion 5.3 is not fully met.

Identification of legal persons or other arrangements (c.5.4)

677. Pursuant to Art. 12 of the AML/CFT Law, if a transaction is carried out on behalf and in the name of a third party, in the cases where the law stipulates such obligation, the financial institutions are obliged to establish and verify the identity of a person performing the transaction (proxy), the holder of rights (principal) and the power of attorney. As was previously stated, the definition of *"transaction"* includes the agreements and this should be understood as establishment of business relationships. In this respect, the requirement of Art. 12 covers the obligation to verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person.

678. With respect to criterion 5.4(b), as previously stated, according to Art. 10 of the AML/CFT Law, the legal persons are required to provide the financial institutions with relevant documents for identification and verification measures. However, the financial institutions are not obliged to verify the legal status of the legal person or legal arrangement, *e.g.* by obtaining proof of incorporation or similar evidence of establishment or existence, and obtain information concerning legal form, directors and provisions regulating the power to bind the legal person or arrangement.

679. The evaluators are concerned by the identification measures envisaged in the AML/CFT Law with respect to prospective (foreign) clients which are legal persons not subject to registration in a registry. In such cases, the obliged entities are required to identify the client on the basis of a document (original or certified copy) adopted by the management body of the legal person. The obliged entity is not required to conduct further measures to confirm that the document is valid. This may result in the opening of a bank account in the name of a legal person, based simply on a declaration given by natural persons who claim to be management members of an entity situated in a third country, which is not subject to registration in that particular jurisdiction.

Identification of beneficial owner (c.5.5, c.5.5.1* & c.5.5.2)*

680. Art. 2 (9) of the AML/CFT Law provides for the definition of the *"beneficial owner"* as follows: a natural person who is the owner or who has direct influence on a client and/or the natural person in whose name and on whose behalf the transaction is being performed.

681. In addition, the beneficial owner of a legal person shall be a natural person who has a direct or indirect share of at least 25% of the total stocks or shares, or rather the voting rights of the legal entity, including possession of bearer shares and/or who otherwise exercises control on the management or gains benefits from the legal entity.

682. It should be noted that the definition of the beneficial owner is broadly in line with international standards, however it does not cover the ***ultimate*** ownership or control of a client and/or a person on whose behalf a transaction is being conducted.

683. According to Art. 11 of the AML/CFT Law, the entities shall verify the identity of the beneficial owner and on the basis of risk analysis, shall verify his/her identity in accordance with Art. 10. When the entity cannot identify the beneficial owner, it shall take a statement from the client, and it shall verify the identity on the basis of data from independent and reliable sources.

[86] The reader is referred to the analysis in the introduction or Section 3 of the MER

Thus, the only requirement in the AML/CFT Law obliging the financial institutions to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source refers to the circumstances when they are not able to identify the beneficial owner.

684. Pursuant to item 7 of the NBRM Decision 103, the banks are required to identify and verify the identity of the beneficial owner, at least in a manner and on the basis of documentation and data stipulated in the AML/CFT Law, and to ensure that it possesses accurate sources of information, documentation and data, on the basis of which it will be able to determine and verify the identity of the beneficial owner of a client.

685. According to Art. 12 (2) of the AML/CFT Law, the financial institutions are required that in case there are doubts whether the client is acting on his/her own behalf or on behalf of a third party, to request information from the client to determine the identity of the holder of the rights (the principal) and the power of attorney *i.e.* the certified contract between the principal and the proxy. However, this requirement is not fully in line with criterion 5.5.1 which requires financial institutions to determine whether the customer is acting on behalf of another natural person in all cases.

686. Art. 9 (1) (b) of the AML/CFT Law provides that the customer due diligence procedure shall include the identification of the principal and verification of his/her identity and identification of the beneficial owner, his/her ownership and management structure and verification of its identity.

687. Additionally, the NBRM Decision 103 makes further clarification for banks to determine and verify the identity of the beneficial owner of the customer and to determine its ownership and management structure (Art. 7 line 2).

688. Following the discussions that the evaluation team had with financial institutions, it was concluded that not all representatives of the financial sector are clear on the distinction between the beneficial owner and proxy and the person who is conducting a transaction. It should also be mentioned that the evaluation team was informed that the NBRM interprets the concept of the beneficial owner in a restrictive manner and in their opinion the definition stipulated in AML/CFT Law does not cover the beneficial owner in case of natural persons.

Information on purpose and nature of business relationship (c.5.6)

689. Art. 9 (1) (c) of the AML/CFT Law requires the financial institutions to obtain information on the purpose and intention of the business relationship.

690. Pursuant to Art. 10 of the NBRM Decision 103, the banks and savings houses should obtain information and data to determine the purpose and intended nature of the business relation established with the client, which can include information on the nature of the business activities of the client, financial standing, sources of financial means and the most important business partners.

Ongoing due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

691. Art. 9 (1) (d) of the AML/CFT Law obliges the financial institutions to perform ongoing monitoring of the business relation.

692. According to Art. 12-b (1) of the AML/CFT Law, the ongoing monitoring includes a detailed monitoring of transactions performed within the framework of the business relationship with the client with a view to confirm that those transactions are carried out according to the purpose and intention of the business relationship, the risk profile of the client, the client's financial situation and, if necessary, client's financial sources.

693. Paragraph 2 of Article 12-b obliges financial institutions to perform regular updating of document and data of the client collected under the CDD process.

694. A specific suggestion is foreseen in Art. 12 of the NBRM Decision 103, which requires banks and savings houses to include in their internal programs ongoing monitoring procedures, in order to confirm that the transactions performed are in line with the purpose of the business relationship and with the financial sources of the client. However, the above item does not establish an explicit

requirement to ensure that transactions are consistent with the risk profile of the customer.

695. Art. 13 of the NBRM Decision 103 provides that the monitoring of the business relation with the client shall denote regular update of the documents and the data the bank has on its disposal for the client. The bank shall determine the manner and the moment of updating of the data within its internal procedures.

696. Additionally, pursuant to Art. 11 of the NBRM Decision 103, the banks and savings houses can determine the sources of funds of the client by obtaining specified data on the basis of which it can get more accurate picture of the business relationship with the client.

Risk – enhanced due diligence for higher risk customers (c.5.8)

697. According to Art. 9 (2) of the AML/CFT Law, the financial institutions may determine the extent of the CDD measures depending on the client's risk assessment, business relationships, products or transactions. The risk assessment documents shall be available to the FIO and the supervisory authorities in order to demonstrate that the undertaken measures are appropriate in view of the determined risks of money laundering and financing terrorism.

698. Art. 9 (3) of the AML/CFT Law obliges the financial institutions to perform the risk analysis on the basis of the internal specific procedures, as well as on the basis of the indicators prepared by the FIO in co-operation with the reporting entities and the supervisory bodies.

699. Art. 14 of the AML/CFT Law provides for the application of enhanced CDD where there is a higher risk of ML or TF established. There is no further explanation as to what *"enhanced CDD measures"* should mean, apart from three specific situations where, regardless of their own risk assessment, the reporting entities are obliged to undertake enhanced CDD measures. These specific situations are as follows:

- Where the client is not physically present for identification purposes;
- Where banks establish correspondent banking relations with another banks for which a simplified due diligence is not permitted pursuant to Article 13 of the AML/CFT Law;
- When entities perform transactions or enter into a business relationship with PEPs;

700. Where the client is not physically present for identification purposes, the reporting entities should take one or several of the following measures:

a) determining the client's identity by obtaining additional documents, data or information;
b) additional measures confirming the supplied documents or requiring for the documents to be verified by another financial institution of the Republic of Macedonia, an EU Member State or a country where the regulations provide for at least identical criteria and standards for prevention of money laundering and financing terrorism as the requirements provided for by this Law;
c) ensuring that the first payment is carried out through an account of the client in a bank in the Republic of Macedonia.

701. The enhanced CDD measures to be applied with respect to PEPs and correspondent banking are dealt with in detail under Recommendations 6 and 7 respectively.

702. The NBRM Decision 103 provides for some additional requirements for the banks and savings houses with respect to enhanced CDD measures. In particular, Art. 14 requires banks to develop an internal risk assessment procedure, which should enable the creation of a risk profile for each client and the monitoring of the respective ML/TF risk. In their internal procedures, the banks shall be required to determine at least the following:

- *the manner of creating the risk profile;*
- *determining of the risk level;*
- *monitoring of the risk level;*
- *transferring of the client from one risk level into another.*

703. The banks internal programs shall provide for enhanced client due diligence measures at least for the following categories of clients:

- *Clients using private banking services;*
- *Correspondent banks;*
- *Clients who are physically absent during the establishing or the conducting of the business relation;*
- *Clients coming from countries that fail to, or insufficiently, apply measures for prevention of money laundering and terrorist financing, at least in a volume defined by the Law - risky countries;*
- *Clients the business relation of which is carried out by using new technologies or developing technologies.*

704. The AML/CFT responsible person should be informed about the establishment of higher risk business relations as soon as possible.

705. The evaluators noted that apart from the specific situations indicated in the AML/CFT Law, where enhanced CDD measures should be applied compulsorily, regardless of the banks' risk assessment, there are no provisions describing what enhanced CDD measures should mean. No guidance was issued by the authorities to assist financial institutions in determining higher-risk customers.

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

706. Pursuant to Art. 13 of the AML/CFT Law, the financial institutions shall not be obliged to meet the CDD requirements referred to in Article 8 paragraph 1 items a), b) and d), and in Articles 9, 10, 11 of the Law, when the client is a bank:

- *in the "the former Yugoslav Republic of Macedonia" which is licensed to establish and operate by the Governor of the National Bank and has established adequate measures for the ML/FT prevention;*
- *from a European Union Member State which is established and operates in accordance with the EU legal regulations;*
- *from third countries where the regulations provide for at least identical requirements for taking measures for prevention of money laundering and financing terrorism as the requirements stipulated by this Law.*

707. Although the AML/CFT Law refers literally to exemptions from the identification of the clients, in fact the identification is implicit as the reporting entity must be sure that the client is falling under the categories mentioned and shall be bound to *provide*[87] suitable documentation based on which it can be confirmed that simplified client due diligence can be applied. These documents shall available for the FIO and the supervisory authorities (Art. 13 (3)).

708. Art. 13 (2) of the AML/CFT Law provides for the obligation of the MoF to issue a list of countries which have taken adequate measures to combat ML/FT. In this respect, on 17 December 2010, the *"Rulebook on determining the list of countries that fulfil the requirements to combat money laundering and financing terrorism"* was amended. During on-site meetings, most of the financial institutions demonstrated a satisfactory level of awareness on the content of this Rulebook.

709. Pursuant to Art. 13 (4) of the AML/CFT Law, the entities shall not be bound to meet the requirements for the CDD measures referred to in Article 8 paragraph (1) items a, b and d, and in Articles 9 and 11 of this Law, in respect of:

- *life insurance policies where the annual premium is no more than EUR 1,000 in denar counter-value or the single premium is no more than EUR 2,500 in denar counter-value;*
- *insurance policies for pension schemes if there is no transfer clause and the policy cannot be used as collateral.*

710. Thus, for the life insurance policies Art. 10 of the AML/CFT Law (identification and

[87] The evaluation team considers that a more appropriate word would be "require", but this is the language of the AML/CFT Law.

verification) apply.

711. It should be noted that although it is not applied in practice, Art. 13 (1) of the AML/CFT Law allows financial institutions in some circumstances not to meet the CDD requirements rather than providing the framework of the simplified CDD measures, which is not in line with the requirements of criterion 5.9.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

712. Art. 13 of the AML/CFT Law allows the financial institutions to apply simplified or reduced CDD measures to non-resident customers which are banks from the European Union which are established and operate in accordance with the EU legal regulations. It also provides for the application of reduced or simplified CDD measures for the banks from third countries where regulations at least have identical requirements to combat ML and FT as the requirements stipulated by the AML/CFT Law.

713. As was previously described in the essential criterion above, the Ministry of Finance is required to establish such list of countries that adequately apply measures to combat ML and TF.

Risk – simplified/ reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

714. Pursuant to Art. 8 of the AML/CFT Law, the financial institutions must perform the CDD obligations when there is a suspicion of ML or FT, regardless of any exception or amounts involved. Further on, Art. 9 define the scope of the CDD measures as: identification of the client and verification of his/her identity; identification of the principal and verification of his/her identity; identification of the beneficial owner; identification of the ownership and management structure and verification of his/her identity; obtaining information on the purpose and intention of the business relationship and conducting ongoing monitoring on the business relationship. Thus, in case of ML/TF suspicions, the simplified CDD measures cannot be applied.

715. There is no explicit requirement in the law directly prohibiting the application of simplified CDD measures when specific higher risk scenarios apply.

716. The authorities invoked Art. 13 of the AML/CFT Law which state that the reduced or simplified CDD measures are applied only to: banks from the EU and third countries, which adequately apply FATF Recommendations and some types of life insurance. In the context of the banks from EU or equivalent third countries, specific higher risk scenarios do not arise.

717. However, there is no requirement to prohibit the application of simplified CDD when there are specific higher risk scenarios in cases of life insurance policies and insurance policies for pension schemes.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

718. Apart for the requirements set in AML/CFT Law, at the time of the on-site visit, the authorities have not issued any guidelines for the application of a risk-based approach.

Timing of verification of identity – general rule (c.5.13)

719. Pursuant to Article 12-a (1) of the AML/CFT Law, the reporting entities are obliged to verify the identity of the client, beneficial owner or the principal, before establishing the business relationships and before conducting transactions with the occasional customers.

720. Additionally, Art. 12-a (2) of the AML/CFT Law allows the financial institutions to verify the identity of the client, beneficial owner or principal during the establishment of a business relationship, so as not to interrupt the normal conduct of the business relations and when there is lesser risk of money laundering and financing terrorism.

721. Following the discussions the evaluation team had with financial institutions during the on-site visit, the representatives of these entities demonstrated a good level of awareness of this requirement.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

722. Article 12-a (2) the AML/CFT Law provides that the financial institutions may verify the identity of the client, the beneficiary or principal *during* the establishment of a business relationship, so as not to interrupt the normal conduct of the business relations and when there is lesser risk of money laundering and financing terrorism.

723. In relation to activities of life insurance, the verification of the identity of the client and the beneficial owner under the policy shall be allowed to occur once the business relationship has been established. In that case, verification of the identity shall take place before or at the time of payment of the policy or before, or at the time when the beneficiary intends to exercise the rights vested under the policy.

724. There is no possibility under the Macedonian Law to compete the verification of the identity of the customer and the beneficial owner following the establishment of the business relationship (as provided by c5.14).

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

725. Pursuant to Art. 15 of the AML/CFT Law, in cases when reporting entities cannot perform the activities from Art. 9 (1) items a), b) and c) of the AML/CFT Law, they are obliged to refuse the execution of transactions or business or other relation or legal matter, or if the transactions are in progress, to postpone them and immediately notify in writing the FIO on the refusal.

726. Together with the notification on the postponement, the financial institutions are required to submit to the FIO data on the type of transaction, business or other relation or legal matter and all other available data and facts for the purpose of identification of the client, *i.e.* the transaction.

727. However, there is no requirement for the financial institutions to terminate the business relationship and to consider making a STR, when the business relationship with the customers has been established, but there are doubts about the veracity or adequacy of the data, or the identity of the existing customers has to be confirmed (under the criteria 5.17), but the financial institutions are unable to comply with the CDD requirements.

728. Based on the information obtained during the on-site visit, the evaluation team came to the conclusion that in practice due of the low level of awareness of the beneficial owner concept, most of the reporting entities do not follow criteria 5.15 and 5.16.

Existing customers – (c.5.17 & 5.18)

729. The general requirement to apply CDD measures to existing customers is stated in Article 56c of the AML/CFT Law requiring that the reporting entities shall confirm the identity of the existing clients based on the risk analysis procedure within 24 months from the day of entering into force of the AML/CFT Law.

730. Following the on-site discussions, the evaluation team concluded that as a result of the established practice for mandatory identification, most of financial institutions follow this requirement.

Effectiveness and efficiency

731. The evaluation team welcomes the efforts made by the authorities in order to bring the legislation more into line with the international standards.

732. The CDD regulation system is generally in place, however, in practice, the level of understanding differs across the financial sector.

733. During the on-site interviews, the non-banking financial institutions, demonstrated a low awareness of AML/CFT risks and threats and expressed uncertainty on the obligation to perform a risk analysis and to applying the CDD measures according to its results.

734. The representatives of the banking sector appear to be aware of the identification obligations and of the obligation to retain the relevant documentation expressed in the AML/CFT Law. These obligations are in some cases further enhanced by group-wide procedures. During the on-site visit,

the representatives of the financial institutions informed the evaluation team that when conducting CDD, they determine whether the client is acting on his/her own account or on behalf of another person.

735. In general, the banks take the required measures to identify the beneficial owner, but it was acknowledged during the on-site interviews that in case of complex legal structures, the attempts to fully identify the beneficial owner may stop at a certain level, without necessarily refusing to open the bank account, terminating the business relationship or refusing to perform the transaction.

736. The evaluators consider that this practice may be a result of low awareness on the significance of beneficial owner's identification in the context of the transparency and correct application of the risk based AML/CFT measures. Moreover, the inspections of the supervisors seem to be carried out on a very basic level on the beneficial owner issues. No sanctions have been applied yet for failure to properly identify the beneficial owner. In the interpretation of the NBRM, the beneficial owner's concept refers only to a legal entity, which can be misleading for supervised financial institutions.

737. The interviewed representatives of the non-banking financial sector, particularly securities, demonstrated a low awareness of the requirements covering the beneficial owner identification and in many cases it seemed that the distinction between the beneficial owner, proxy, or beneficiary of the transaction is unclear.

738. The representatives of financial institutions, met during the on-site visit, confirmed that the cooperation with the FIO is on a satisfactory level, and there are no difficulties in getting responses to specific queries concerning the implementation of the CDD measures. However some of the entities suggested that more sector specific guidelines covering the full scope of the AML/CFT requirements would be useful.

739. With respect to paragraph 2 of Article 10 of the AML/CFT Law, the evaluation team had concerns that there is no obligation for a client who is a foreign natural or legal person to submit the official translation of documents used in the process of identification or verification. The authorities confirmed the evaluator's doubts, but noted that some of the languages are similar to the Macedonian language, so the content of the documents might be understood by the FI's employee, and underlined that only these documents are accepted.

Recommendation 6 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

740. Recommendation 6 was rated NC in the 3rd round MER since there was no comprehensive definition of PEPs and across the whole financial sector was a widespread lack of awareness of this concept.

Risk management systems (c. 6.1)

741. Art. 2 (11) of the AML/CFT Law defines *holders of public functions* as natural persons, who are not citizens of "the former Yugoslav Republic of Macedonia", who are or have been entrusted with public functions in "the former Yugoslav Republic of Macedonia" or another country, such as:

- *presidents of states and governments, ministers and deputies or assistant ministers;*
- *members of parliament;*
- *elected and appointed public prosecutors and judges in courts;*
- *members of state audit institution and members of the board of the central bank,*
- *ambassadors,*
- *high ranking officers in the armed forces (ranks higher than colonel),*
- *other elected and appointed persons pursuant to Law and members of management bodies of state owned enterprises; and*
- *persons with functions in political parties (members of political party bodies).*

742. According to the authorities, the *Law* mentioned in item 7 of Art. 2 (11) of the AML/CFT Law, refers to any Law that regulates the election and assignment of bearers of public function.

743. The term *"holders of public functions"* also extends to:

- *close members of the family with whom the holder of the public function lives in communion at the same address;*
- *persons who are considered to be close associates:*
- *business partners (any natural persons known to have joint ownership of the legal entity, has concluded agreements and has established other close business links with a "holder of a public function");*
- *persons who have incorporated a legal entity on behalf of the holders of public functions.*

744. The reporting entities shall retain the *"holders of the public function"* status of their clients for a period of one year after the termination of the public functions, on the basis of a previously completed risk assessment.

745. The definition of PEP is broadly in line with the FATF standards, although the extension of the term *"holder of public function"* refers only to close members of the family with whom the PEP lives in communion at the same address, whereas the standard refers to family members, regardless of place of residence.

746. According to Art. (14) (4) of the AML/CFT, the financial institutions are required to apply enhanced CDD measures when the customer is a PEP. This requirement does not extend to beneficial owners who are PEPs, as required by criterion 6.1.

747. According to Article 14 (4) (a) of the AML/CFT Law, the financial institutions are required to implement risk-based procedures to determine whether a customer is a *"holder of public function"* and if it is not possible, to obtain the client's statement.

748. According to Art. 26 of the NBRM Decision 103, the banks shall be required to undertake additional measures for the *"holders of public function"* which shall include establishing adequate system for timely identification and the assessment of the risk level attached to every particular client which is a PEP.

Senior management approval (c. 6.2)

749. Pursuant to Art. 14 (4) (b) of the AML/CFT Law, before performing a transaction or entering into a business relationship with a *"holder of public function"*, the financial institutions are required to obtain the approval of the entity's management structures. Similarly, a decision for extending the business relationship with the existing client, who became a *"holder of public function",* should be issued by the same management structures. However, the obligation to obtain the management approval is not fully in line with criterion 6.2, since the requirement does not cover the beneficial owner who is subsequently found to be, or subsequently becomes a PEP.

750. The NBRM Decision 103 provides that the decision on establishing business relations with the client should be adopted by a person with special rights and responsibilities in the bank. In instances when the current client becomes *"holder of a public function",* the bank shall issue a decision on (dis)continuation of the business relation with that client, which shall be adopted by the same person with special rights and responsibilities. Determining of the source of funds of the client, and ongoing monitoring of the business cooperation with these persons is also required.

751. The AML/CFT Law requires the approval of the *entity's management structures* when establishing business relationship with a PEP while the NBRM Decision 103 makes reference to *the person with special rights and responsibilities in the bank.* The authorities clarified that the term "*person with special rights and responsibilities"* is explained in Art. 2 item 26 of Banking Law as a natural person who is a member of the Supervisory Board, member of the Board of Directors, member of the Auditing Committee, member of the Risk Management Committee and other managers as defined by the Statute of the bank. In the case of a foreign bank branch, a *person with special rights and responsibilities* is a natural person managing the branch. Thus, the evaluators consider that for the banks, the approval of the *senior* management for establishing or

continuing a business relationship with a PEP is met.

Requirement to determine source of wealth and funds (c.6.3)

752. According to Art. 14 (4) (c) of the AML/CFT Law, when dealing with clients which are PEPs, the financial institutions shall take adequate measures to determine the source of client's funds. Nonetheless, the requirement does not extend to *"the source of wealth"*. Additionally, it should be mentioned that the obligation does not require establishing the source of wealth and the source of funds of beneficial owners as PEPs. The NBRM Decision 103 contains similar provisions on establishing the source of funds, as quoted above.

On-going monitoring (c.6.4)

753. Art. 14 (4) (d) of the AML/CFT Law obliges the financial institutions to maintain intensive monitoring of the business relationship with a client who is *"a holder of public function"*. The requirement is not fully in line with Criterion 6.4, since it does not capture the situation where the client is not a PEP, but the beneficial owner is.

Additional elements

Domestic PEP-s – Requirements

754. The AML/CFT Law does not extend the requirement to apply enhanced due diligence measures to PEPs who hold prominent public functions domestically.

Ratification of the Merida Convention

755. "The former Yugoslav Republic of Macedonia" signed the UN Convention against Corruption in August 2005 and ratified it in March 2007. The measures are undertaken in all areas that the Convention covers, more precisely in all its Chapters: Preventive measures (Chapter 2), Criminalisation and implementation of the Law (Chapter 3), International collaboration (Chapter 4) and Confiscation of proceeds from crime (Chapter 5).

Effectiveness and efficiency

756. Whereas the banks were aware of the provisions on PEPs, other financial institutions did not demonstrate a satisfactory level of awareness during the on-site visit. Some banks rely on internet checks and some have access to specialised databases such as the Worldcheck or Factiva.

757. Most of the representatives of the non-banking financial institutions demonstrated a low awareness on the concept of PEP and acknowledged that they have no experience in applying CDD measures to this category of clients. Some representatives of the FIs were confusing the concept of PEP with person publicly recognisable on the basis of TV or other mainstream sources of information.

758. The on-site interviews demonstrated that the requirement concerning the senior management approval when establishing or continuing a business relationship with a *"holder of public function"* is observed.

Recommendation 7 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating

759. In the 3rd MER "the former Yugoslav Republic of Macedonia" was rated NC on R.7 as the authorities had not implemented any enforceable AML/CFT measures concerning the establishment of cross-border correspondent banking relationships.

Require to obtain information on respondent institution & Assessment of AML/CFT controls in Respondent institutions (c.7.1 & c.7.2);

760. The provisions relating to cross border correspondent relationships are embedded in the section on enhanced client due diligence of the AML/CFT Law. Art 14 (3) requires enhanced due diligence for the establishment of correspondent banking relations:

"Where banks establish correspondent banking relations with banks for which a simplified

due diligence is not permitted pursuant to Article 13 of this Law, they are bound to:

a) *gather sufficient information about the respondent bank to determine fully the nature of its business and to determine its reputation and the quality of supervision;*
b) *gather information and on the basis thereof assess the system for protection against money laundering and financing terrorism;*
c) *obtain approval from the management board for establishing a new correspondent banking relation;*
d) *precisely prescribe the mutual rights and obligations"*

761. Furthermore, Art. 20 of the NBRM Decision 103 contains a list of data which shall be taken into consideration when undertaking additional measures as prescribed by the law (on the persons who would use the account of the correspondent bank; on the AML/CFT measures and supervision in the country of the correspondent bank; on the system of control and audit of the correspondent bank; on the assessment of the adequacy of the enhanced due diligence and risk assessment etc.).

762. The banks can obtain data under Art. 20 (1) of the NBRM Decision from the correspondent bank (questionnaires, correspondence, etc.), or by using public media (specialised magazines, internet, etc.).

763. However, according to Art. 13 (1) of the AML/CFT Law, simplified due diligence is allowed in several cases, included when the client is a bank from a European Union Member State which is established and operates in accordance with the EU legal regulations, and from third countries where the regulations provide for at least identical requirements for taking measures for prevention of money laundering and financing terrorism as the requirements stipulated by the "the former Yugoslav Republic of Macedonia" Law.

764. This exemption of enhanced due diligence for cross border banking relationships with banks from the EU or other equivalent countries does not only mean a reduced level of diligence, but in practice results in a blanket exemption.

Approval of establishing correspondent relationships (c.7.3)

765. The approval of the management board is required by Art. 14 (3) (c) of the AML/CFT Law when establishing a new correspondent banking relationship.

Documentation of AML/CFT responsibilities for each institution (c.7.4)

766. Mutual rights and obligations must be precisely prescribed according to Art. 14 (3) (d) of the AML/CFT Law.

Payable through Accounts (c.7.5)

767. According to Art. 14(3) (e) of the AML/CFT Law, the banks are required to ensure that the correspondent bank carries out normal CDD procedures and is prepared to provide the data for identification and verification of the identity of the client, and to deliver them to the bank on its request.

Effectiveness and efficiency

768. While banks in "the former Yugoslav Republic of Macedonia" generally seem aware of additional measures required in case of correspondent banking relationship, the blanket exemption for several types of banks raises concerns. It was reported to the assessors that in practice, the banks apply SDD in relation to EU credit institutions, and that EU credit institutions require the application of the same simplified procedures for "the former Yugoslav Republic of Macedonia" banks.

Recommendation 8 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

769. In the 3rd round MER of "the former Yugoslav Republic of Macedonia", Recommendation 8 was rated PC since the legislation was only partially in line with the international requirements

and left lot of discretion for the obliged entities.

Misuse of new technology for ML/FT (c.8.1)

770. According Art.12-c (4) of the AML/CFT Law, the financial institutions are required to pay special attention to ML/TF threats arising from the use of new technologies or developing technologies and to prevent them from being misused for money laundering or financing terrorism.

771. As stated by the authorities, new or developing technologies are not largely used in "the former Yugoslav Republic of Macedonia" and non-face-to-face business relations are not accepted.

Risk of non-face-to-face business relationships (c8.2)

772. The financial institutions are required to apply enhanced CDD measures when the customer is not physically present for the establishment of a business relationship or the carrying out of a transaction. In such cases, according to Article 14 (2) of the AML/CFT Law, the financial institutions shall apply at least one of the following measures:

- *determining the client's identity by additional documents, data or information;*
- *applying additional measures confirming the supplied documents or requiring for the documents to be verified by another financial institution of the Republic of Macedonia, an EU Member State or a country where the regulations provide for at least identical criteria and standards for prevention of money laundering and financing terrorism as the requirements provided for by this Law;*
- *ensuring that the first payment is carried out through an account of the client in a bank in the Republic of Macedonia.*

773. Art. 21 of the NBRM Decision 103 provides that the banks shall be required to include in their internal programs additional measures of enhanced due diligence for the clients not being physically present at the moment of concluding or performing the business relation. Clients *"not being physically present"* shall be considered those clients with whom the bank realises the business relation through internet, mail, telephone or other similar means of communication.

774. The bank shall put in place additional measures when operating with clients not being physically present through: ensuring and verification of additional documentation, organising meetings with the client; using data from other institutions that have adequate information on the client and by using data available through the public media (specialised magazines, internet, etc.).

775. The evaluators noted that financial institutions are not required to have policies and procedures to address the specific risks associated with non-face-to-face business relationships when conducting on-going due diligence.

Effectiveness and efficiency

776. During the on-site visit, the financial institutions explained that according to the AML/CFT Law, enhanced due diligence measures are applied to non-face-to-face relationships, however in practice this type of relationship is rather exceptional. As it was repeatedly stated, cash is still the most popular way of payment in the country.

777. The financial institutions (apart from banks) demonstrated low awareness of threats arising from the misuse of new or developing technologies but few (if any) such business relationships were conducted in practice.

3.2.2 Recommendations and comments

778. "The former Yugoslav Republic of Macedonia" made welcome progress to implement international standards into the national legislation.

779. However, to ensure effective implementation, sector specific guidelines and supporting programmes should be introduced by the authorities.

Recommendation 5

780. The assessment team noted that most of the CDD requirements stipulated by legal framework are in line with the FATF Standards, however there are still some deficiencies concerning the legal provisions.

781. Art. 8 of the AML/CFT Law provides for the general requirement for all financial institution to apply CDD measures, while Art. 23 requires brokerage firms and banks licenced to operate with securities to identify their clients when the total amount exceeds €15,000. The authorities should eliminate any contradictory requirements concerning the CDD measures to be taken in respect of the securities transactions and clients.

782. The authorities should provide for an explicit prohibition for all financial institutions not to open and keep accounts in fictitious names.

783. According to the AML/CFT Law, the financial institutions are required to identify and verify all customers, whether they are permanent or occasional, and whether natural or legal persons or legal arrangements. However, the financial institutions should be required to verify customer's identity using reliable, independent source documents, data and information.

784. Financial institutions should be required to verify the status of the legal person or legal arrangement in all cases, *e.g.* by obtaining proof of incorporation or similar evidence, and obtain information concerning the legal structure and its directors. Official translations of the incorporation documents should be required as compulsory part of the CDD measures.

785. The BO definition should cover the natural person who ***ultimately*** owns or controls a customer or/and the person on whose behalf a transaction is being conducted.

786. According to the AML/CFT Law, the FI shall verify the identity of the beneficial owner and on the basis of risk analysis, shall verify his/her identity. When the entity cannot identify the beneficial owner, it shall take a statement from the client, and it shall verify the identity on the basis of data from independent and reliable sources. Financial institutions should be required to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source in all cases.

787. The financial institutions should be required to determine whether the customer is acting on behalf of another person, irrespective of whether there is a suspicion that the client does not act on his/her own behalf, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person.

788. Apart from the specific situations indicated in the AML/CFT Law, where enhanced CDD measures should be applied compulsorily, regardless of the banks' risk assessment, there are no provisions describing what enhanced CDD measures should mean. Guidance should be issued by the authorities to assist financial institutions in determining higher-risk customers and in the application of enhanced CDD measures.

789. The authorities are recommended to take legislative measures to exclude the possibility of waiving all CDD measures and to provide instructions for applying reduced or simplified CDD measures.

790. A requirement to prohibit the application of simplified CDD when there are specific higher risk scenarios in case of life insurance policies and insurance policies for pension schemes should be introduced.

791. A requirement should be introduced to oblige the financial institutions to terminate the business relationship and to consider making a STR, when the business relationship with the customers has been established, but there are doubts about the veracity or adequacy of the data, or the identity of the existing customers has to be confirmed (under the criteria 5.17), but the financial institutions is unable to comply with criteria 5.3 to 5.5.

792. The authorities should consider issuing specific guidance to assist the financial institutions in implementing the CDD requirements of the AML/CFT Law. Particularly, guidance should be

adopted for the application of the risk-based approach, for the process of understanding the ownership and the control structure of the legal persons and for the concept of beneficial owner, to avoid any confusion with a proxy or representative of a customer.

793. The authorities should consider conducting training and awareness raising seminars for reporting entities on the concept of the beneficial owner.

Recommendation 6

794. It is recommended to extend the definition of PEP to persons who are close members of the family without an additional requirement related to domicile.

795. Financial institutions should be required to apply enhanced CDD measures when the beneficial owner is a PEP.

796. Financial institutions should be required to obtain senior management approval to continue business relationship when the beneficial owner is subsequently found to be, or subsequently becomes a PEP in the course of the relationship.

797. A provision should be introduced in order to require the financial institutions to establish the *source of wealth* of customers who are PEPs, and both the source of funds and the source of wealth for beneficial owners who are PEPs.

798. Financial institutions should be required to conduct enhanced ongoing monitoring when the beneficial owner is a PEP.

799. The authorities are recommended to provide guidance on the risk based identification of PEP and the application of appropriate CDD measures.

Recommendation 7

800. The enhanced CDD measures listed under Art. 14(3) AML Law should apply to all correspondent banking relations, including to banks established in the EU or other equivalent countries.

Recommendation 8

801. Financial institutions should be required to have policies and procedures to address the specific risks associated with non-face-to-face business relationships when conducting on-going due diligence.

802. The authorities should provide guidance to the financial institutions to prevent the misuse of new technologies.

3.2.3 Compliance with Recommendations 5, 6, 7 and 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• No explicit prohibition to open and maintain accounts in fictitious names; • Financial institutions are not required to verify customer's identity from *"reliable, independent source documents, data and information"*; • Definition of beneficial owner does not cover a person who *ultimately* owns or control a client or/and the person on whose behalf a transaction is being conducted; • The requirement to verify the identity of the beneficial owner does not mention *"relevant information or data obtained from a reliable source"*; • Financial institutions are not required to determine whether the customer is acting on behalf of another person in all cases, but only in case of suspicion; • Financial institutions are not bound to meet the CDD requirements when the client is a bank from "the former Yugoslav Republic of

		Macedonia", EU or equivalent countries; • Apart from the specific situations indicated in the AML/CFT Law, where enhanced CDD measures should be applied compulsorily, regardless of the banks' risk assessment, there are no provisions describing what enhanced CDD measures should mean; • No requirement to prohibit the application of simplified CDD when there are specific higher risk scenarios in case of life insurance policies and insurance policies for pension schemes; • No requirement to terminate the business relationship and to consider making a STR, when the business relationship with the customers has been established, but there are doubts about the veracity or adequacy of the data, or the identity of the existing customers has to be confirmed (under the criteria 5.17), but the financial institutions is unable to comply with criteria 5.3 to 5.5; **Effectiveness** • Financial institutions use documents in foreign languages to carry out CDD measures; • Apart from the banking sector, there is low awareness of the concept of the beneficial owner. No clear understanding among some of the non-banking financial institutions on the distinction between the beneficial owner with the customer or proxy; • Some of financial institutions met on-site maintain a business relationship despite the fact that the ultimate beneficial owner is unknown.
R.6	**PC**	• Definition of *"holder of public function"* refers only to close members of the family with whom holder of the public function lives in communion at the same address; • There is no obligation to apply enhanced CDD measures and to conduct enhanced ongoing monitoring when the beneficial owner is a PEP; • No requirement for the non-banking financial institutions to obtain senior management approval to continue business relationship when the beneficial owner is subsequently found to be, or subsequently becomes a PEP; • No requirement to establish the *source of wealth* of customers or beneficial owners who are PEPs; **Effectiveness** • Some non-banking financial institutions demonstrated a low level of awareness of the concept of PEP and experience difficulties in identifying them.
R.7	**LC**	• Undue exemption from additional measures for correspondent relationships with credit institutions established in EU countries or other equivalent countries.
R.8	**LC**	• There is no obligation for the financial institutions to have policies and procedures to address the specific risks associated with non-face-to-face business relationships when conducting on-going due diligence; **Effectiveness** • Financial institutions (apart from banks) demonstrated low awareness of threats arising from misuse of new or developing technologies.

3.3 Third Parties and Introduced Business (R.9)

3.3.1 Description and analysis

Recommendation 9 (rated N/A in the 3rd round report)

Summary of 2008 MER factors underlying the rating

803. R.9 was rated N/A in the 3rd round report. Although the Recommendation was not applicable at that time, it was recommended that the authorities should satisfy themselves by covering all the essential criteria in the AML/CFT Law.

Legal framework

804. At the time of the 4th round on-site visit, according to the explanations provided to the evaluators by the authorities, the AML/CFT Law would clearly define that the obligations for client analysis/identification and other measures are implemented by the obliged entities. The AML/CFT Law does not include provisions that allow the entities to rely on mediators or third parties and/or introducers in the implementation of the measures and activities required by the AML/CFT legislation. The authorities are thus of the opinion that R.9 would not be applicable in "the former Yugoslav Republic of Macedonia".

Requirement to immediately obtain certain CDD elements from third parties; availability of identification data from third parties (c.9.1 & 9.2); Regulation and supervision of third party & adequacy of application of FATF Recommendations (c.9.3 & 9.4); Ultimate responsibility (c.9.5)

805. Neither the requirement to directly apply the identification procedures, nor the prohibition of reliance on third parties is stated in the law.

Effectiveness and efficiency

806. According to the information provided by the ISA, there are 23 insurance brokerage companies and 9 insurance agencies. The insurance agent is a natural person holding the relevant licence from the ISA and he/she may carry out activities for preparing and concluding insurance contracts on behalf of and for the account of one or several insurance companies (Art. 134 (1) and (2) of the Law on Insurance Supervision Insurance, brokerage activities are among others, intermediation on the process of agreeing insurance, and they require a licence by the ISA (Art. 135 (1) and Art. 137(1) LIS).

807. All the above mentioned participants in the financial market are entities within the scope of the AML/CFT Law (Art. 5 (1) in conjunction with Art. 2 (5) of the AML/CFT Law). Still, from the information provided, all such participants are at the same time employees of a licensed institution and thus, are not to be considered *"third parties"*.

3.3.2 Recommendations and comments

808. "The former Yugoslav Republic of Macedonia" authorities should adopt general legal or regulatory provisions applicable to third parties and intermediaries that cover the requirements of R.9 on intermediaries and introduced business or alternatively, *expressis verbis* prohibit the use of 3rd parties.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N/A**	

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

Recommendation 4 (rated LC in the 3rd round report)

Summary of 2008 factors underlying the rating

809. "The former Yugoslav Republic of Macedonia" was rated LC for R.4 in the 3rd round MER

based on the deficiency that financial institutions were not specifically authorised to share information for the implementation of R.7 and SR.VII.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

810. The current AML/CFT Law, similarly to the legislation that was in force at the time of the previous evaluation contains clear and simple rules on this subject. Art.28 stipulates that *the data provided on the basis of this Law shall be confidential and may be used only for the detection and prevention of money laundering and financing terrorism. The submission of the data referred to in paragraph (1) of this Article to the Office*[88] *the supervisory authorities and the law enforcement authorities shall not be considered as disclosing a business secret.*

811. This rule is then reiterated by Art.43 which provides that *"the reference to a business secret shall not be accepted as grounds for refusal to submit information according to this Law"*. These provisions are formulated almost identically to Art.21 paragraphs (1) and (2) and Art.36 of the AML/CFT Law being in force at the time of the 3rd round evaluation, with the sole difference that wherever the former legislation referred to *"professional and business secret" ("службена и деловна тајна"*) the new AML/CFT Law only mentions *"business secret"* (*"деловна тајна"*).

812. As it was explained by the competent authorities, the term *"professional secret"* has since generally been abandoned in the legal terminology of "the former Yugoslav Republic of Macedonia" and therefore the current legislation only refers, in a general sense, to *"business secret"* which term, however, has no generally applicable definition and therefore its actual content has to be identified by use of the respective underlying legislation.

813. Notwithstanding that, the provisions quoted above are worded in fairly broad terms so as to cover all information within the scope of R.4 and all reporting entities. The evaluation team was not informed about any practical impediments to obtaining information from financial institutions nor from other obliged entities.

814. At the time of the 3rd round evaluation, it was Art. 84 of the former Banking Law that defined what the banks had to consider a *"business secret"* namely "*data on the savings deposits and all deposits of natural and legal persons, as well as data on the operations of natural persons through their giro and current accounts and the operations of legal persons through their giro accounts*". This kind of banking information is likewise protected by Art.111 of the current Banking Law ("Official Gazette of the Republic of Macedonia" No. 67/2007), nonetheless it is no longer labelled as *"business secret",* but as *"banking secret"* ("*банкарска тајна*"): *any documents, data and information acquired through banking and other financial activities on individual entities, and transactions with individual entities and on deposits of individual entities shall be considered banking secret the bank is required to protect and keep.*

815. The latter definition is even more comprehensive and flexible than the previous one, for which reason the examiners would have no objection against its scope and wording had the term *"business secret"* been retained by the legislators. Nonetheless, as quoted above, this kind of secrecy currently constitutes *"banking secrecy"* which term is not in line with the language applied in the AML/CFT Law. In this respect, the authorities confirmed that the term *"business secret"* (in the old Banking Law) referred to the same category which has since been renamed and is now addressed as *"banking secret"* (in the new Banking Law), although no explanation was given for this modification and why the language of the new Banking Law was not harmonised with the one of the AML/CFT Law.

816. As it was explained by the competent authorities, a *"banking secret"* is actually considered, according to the common understanding of this term, a business secret within the scope of the business activities of the banking sector *i.e.* a specific sort of business secret and therefore the secrecy governed by Art.111 of the new Banking Law is actually addressed by Art.28 and Art.43 of the AML/CFT Law. Considering all circumstances, this practical explanation can be accepted by the evaluation team, nevertheless they are of the opinion that such discrepancies in the legal

[88] "Office" means the FIU in this context.

terminology should rather be avoided.

817. Art. 112(1) of the Banking Law (in accordance with Art.83 of the old Banking Law) stipulates that *"persons with special rights and responsibilities, shareholders and bank employees, who have an access to the documents, data and information from Article 111 of this Law, as well as other persons who, by rendering services to the bank, have an access to the documents, data and information referred to in Article 111 of this Law, shall keep them, and may use them only for the purposes they were obtained for, and shall not disclose them to third parties".*

818. This requirement does not apply, however, under certain circumstances provided by Art. 112(2), according to which the banking secret may generally be disclosed in the following cases:

- if the data and information disclosure is prescribed by a law; or
- if the person gave a written consent to the disclosure of the data.

819. For persons with special rights and responsibilities, as well as for bank employees, Art. 112(3) provides further cases, in which the disclosure must be made:

- on written request of a competent court for conducting procedures within its competence;
- for the needs of the National Bank or another supervisory body authorised by law;
- on written request of the Public Revenue Office for conducting procedures (as above)
- if the data are disclosed to the FIO in accordance with the law;
- if the data are disclosed to the Financial Police Office in accordance with the Law;
- on written request of the State Foreign Exchange Inspectorate for foreign exchange operations control;
- on written request of the Deposit Insurance Fund; in accordance with the law;
- if the data are disclosed for the needs of operating the National Bank Credit Registry and to the credit bureau; in accordance with the law; and
- on written request of the enforcement agents in accordance with the law.

820. The second set of preconditions in paragraph (3) *i.e.* those applicable to the bank employees and persons with special rights and responsibilities appears, at certain points, redundant as compared to the general cases in paragraph (2). Nonetheless, this is not likely to impede the effective implementation of the law and the examiners appreciate the lawmakers' intention to underline the importance of disclosing data and information in all of the aforementioned circumstances.

821. Pursuant to Article 74 of the NBRM Law, the National Bank council members and staff are prohibited from permitting access to, disclose or publicise classified information (presumably including business secrecy or confidential data) which is only possible upon the consent of the person affected or if it is required in the interest of the NBRM in legal proceedings. Otherwise, this is only allowed in the following cases:

- for the fulfilment of a duty to disclose as imposed by law, or on the order of a court;
- given to the external auditors of the National Bank; and
- given to regulatory and supervisory authorities in the performance of their official duties.

822. The confidentiality requirements that apply to the insurance companies pursuant to Art.108 of the Law on Insurance Supervision were already discussed in the 3rd round MER[89] together with the cases where disclosure of data is allowed. In this respect, Art. 108(2) provides that the obligation for keeping confidential data shall not apply, among others,

- if the data are necessary for determination of facts in criminal procedures or other court procedure and if they have received written request from the competent court to submit data; or
- in cases anticipated by the AML/CFT Law (which necessarily includes any disclosure towards the FIO).

823. The Law on Securities contains similar though more general provisions on business secrecy

[89] See paragraph 465 of the 3rd round MER (page 114).

(data, document or information the authorised participants of the securities market obtain during their operations) including exemptions that allow competent authorities to access the relevant information to perform their duties. In this respect, the law simply prescribes an obligation that data and information that contain business secrecy be disclosed at the request of a competent authority authorised by the law. Such obligation equally applies to the depositary (Art.48-a) the Stock Exchange (Art.87-a) and to the brokerage houses (Art.125-a).

Sharing of information between competent authorities, either domestically or internationally; Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

824. There is no clear power for financial institutions to share information where this is required by Recommendation 7. As for the exchange of information between competent authorities regardless of the secrecy laws, the examiners were advised of the following regulations in force:

- the Securities and Exchange Commission is empowered to cooperate, on the basis of an MoU, with other institutions in and outside the country pursuant to Art. 225 and 226 of the Law on Securities, including the sharing of information which is unconditional in domestic relations but for foreign counterparts it requires reciprocity;
- the MAPAS can share confidential information with domestic or international bodies or organisations with similar functions pursuant to Art. 55 of the Law on Mandatory Fully Funded Pension Insurance; and
- the Insurance Supervision Agency has a similar authorisation pursuant to Art.232 of the Law on Insurance Supervision.

Effectiveness and efficiency

825. During on-site visit the evaluation team was told that the FIO and LEAs had not experienced any problems in obtaining information.

3.4.2 Recommendations and comments

826. The provisions of the AML/CFT Law as well as those in the Banking Law or other relevant pieces of legislation are generally satisfactory and the evaluators were not advised of any particular problems occurring in practice.

827. Nonetheless, the examiners reiterate the recommendation made by the previous evaluation team according to which the possibility to share information between financial institutions in relation to correspondent banking should be stipulated by a positive law.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• Financial institutions are not specifically authorised to share information for the implementation of Recommendation 7.

3.5 Record Keeping and Wire Transfer Rules (R.10 and SR. VII)

3.5.1 Description and analysis

Recommendation 10 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

828. Recommendation 10 was rated PC in the 3rd round MER based on the following deficiencies:

- lack of harmonisation of the AML/CFT Law with some sectoral laws in relation to record keeping which could lead to difficulties in implementation;
- lack of requirement for financial institution to keep all necessary records on transactions for longer than five years if requested to do so in specific cases by a competent authority upon proper authority; and
- lack of requirement for financial institution to keep identification data for longer than five years where requested by a competent authority in specific cases on proper authority. There

were also no clear obligations specified to keep records of the account files and business correspondence.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

829. Art. 27 (1) of the AML/CFT Law prescribes that the reporting entities are obliged to keep copies of documents that confirm: the identity of the client or the beneficial owner, the client's and beneficial owner's analysis procedure, the performed transactions or the transactions being performed, the client's file and the business correspondence, for at least ten years after the performed transaction starting from the moment of last transaction performed. In case of the dissolution of the financial institution, the record keeping obligation shall be transferred to a legal successor or its founders.

830. The requirement is broadly in line with Criterion 10.1, however there is no requirement to keep records longer if requested by a competent authority in specific cases and upon proper authority.

831. Although, there is no specific requirement in the Law which states that the transaction records should be sufficient to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity, the evaluation team is of the opinion that the information required to be kept under Art.s 27 and 10 of the AML/CFT Law is sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

Record keeping of identification data, files and correspondence (c.10.2)

832. Paragraph 4 of Art. 27 of the AML/CFT Law stipulates that the information on the client who has entered into a long-term business relationship shall be kept for at least ten years from the date of the termination of the business relation. According to the authorities, *"information on the client"*, mentioned in this paragraph, refers to information indicated in para 1 of this article, *i.e.* the identity of the client or the beneficial owner, the procedures employed for the analysis of the client or the beneficial owner, the transactions performed from the client file and the business correspondence.

833. Nonetheless, there is no requirement to keep records longer if requested by a competent authority in specific cases and upon proper authority.

Availability of Records to competent authorities in a timely manner (c.10.3)

834. Pursuant to Art. 27 (9) of the AML/CFT Law, the entities are obliged to make available the documents defined in the paragraph 1 of the same article upon the request of the FIO or the supervision bodies (as defined in Art.s 46 and 47 of the AML/CFT Law). According to Art. 34 of the AML/CFT Law, the reporting entities are obliged to respond to the FIO request within 10 days from the receipt of the request. There is no reference to timeliness in responding to supervisory authorities' requests.

835. The provision of Art. 27 (9) does not include the law enforcement authorities as provided by the definition of *"competent authorities"* of the FATF Glossary. Thus, the criterion 10.3 is not fully met.

Effectiveness and efficiency

836. During the on-site interviews all the financial institutions demonstrated a satisfactory level of awareness and understanding of their record keeping obligations.

837. Some FI indicated during the on-site visit that some parts of the record keeping obligations stated in the AML/CFT Law contradict the provisions of the Law on personal data protection, which might pose difficulties in keeping a copy of the client's ID card in an electronic format.

Special Recommendation VII (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

838. "The former Yugoslav Republic of Macedonia" was rated NC in respect of SR.VII, since the requirements on the wire-transfers were not directly covered by the Law or regulation. The 3rd

round MER identified the following deficiencies:

- Criterion VII.1 was covered only for transactions exceeding €2,500 in MKD equivalent. Moreover, there are two pieces of legislation regulating the same issue in different ways;
- Financial institutions were only required to include full originator information in the message or payment form accompanying cross- border wire transfers above €2,500 or more (which is higher than the threshold of 1,000 EUR/USD as provided for by criterion VII.2). There was no legal requirement on financial institutions that the originator information in the message or payment form accompanying domestic wire transfers is meaningful and accurate;
- There were no requirements for each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information that accompanies the wire transfer is transmitted with the transfer; and
- Referring to effectiveness the sanctions regime concerning SR VII had several deficiencies and has never been applied in practice.

Obtain Originator Information for Wire Transfers (c.VII.1)

839. Pursuant to Art. 21 of the AML/CFT Law, the entities performing fast money transfers, shall be obliged to determine the identity of the client, the sender (*i.e.* beneficial owner) prior to each transaction exceeding the amount of €1,000 or another equivalent currency in accordance with Art.s 10 and 12-d of the AML/CFT Law. As was previously stated (under R.5) *"the identity of a client"* includes the identification and verification process.

840. Considering the above mentioned information it can be concluded that Criterion VII.1 is met.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2)

841. According to Article 12-d of the AML/CFT Law, for the cross-border wire transfers of an amount exceeding €1,000, the financial institutions are required to include full originator information. The following information on the originator should be included: name and surname, address and account number, if the data on the address is missing or cannot be determined, financial institutions may substitute it with a personal identification number of a client, date and place of birth.

842. With respect to the batch files, the AML/CFT Law does not make any derogation, therefore the evaluation team came to the conclusion that in all circumstances, the financial institutions are required to fulfil obligation under Article 12-d of the AML/CFT Law.

843. Additionally, if a financial institution is acting as a mediator in the cashless transfer, pursuant to Article 12-d (2) of the AML/CFT Law, such institutions are bound to forward full originator information to the institution which will reform the transfer.

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3)

844. Art. 12-d (2) of the AML/CFT Law obliges the financial institutions to include data (name and surname, address and account number) in the domestic wire transfer. If due to technical reasons, the obtained data cannot be forwarded, only an account number or a unique identification number shall be sent.

845. Pursuant to Art. 12-d (3) of the AML/CFT Law, the ordering financial institution is required to make available full originator's information within three working days upon the request of the beneficiary financial institution or the competent authority.

Maintenance of Originator Information (c.VII.4)

846. Art. 12-d (5) of the AML/CFT Law provides that before carrying out a payment, the financial institutions are obliged to determine an internal procedure to establish whether a part of originator's data is missing, and how to act in such cases. The financial institutions are required to demand the missing data or to refuse the transfer. Moreover, they can limit or stop the business relations with those financial institutions which cannot provide the relevant data. By reading this paragraph it could be understood that the requirement does not distinguish whether it should be the ordering financial institution or the beneficiary financial institution, in this respect the

evaluation team is of the opinion that this requirement applies to all financial institutions including the intermediary and beneficiary financial institutions and is in line with Criterion VII.4.

847. Where technical limitations prevent the full originator information to accompany a cross-border wire transfer, there is no direct requirement to keep available information for 5 years. As was mentioned under R.10, according to the general requirements, the financial institutions are obliged to keep record of transactions for 10 years. The definition of *"transaction"* includes wire transfers therefore, the obligation foreseen in Article 10 of the AML/CFT Law covers the requirement under Criterion VII.4.1.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

848. The AML/CFT Law does not directly provide for an obligation for the beneficiary financial institutions to adopt specific effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. Nonetheless, as was stated under Criterion VII.4, the financial institutions are required to determine an internal procedure to establish whether a part of originator's data is missing, and how to act in such cases. However, no further guidance has been provided by the authorities to the financial sector.

849. The authorities stated that the obligation to identify incomplete originator information is covered by Art. 16 (1) of the AML/CFT Law, according to which where there are grounds to suspect that the transaction, the client or the beneficial owner are related to ML, the entity should request information on the course of the transaction, its purpose, the final destination of the money, and information on all participants in the transaction. However, Article 16 is applicable only in case of suspicion while criterion VII.5 requires introducing relevant procedures without additional reservations.

850. According to Article 12-d (6) of the AML/CFT Law, the financial institutions (from paragraph 5 of Article 12-d) can limit or stop the business relation with those financial institutions which cannot provide the identification data. The reading paragraphs 5 and 6 of Art. 12-d of the AML/CFT Law, leads to the conclusion that the reference in these paragraphs is made to all financial institutions, including the ordering and the beneficiary.

Monitoring of Implementation (c. VII.6) and Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

851. According to Art. 46 of the AML/CFT Law, the NBRM is the designated authority to perform supervision of the application of measures and actions laid down in the AML/CFT Law by banks, savings houses, providers of fast money transfer and exchange offices. Pursuant to Article 48 of the AML/CFT Law the FIO is the designated authority to impose sanctions on the financial institutions which provide wire transfers.

852. Relevant sanctions for non-compliance with the provisions of Article 12-d of the AML/CFT Law are stipulated in Articles 50 and 50-a of the same Law. The highest financial sanction that can be imposed on a legal entity is of €40,000 and for a natural person of €5,000. The general AML/CFT sanctioning regime which applies to the wire transfers is described under Recommendation 17 (see section 3.10).

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

853. The requirement for financial institutions to provide data on a client in case of an out-going wire transfer either through the international or domestic payment system covers only transfers exceeding €1,000 in denar counter value.

Effectiveness and efficiency

854. During the on-site visit, the representatives of banks informed the evaluation team that special software has been implemented in order to monitor the activity of the money transfer services. No serious problems regarding the information on the payer in the case of cross-border wire transfers were identified. In addition, there were no serious irregularities detected by the NBRM in the course of their compliance on-site visits.

855. The Postal Office representatives demonstrated some deficiencies in fully implementing the SRVII obligations, which may arise from a low awareness by its designated supervisory body (the Postal Agency) of the AML/CFT issues. The evaluators were informed that the Postal Agency became competent to supervise the application of the measures and actions regarding AML and CFT within the Post and legal entities performing telegraphic transmission or delivery of packages of value with the amendments of the AML/CFT Law in 2010. The first supervision was conducted the first supervisions in 2012 in cooperation with the FIO.

3.5.2 Recommendations and comments

Recommendation 10

856. The financial institutions should be required to keep records on transactions and on identification data longer if requested by a competent authority in specific cases.

857. The financial institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to the competent authority upon request.

858. The law enforcement authorities should be included in the scope of the *"competent authorities"* for R10 purposes.

859. The authorities should make steps to remove any inconsistency or contradiction between the Law on personal data protection and Article 27 of the AML/CFT Law.

Special Recommendation VII

860. The authorities should consider issuing guidelines for the beneficiary financial institutions in order to implement effectively risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

861. Improving monitoring and supervision of the Post Office will improve effective implementation of SR.VII requirements.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• No requirement to maintain records on transactions, identification data, account files and business correspondence longer if requested by a competent authority in specific cases; • No requirement to provide the information on a timely basis to supervisory authorities; • Financial institutions are not required to ensure that all customer and transaction records and information are available upon law enforcement authorities' request.
SR.VII	**LC**	**Effectiveness** • The Postal Office did not display sufficient awareness of their obligations; • The effectiveness of the risk-based procedures for identifying and handling wire transfers not demonstrated.

Unusual and Suspicious transactions

3.6 Monitoring of Transactions and Relationship Reporting (R. 11 and R. 21)

3.6.1 Description and analysis

Recommendation 11 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

862. In the 3rd round MER of "the former Yugoslav Republic of Macedonia", Recommendation 11 was rated 'Non-compliant', since the requirements were not implemented.

Special attention to complex, unusual large transactions (c. 11.1)

863. According to Art. 12-c (1) of the AML/CFT Law, financial institutions are obliged to pay special attention to all complex, unusually large transactions or transactions performed in an unusual way, which have no obvious economic justifiability or evident legal purpose.

Examination of complex and unusual transactions (c. 11.2)

864. Art. 12-c (5) of the AML/CFT Law requires the financial institutions to perform due diligence of the entity carrying out unusually large transactions or transactions performed in an unusual way, which have no obvious economic justifiability or evident legal purpose. The purpose of those transactions shall be part of the analysis included in a written report.

865. There is no further guidance as what the "analysis" of such transactions should comprise. There is no specific requirement to examine as far as possible the background and the purpose of such transactions.

Record-keeping of finding of examination (c. 11.3)

866. Pursuant to Article 27 (2) of the AML/CT Law, financial institutions are obliged to keep copies of the performed analysis under Article 12-c for 10 years from the last transaction.

867. Financial institutions are expressly required to make available the copies of the performed analysis to competent authorities and auditors. However, the authorities explained that in such cases the provisions of Art. 34 of the AML/CFT Law shall apply and the financial institutions shall be under the obligation to provide any information required by the FIO[90].

Recommendation 21 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating

868. In the 3rd MER R.21 was rated NC as no specific measures were taken and no legislation was in place.

Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1), Examination of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c 21.2)

869. According to Art. 12 (c) (2) of the AML/CFT Law, the entities are obliged to give special attention to the business relations and transactions with natural persons or legal entities from countries that have not implemented or have insufficiently implemented measures for the prevention of money laundering and financing terrorism. The MoF, upon the proposal of the FIO, shall determine the list of countries with weaknesses in the AML/CFT system.

870. In compliance with this provision, the MoF published the "Rulebook on determining the list of countries that have not implemented or insufficiently implemented the measures for preventing money laundering and financing terrorism", which dates from 17 December 2010. No information on updates was subsequently provided by the authorities.

871. According to Art. 12 (c) (1) and (5) of the AML/CFT Law, the entities are obliged to give special attention to transactions performed in an unusual way, which have no obvious economic justifiability or evident legal purpose. In those cases, the entities shall perform due diligence on the entity and gather information on the purpose of the transaction and shall prepare a written report on the performed analysis. Following the FIO's instruction these reports shall be submitted to the FIO.

872. Besides the provisions of the AML/CFT Law, Art. 23 of the NBRM Decision 103 stipulates that the bank is required to pay special attention to the business relations and transactions with clients coming from countries that are on the list published by the MoF. If the business relation or transaction has no obvious economic or other evident legal purpose, the bank is required to determine the purpose and the intention of the business relation. According to the Art. 24 of the

[90] Detailed analysis under R 26.3.

NBRM Decision 103, the banks' employees who directly operate with the clients from countries listed by the MoF are obliged to inform the responsible person on each transaction of those clients. If the transaction has no obvious economic of legal purpose, the responsible person prepares a written report, on the basis of the information obtained from the respective organisational units and other bank employees.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c 21.3)

873. There are no provisions which would empower "the former Yugoslav Republic of Macedonia" to apply counter measures in respect of those counties that do not apply or insufficiently apply the FATF Recommendations.

874. The authorities pointed to various provisions which are related to performance of CDD, and to licensing requirements for banks in the Law on Banks.

Effectiveness and efficiency

875. While it appears that a general awareness in relation to the large and complex transactions and with countries not sufficiently applying FATF Recommendations is in place, this is mainly understood in the context of CDD. Beyond that, the counter-measures are limited to ECDD and the information provided by the authorities is not regularly up-dated. It was noted that once a country identified as high risk for various reasons or as default, it remains in the high-risk category, which results in a very broad lists of countries. This negatively influences the effectiveness of the authorities' measures to advise financial institutions on the current weaknesses in the AML/CFT system of other countries.

876. The financial sector seemed aware of their obligations resulted from the AML/CFT Law in respect of the complex, unusually large transactions with no apparent economic or legal purpose. However, when asked about the content of the analysis carried out in respect of these transactions, the representatives of the private sector were hesitant.

3.6.2 Recommendations and comments

Recommendation 11

877. Since the adoption of the 3rd round report "the former Yugoslav Republic of Macedonia" has significantly improved its legislation with respect to Recommendation 11.

878. The financial sector seemed aware of the risks attached to the unusually large transactions or transactions without any apparent economic purpose.

879. However, little instruction was provided by the authorities in explaining what the *"analysis"* required to be carried out in these cases should include. The authorities are recommended to issue guidelines to assist the private sector in the examination - as far as possible – of the background and the purpose of such transactions.

Recommendation 21

880. "The former Yugoslav Republic of Macedonia" authorities should establish mechanisms to apply counter-measures in respect of those countries that insufficiently apply the FATF Recommendations.

881. The list of countries with weaknesses in the AML/CFT system should be updated in regular intervals corresponding to the frequency of Public Statements issued by the relevant regional or international bodies.

882. With a focus on the requirement to prepare and submit reports in many occasions (report on the purpose and the intention of the business relationship, see c.21.2) it is recommended to analyse and assess the usefulness of these reports' submission to the FIO.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**LC**	**Effectiveness** • Insufficient instruction provided in respect of the *analysis* required to be carried out negatively impact effective application of the requirements of the Recommendation.
R.21	**PC**	• There is no legal basis for "the former Yugoslav Republic of Macedonia" to apply countermeasures; **Effectiveness** • No appropriate updates by the MoF to the list of countries with weaknesses in the AML/CFT system.

3.7 Suspicious Transaction Reports and Other Reporting (R. 13, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13 (rated PC in the 3rd round report) & Special Recommendation IV (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

883. Recommendation 13 was rated PC in the 3rd round MER due to the following shortcomings:

- The AML Law does not explicitly cover the reporting of attempted transactions.
- Apart from banks no other financial institution submitted any STR.

Requirement to Make STRs on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

884. STR reporting obligations are prescribed in the AML/CFT Law (Art.s 16, 17 and 29), in the bylaws deriving from it issued by the FIO and in the NBRM Decision 103 (on the manner and the procedure for introducing and implementation of the bank's program for prevention of ML and TF).

885. According to Art. 16, where the entity has discovered the grounds for suspicion referred to the transaction, the client or the beneficial owner, related to money laundering, before carrying out the transaction shall immediately inform the FIO thereof and postpone the transaction for 2 hours. Where the entity has discovered the grounds for suspicion in the course of carrying-out the transaction, shall immediately inform the FIO and postpone the transaction for 4 hours. Where the entity has discovered the grounds for suspicion after carrying-out the transaction shall inform the FIO within 24 hours. If the FIO does not inform the entity of the further activities within the time limits set out in paragraphs (2) and (3) of the Article, the entity shall carry out the transaction. Within the time limits referred, the entity shall submit a written report to the FIO containing all relevant information in relation to the transaction and the identity of the clients and the other participants in the transaction.

886. Art. 17 of the AML/CFT Law provides the TF reporting obligations by stipulating that where are grounds to suspect the transaction or the client are related to terrorist activity or that the money or assets which are subject to the transaction are intended for financing terrorism, the entity should, where applicable, require information on the course of the transaction, its purpose, the final destination of the money, and information on all participants in the transaction. The entity shall inform the FIO before carrying-out the transaction, and submit a written report to the FIO containing all relevant information in relation to the transaction and the identity of the clients and the other participants in the transaction within 24 hours after detecting suspicion of the transaction. It appears that postponement of the transaction is not possible in case of TF suspicions.

887. According Art. 29 (1, a) of the AML/CFT Law, the entities shall be bound to submit to the FIO the data, information and the documents in the case there is suspicion or there are grounds for suspicion that money laundering or financing terrorism has been performed or an attempt has been

made or is being made for money laundering or financing terrorism. In addition, the reporting entities shall be bound to inform in written form the supervisory competent authority on the submission of the STR within three days from the submission of the report to the FIO.

888. According to the Article 18 of the AML/CFT Law, the obliged entities shall determine the grounds for suspicion on the basis of direct facts, the lists of indicators for identifying suspicious transactions set out by the FIO, the entities and the supervision authorities and international list of terrorist and terrorist organisations. The FIO shall have the responsibility to annually update the mentioned lists of indicators.

889. All the reporting obligations set in the AML/CFT Law make reference to *money laundering* has been performed or an attempted, not to funds that are *proceeds of criminal activity*, as required by criterion 13.1.

890. Similarly, the provisions of the AML/CFT Law concerning the TF suspicions provided in Art. 17, are limited to transactions and clients possibly related to *terrorist activity* or to money and assets subject to the transaction, which are intended for financing terrorism and do not extend to *funds* related to terrorist organisations or those who finance terrorism as required by 13.2 and IV.1.

891. Moreover, the definition of *"financing terrorism"* in Art. 2 of the AML/CFT Law, makes reference to the activities stipulated in the Criminal Code as the crime of financing terrorism. Thus, the technical shortcomings described under SRII have a negative impact on the reporting obligations.

Guidance on reporting

892. As described under R26.2, guidance on the manner of reporting and the specification of the reporting form is provided in Rulebook 38[91] and 140[92]. The Rulebook 38 provides the list of necessary information that the reporting entity must fill in when submitting an STR to the FIO but no suspicion indicators are included herein.

893. The distinction between the ML and FT related STRs is made at the end of the report form where there are two separate fields where the reporting entity shall fill in the *"reasons for suspicion"* of TF or ML.

894. Rulebook 38 provides two types of ST reporting forms: one valid for the banking sector (where more information is required) and the second for all the rest of the reporting entities, where less information is required and no express field describing the transaction (considered as suspicious) is included. Under the field requiring information about the *"reasons for suspicion"* the reporting entity must provide the number of suspicion indicator from the *"list"* or provide the broader description on the suspicion. There is no explanation or link to what *"list"* the reporting entity is referred to.

895. During the on-site-visit, the evaluators were informed that lists of indicators for every group of the obliged entities were issued by the FIO in cooperation with competent authorities responsible for the financial institutions supervision referred to in the Article 46 of the AML/CFT Law: the NBRM; ISA, SEC, MAPAS and the Postal Agency. Thus, specific lists of indicators are available on the FIO website for the following groups of the obliged entities from the financial sector:

- Grantors of leasing;
- Insurance companies, insurance brokerage companies, insurance agencies, licensed insurance agents and insurance brokers which perform life insurance activities;
- Voluntary pension funds management companies;
- Saving houses;
- Brokerage companies and companies managing investment funds;
- Banks;

[91] on the contents of the reports submitted to the FIO

[92] On the content and the form of the data submitted by the entities to the FIO and the manner of their electronic submission

- Fast money transfer and sub-agents;
- Post Office and the legal entities that perform telegraphic transmissions or delivery of valuable shipments;
- Factoring companies;
- Exchange offices.

896. Art. 46 (5) of the AML/CFT Law provides that the competent supervision bodies may prescribe a manner and procedure for adequate application of the programmes for prevention of money laundering for the entities they are to supervise. However such guidelines were issued only by the NBRM namely the Decision 103/2010 on the manner and the procedure for introduction and implementation of the bank's program for preventing of money laundering and terrorist financing.

897. According to the Chapter VI (Procedures for identification of unusual transactions and suspicion for money laundering and terrorist financing) of the NBRM Decision 103, in order to provide efficient identification of the suspicious transactions, the bank shall be required to identify the complex, unusually large transactions, or transactions that are executed in unusual manner, which have no apparent economic justification, or evident legal purpose. The definition of the unusual transaction is provided[93].

898. Further on, on the basis of the client's risk profile and on the written report on the unusual operations, the responsible person shall adopt a decision whether it is a suspicious transaction, i.e. whether there is a suspicious that the client, the transaction, or the beneficial owner are related to money laundering and terrorist financing. That means that according to the NBRM Decision 103, the STRs are a sub-specie of the UTRs which raises significant questions in relation to the obligations of the banks to report suspicious transactions which do not fall under the characteristics of an unusual transaction (for instance if the suspicion is related to the person executing the transaction or to the jurisdiction the transaction is related to).

899. According to the NBRM Decision 103, in its internal procedures, the banks must define at least the following elements in its internal acts:

- list of indicators for identification of suspicious transactions;
- the documentation which it has to possess with respect to the transactions which were decided not to be reported;
- deciding on withholding, rejections, or execution of certain transaction; and
- the manner of reporting to the bank's managing bodies for transactions that were reported to the FIO and the transactions which were decided as non-suspicious.

900. The evaluators were informed that in the first half of 2009, the Insurance Supervision Agency prepared the Manual for Prevention of Money Laundering and Financing Terrorism in the area of insurance for the needs of insurance companies and other entities working in the insurance market and distributed it all entities working in the insurance market. In the mentioned document was included and procedure of the reporting of suspicious cases to the FIO.

901. Only the list dedicated for the banks include indicators related to terrorism financing suspicions. Apart from that, the authorities pointed out a list of ten indicators for terrorist financing which is imbedded in one general instruction document which is published on the FIO website. The list is quite limited and one of the grounds for suspicion refers to the UN terrorist list. The evaluators did not receive any information on the date the TF suspicion indicators was published or (if ever) up-dated. The guidance on TF suspicion indicators is an area for improvement.

No Reporting Threshold for STRs (c. 13.3 & c. SR.IV.2)

902. Art.s 16, 17 and 29 of the AML/CFT Law include the requirement to report suspicious

[93] Unusual transactions can be considered all transactions which are uncommonly large, the character of which fails to correspond to the type of activities the client performs, while the client gives no acceptable explanation why that transaction has been executed (for example, amounts that fail to correspond to the client's regular manner of operating, large turnover on the clients' account failing to correspond to the size of its balance sheet, etc.).

transactions which may be committed or attempted (see criterion 13.1). No reference is made in the AML/CFT legislation to any threshold or amounts that could trigger STR reporting.

903. However, taking into consideration the provisions of the NBRM Decision 103 which defines STRs as a form of UTRs (which among other includes the concept of "large transaction") the effective application of this criterion might be hindered in practice.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

904. According to the provisions of the CC, ML offence is related to *"obtained through a crime"*. Tax crimes are also provided in the CC. The authorities confirmed that there are no such tax-related limitations in STR reporting.

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

905. Under the AML/CFT Law the requisite *"obtained through a crime"* means any activity wherever carried out which, under the "the former Yugoslav Republic of Macedonia" or any other law, amounts to a criminal offense or crime. Therefore, subject persons are required to report suspicious transactions notwithstanding that the predicate offence was committed outside "the former Yugoslav Republic of Macedonia".

906. Thus, since the reporting obligations refer to suspicions of money laundering, it can be concluded that the reporting obligations as formulated in the Macedonian legislation shall be extended to crimes committed outside Macedonia.

Effectiveness and efficiency R.13

907. The authorities have elaborated sets of indicators for recognising suspicious transactions for all financial institutions that are reporting entities (banks, exchange offices, fast money transfers, Post Offices and telegraphic delivery of valuable shipments, brokerage companies and managing investment funds, saving houses, voluntary pension funds and for the insurance industry).

908. Although the guidance is elaborated satisfactorily in case of ML suspicions, the results in terms of number of STRs show limited success. According to statistics provided to the evaluation team, it is seen that most of the reporting is done by the banking system. Other financial institutions do not report in satisfactory manner as emphasised in the table below.

Table 28: STRs submitted by the FI

No.	Type of entity	2008	2009	2010	2011	2012
1	Banks	82	163	122	114	145
2	Savings banks	-	2	14	7	-
3	Exchange offices	-	-	5	-	-
4	Providers of fast money transfer services and sub-agents	-	2	2	2	1
5	Insurance companies	-	-	-	-	-
6	Brokerage houses	-	1	1	1	-
7	Investment fund management companies	-	-	-	2	-
8	Companies for management of voluntary pension funds	-	-	1	1	1
9	Stock Market	2	-	-	1	-
	Total	84	168	145	128	147

909. According to the requirements Article 31 of the AML/CFT Law, the STRs shall be submitted to the FIO in electronic form or via telecommunication means (telephone, fax), and in case this is not possible, in other written forms. During the on-site interviews the evaluation team was informed that the banks report electronically since 2011, (for more details the reader is referred to the analysis provided under R26.2.

910. The on-site discussions have pointed several reasons to explain the low level of reporting by the

non-banking financial intermediaries (such as insurance companies and brokerage traders): the limited exposure to criminal activity, limited life insurance products used in Macedonia, underdeveloped securities market doubled by the financial crisis which negatively impacted on the volume of business etc. The evaluators are of the opinion that these arguments are valid. However, continuous awareness raising and training programs are still needed in order to increase the number of STRs.

911. A general over-reliance on the banking sector was detected during the on-site interviews. The non-banking financial sectors had the tendency to "delegate" the responsibility for the detection and submission of STRs to banks.

912. Art. 18 of the AML/CFT Law provides the FIO's duty to annually update the lists of suspicion indicators but the evaluators did not receive any evidence demonstrating that this requirement is actually observed.

913. Another reason for the lack of effectiveness could be the marginal participation in the implementation of the money laundering and terrorism financing regime from the competent supervision authorities' side. There is no sector specific guidance or regulation issued by the supervisors in order to further detail the manner of implementation of the general AML/CFT regime and no instruction to assist the obliged entities in complying with the AML/CFT requirements (guidance on reporting, suspicions detecting, typologies etc…). The only guidance document is the NBRM Decision 103 which describes the content of the *internal AML/CFT procedures* which should be adopted by the reporting entities and not the description of the practical manner of compliance with the legal requirements including the ST reporting. As stated by the authorities, in 2012, the FIO received 595 such AML/CFT internal programs. However, the low number of STRs puts under question the relevance and the effective implementation of those internal programs in the identification of the suspicious transactions.

914. Although some technical deficiencies were identified, the TF related reporting system seems to work properly in practice. STRs were constantly filled by the reporting entities (not only by banks) and their volume varies between 1% to 8% of the ML related STRs which seems a fair ratio taking into account the size of the financial system and the country risk. The FIO presented the evaluation team the following data:

- 2008 – 7 reports (4 – commercial banks, 7 – other institutions);
- 2009 – 2 reports (1 – commercial banks, 1 – other institutions);
- 2010 – 4 reports (2 – commercial banks, 2 – other institutions);
- 2011 – 7 reports (all reports provided commercial banks);
- 2012 – 9 reports (all reports provided commercial banks).

915. No investigations or prosecutions have been initiated in Macedonia for TF charges.

916. Indicators related to TF suspicious transactions are provided in the list of indicators dedicated to the banking sector and in a separate list which is to be found in the content of a compiled document gathering all the AML/CFT guidance, manuals and instructions issued by the FIO and published on its web-page. The indicators provided for the banks are quite comprehensive but include as reason for suspicion the UN and EU lists of terrorists and terrorist organisations, which should be subject to a different regime, not of the suspicion reporting (especially taking into consideration that the postponement of transactions is not possible for TF cases). The indicators available for the rest of the reporting entities are less detailed and it is doubtful that they can provide an effective guidance for the private sector.

Recommendation 25 (c. 25.2 – feedback to financial institutions on STRs/ rated PC in the 3rd round report)

917. According to the requirements of the Art. 32 (1) of the AML/CFT Law, the FIO shall be bound to immediately inform the obliged entity on the receipt of the STRs and at least once a year to inform the entities on the checks carried out in relation to the suspicious transactions and threshold transactions.

Effectiveness and efficiency R.25

918. The evaluators were informed on-site that general feedback to the reporting entities is provided by the FIO during the training sessions. According to the authorities, such feedback contains information on current techniques, identified typologies of the money laundering and financing terrorism, methods and trends. General information on statistics on the number of disclosures, with some breakdowns and general results of the disclosures were provided in the Annual FIO reports.

919. The evaluators were also informed that no specific or case by case feedback is provided (neither for money laundering nor for financing terrorism related reports) by the FIO to reporting entities in relation to the outcome of the individual reports.

920. Although the present situation is a clear improvement from the 3rd round MER, the evaluation team is of the opinion that the feedback is provided more on an ad-hoc basis (when training is provided) not as a rule, and cannot reach all the reporting entities (but only those participating in the training sessions).

3.7.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

921. The provisions of the AML/CFT Law concerning the TF suspicions should extend to funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism* as required by 13.2 and IV.1.

922. The reporting template presented in Rulebook 38 should be improved to include a reference to the lists of indicators published by the FIO (for both ML and TF suspicions) to guide the reporting entities to their industry related document.

923. Terrorist financing indicators available for the financial sector (except banks) should be revised and improved.

924. The provisions of NBRM Decision 103 should be revised to eliminate the cross-reference to the UTRs before filling in an STR which creates confusion amongst the reporting entities.

925. The reporting system in "the former Yugoslav Republic of Macedonia" would greatly benefit from the implementation of an electronic reporting system for all reporting entities or, at a minimum, for the entire financial sector.

926. More involvement of the general supervisors concerning the manner and procedure for adequate STRs identification and submission is necessary to increase effective reporting regime.

Recommendation 25/c. 25.2 [Financial institutions]

927. The general feedback provided to the reporting entities should be done on a regular basis and the authorities should make sure that the information reaches all reporting entities.

3.7.3 Compliance with Recommendations 13, 25 and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• The reporting obligation does not refer to funds that are *proceeds of criminal offences* but is limited to suspicion of *laundering of proceeds;* • TF reporting obligation does not extend to: funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism* as required by 13.2 and IV.1; **Effectiveness** • Contradicting provisions of NBRM Decision 103 which defines STRs as a form of UTRs might impact effectiveness.
R.25	**LC**	**Effectiveness** • General feedback provided on an ad-hoc basis does not reach all the reporting entities.

SR.IV	**PC**	• TF reporting obligation does not extend to: funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism* as required by 13.2 and IV.1 • Shortcomings under SRII impact the reporting requirements; **Effectiveness** • The failure to produce an adequate list of TF indicators undermines the effectiveness of reporting.

Internal controls and other measures

3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15 (rated PC in the 3rd round report)

Summary of 2008 MER factors underlying the rating

928. "The former Yugoslav Republic of Macedonia" was rated PC on R.15 in the 3rd MER. The following factors underlying the rating:

- Apart from the special situation for providers of fast money transfers, banks and savings houses, financial institutions are not required to implement an internal programme covering CDD, detection of unusual and suspicious transactions and the reporting obligation;
- There is no provision concerning timely access of the AML/CFT compliance officer and other appropriate staff to CDD and other relevant information; and
- Financial institutions are not required to put in place screening procedures to ensure high standards when hiring employees.

Internal AML/CFT procedures, policies and controls (c.15.1)

929. Art. 40 of the AML/CFT Law specifies the entities' obligation for introducing and implementation of internal procedures for ML/FT prevention which includes:

- *procedures for accepting clients;*
- *procedure for due diligence the client;*
- *procedures for risk analysis and indicators for risk analysis;*
- *procedures for risk estimation of the holder of public function;*
- *procedures for recognising unusual transactions and doubting of money laundering and financing terrorism;*
- *procedures for keeping data and documents for delivering reports to the FIO;*
- *plan for continuous training of the employees in the entity from the area of preventing money laundering and financing terrorism that provide realisation of at least two trainings during the year;*
- *appointing responsible person;*
- *manner of cooperation with the FIO; and*
- *procedure and plan of performing internal control and audit for implementing the AML/ CF measures and actions.*

930. These internal procedures must be prepared in writing in order to be submitted to the FIO and they must be updated at least once a year (Art. 40(2) and (3) AML/CFT Law).

931. In addition to that, there exist some sector specific provisions:

- For banks and savings houses, the NBRM Decision 103 further explains the obligations of the AML/CFT Law;
- For fast money transfer providers and the sub-agents, Art. 27 of the Law on Performing the Service of Fast Money Transfer obliges to prepare and implement such programs; and
- The ISA refers in this context to its Manual for Prevention of Money Laundering and

Financing Terrorism.[94]

932. For the other sectors such bylaws do not exist but the obligation is derived directly and only from the AML/CFT Law.

Compliance Management Arrangements (c.15.1.1 and c.15.1.2.)

933. In accordance with Art. 40 (1) indent 8 AML/CFT Law, and in the context of the preparation of the internal programmes, each entity is obliged to appoint an authorised person. There is, however, no direct and unconditional obligation to appoint an AML/CFT officer. The "*authorised person*" is defined in Art. 2 (2) no. 17 AML/CFT Law in the following way: "*authorised person shall mean a manager, appointed by the entity's highest management body, who is responsible for the implementation of the programme and establishing direct contacts with the FIO*".

934. Art. 40 (a) of the AML/CFT Law requires entities with more than 50 employees to create a separate department which is responsible for the implementation of the AML/CFT programs. A person shall be made responsible for managing the work of this department.

935. In order to provide the efficient work of the responsible person and the AML/CFT department, Art. 40 (a) (5) of the AML/CFT Law requires that the entity fulfils at least the following conditions:

- *separation of the activities of the responsible person, or the department, from other business activities of the entity, which are related with the activities of preventing money laundering and financing terrorism and control of the compliance between the working and the regulations;*
- *right to direct access to the electronic databases and on-time access to all information needed for continuous implementation of the programs and the provisions of this Law;*
- *establishing direct communication with the management bodies of the entity and similar.*

936. There is no statement that those rights of Art. 40-a (5) AML/CFT Law should also be available to the authorised person according to Art. 40 (1) indent 8 AML/CFT Law. Thus, the conditions of Art. 40-a (5) AML/CFT Law are not linked to the authorised person according to Art. 40 (1) indent 8 AML/CFT Law.

937. Regarding the banks and the savings houses, Chapter IX of the NBRM Decision 103 defines the activities to be performed by the responsible person, which include:

- *To analyze the risks of money laundering and terrorist financing;*
- *To collect all unusual transactions submitted by different organizational units in the bank, analyze them, prepare written reports and decides whether those transactions have characteristics of suspicious transaction, i.e. it adopts decision on their (non)reporting to the FIO;*
- *To provide information and documentation for all transactions reported to the FIO, as well as for all transactions which were decided not to be reported to the FIO, including also the reasons for adopting such a decision;*
- *To give recommendations for amending the bank's program, for its revision and improvement, as well as determines the degree of its compliance with the regulations which pertain to the prevention of money laundering and terrorist financing;*
- *To report to the Boards of Directors (on a monthly basis) and Supervisory Board (on a quarterly basis). The report obligatory includes data on the business relations concluded with the persons under items 16 and 26 of this decision;*
- *To advise the management bodies on the measures to be undertaken for compliance with the regulations from the area of ML/FT prevention, including also monitoring of all amendments to these regulations;*
- *To organise permanent training of the employees for all aspects significant for appropriate implementation of the process of ML/FT prevention of in the bank and establishing guidelines and instructions for adequate implementation of the regulations from this area;*

[94] For lack of English translation this Manual is not further described.

- *To follow up the novelties in the regulations and the international standards for ML/FT prevention;*
- *To prepare annual plan for permanent training;*
- *To maintain regular contacts with other bodies and institutions included in the activities for prevention of money laundering and terrorist financing (the e, the National Bank, other banks, etc.).*

938. In addition to the AML/CFT Law's obligation, Art. 106 (2) (g) Law on Securities requires a compliance officer who oversees compliance and implementation of the Law on Securities and other legal acts. This obligation is embedded in the provision on material to be supplied when applying for a licence. The compliance officer is not regulated as such in the Law on Securities

939. For the other financial institutions, the AML/CFT Law remain the only legal source dealing with the requirements of R 15.

Independent Audit Function (c. 15.2)

940. The requirement to maintain an adequately resourced audit function is not embedded in the AML/CFT Law, but must be derived from sector specific laws. Art. 40 (1) last indent AML/CFT Law only briefly mentions that the internal programmes should also contain a "*procedure and plan of performing internal control and audit for implementing the measures and actions*". Thus, the AML/CFT Law's obligation must be considered as a secondary obligation which is only applicable if the obliged entity develops proper internal programs.

941. The organisation of the Internal Audit Department and its tasks are contained in Articles 95 to 98 Law on Banks. The assessment of the anti-money laundering system is explicitly mentioned in the list of constant and full-scope audit.

942. For banks and savings houses, the NBRM Decision 103 applies additionally[95]. Art. XI requires the Internal Audit Department to perform internal audits on the process of prevention of ML and TF.

943. Art.s 123 – 128 of the Law on Insurance Supervision deal with the internal audit of insurance companies. The internal auditor shall perform complete auditing concerning the manner of compliance with the general prudential requirements (establish if company's activities are carried out in accordance with the LIS, if the accountancy documents and book keeping is maintained as required, if the annual reports are properly prepared etc.).

944. Art. 34 of the Law on Voluntary Fully Funded Pension Insurance requires pension companies to organise an internal audit unit. According to the English version of the law provided to the assessors at the pre-meeting before the Plenary discussions, there is a reference to the assessment of the money laundering and financing terrorism prevention system (as claimed by MAPAS to be stated in Art. 34 (2) (f) leg. cit).

945. Regarding the other types of financial institutions there are no provisions on the internal audit function, e.g. the Law on Foreign Exchange and the Law on Performing the Service of Fast Money Transfer are both silent with regard to an audit function.

Employee training (c. 15.3)

946. Art. 40 (1) (7) of the AML/CFT Law imposes the obligation on all entities to develop and implement a *"plan for continuous training of the employees in the entity from the area of preventing money laundering and financing terrorism that provide realisation of at least two trainings during the year"*. Thus, this training plan should be an integral part of the entity's procedures on AML/CFT.

947. This obligation is further detailed in some sector specific laws or bylaws, e.g. for banks: Section VIII of the NBRM Decision 103 requires the implementation of an annual plan for permanent

[95] The application of the NBRM Decision 103 to savings houses results from the general provision of Art. 79 of the Law on Banks and Savings Houses which states: *"The provisions of this Law pertaining to banks shall apply as well to savings houses, unless otherwise determined by this Law".*

training of the persons employed in the money laundering prevention and terrorist financing unit (including the responsible person), as well as of the employees directly or indirectly involved in operations with clients, or in the execution of transactions. The training of the bank's employees shall include at least the following:

- acquainting the employees with all regulations from the area of prevention of money laundering and terrorist financing;
- informing on the bank's program for prevention of money laundering and terrorist financing;
- acquainting the employees on the international acts within the domain of prevention of money laundering and terrorist financing (recommendations of the Basel Committee of Banking Supervision, FATF recommendations and documents issued by this organisation, recommendations given in the reports of the Committee of the Council Europe etc.);
- practical training referring to the implementation of the international standards for combating money laundering and terrorist financing;
- practical training for identification of suspicious transactions; and
- practical training for enhanced due diligence of clients with higher risk for money laundering and terrorist financing within the domain of their identification, verification and monitoring.

948. "The former Yugoslav Republic of Macedonia" authorities explained that similar training plans exist for the employees of voluntary pension funds and all institutions under the supervision of the SEC.

949. There was no information provided on training plans for the other institutions under the supervision of ISA and the Postal Agency.

Employee screening (c.15.4)

950. Art 40 (a) (3) AML/CFT Law requires that the employees of the AML department should fulfil high professional standards.

951. Pursuant to Art. 42 of the NBRM Decision 103, the banks are required to establish and to apply procedures for the employment of new persons, in order to ensure the observance of the adequate ethic norms without giving further details.

952. Regarding brokers and investment advisers, the SEC explained plausibly that the licencing requirements demand for an extract of the register of convictions. The assessors were in no position to verify that statement which in any case falls short of the requirements of c.15.4.

953. Regarding the other financial institutions, the AML/CFT Law remains the only legal source without further provisions in sector-specific laws.

Additional elements (c. 15.5)

954. The NBRM Decision 103 states that the responsible person should report to the Board of Directors on a monthly basis and to the Supervisory Board on a quarterly basis.

955. There was no information provided regarding the other types of financial institutions.

Effectiveness and efficiency

956. From the interviews conducted on-site, the assessors found that indeed the obliged entities seem to have in place internal procedures for ML/FT prevention. Both official interviewees and representatives from the private sector confirm that annual updates of these internal procedures are submitted to the FIO. The practical relevance of the updating process and of the FIO's response to the submitted programs is doubted, because of the limited resources of the FIO. It is beyond belief that the FIO is in a position to check those annually updated programmes and hence it is assumed that the FIO only confirms the submission of the updated programme.

957. The AML compliance function seems well established and resourced in banks. There remains, however, a concern that the extensive system of reporting results in a schematic treatment and thus inhibits a qualitative analysis in order to e.g. find unusual patterns.

958. It was also observed that AML/CFT is not tied well into the internal audit procedures with the

exception of banks/savings houses.

959. Representatives of obliged entities interviewed showed very low awareness of employee screening procedures and referred exclusively to educational/professional standards which are checked during the interview.

Recommendation 22 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating

960. "The former Yugoslav Republic of Macedonia" was rated NC on R.22 in the 3rd MER. This was based on the fact that there was no provision requiring financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit and that there were no provision requiring financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.

Consistency of the AML/CFT measures with home country requirements and the FATF recommendations (c. 22.1 & 22.2), Additional elements (c. 22.3)

961. According to Art. 26 (a) AML/CFT Law, the financial institutions with subsidiaries or branches abroad should apply the measures for prevention of money laundering and financing terrorism in these subsidiaries and branches. Furthermore, if the laws of the host country do not allow the application of these measures, the financial institutions should immediately inform the supervisory authority. There is no referral as to which AML/CFT measures should be applied.

962. The NBRM Decision 103 is slightly more descriptive and requires banks to ensure compliance with the AML/CFT measures in force in "the former Yugoslav Republic of Macedonia" (Art. 3 NBRM Decision 103).

963. There is no legal requirement regarding the consistent application of CDD measures at group level.

Effectiveness and efficiency

964. Until now "the former Yugoslav Republic of Macedonia" banks have not expanded across borders. Thus, the practical relevance of the legal implementation of R.22 is limited and its effectiveness waits to be demonstrated.

3.8.2 Recommendation and comments

Recommendation 15

965. Although contained in the provisions on the internal programs, the obligation to designate an AML/CFT compliance officer at management level should be a direct obligation in the law for all obliged entities, and not only in the context of the preparation of the internal programmes. Similarly, the rights of the AML officer and his staff to have timely access to relevant data should be stated directly in the law for all obliged entities irrespective of the number of staff.

966. All financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls. This should be a direct obligation on the obliged entities.

967. The screening procedures to ensure high standards when hiring employees should extend beyond checking professional standards and technical knowledge and should e.g. also cover the status of criminal convictions.

Recommendation 22

968. While the main requirements of R.22 is captured by the AML/CFT Law, it fails to provide clarification as to which AML/CFT legislation should be applied in branches and subsidiaries located in the host country, nor that – if applicable – the higher home country standards should be

applied. There is no special reference to situations where countries do not or insufficiently apply the FATF Recommendations.

969. The legislation should be brought in line with R.22 in order to provide or clarify all elements of R.22.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• No requirement, for the securities companies foreign exchange offices and providers of fast money transfers to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls; • Inadequate staff screening requirements; **Effectiveness** • Ineffective procedures regarding the internal programs; • AML/CFT not effectively integrated in the internal audit programs (except for banks & savings houses); • Effectiveness of employee training of institutions under the supervision of ISA and the Postal Agency not demonstrated; • Insufficient staff screening practices.
R.22	**LC**	• No explicit reference to: home country standards, except for banks; respectively the higher standards.

3.9 Shell Banks (R.18)

3.9.1 Description and analysis

Recommendation 18 (rated PC in the 3rd round report)

Summary of 2008 MER factors underlying the rating

970. "The former Yugoslav Republic of Macedonia" was rated PC on R.18 in its 3rd round MER. At the time of the 3rd on-site visit and shortly thereafter, the financial institutions were not prohibited from entering into, or continuing correspondent banking relationships with shell banks. Financial institutions were neither required to satisfy themselves that respondent financial institutions in a foreign country do not permit accounts to be used by shell banks.

971. At the time of the adoption of the 3rd MER the AML/CFT Law was already changed to explicitly provide the prohibition of the incorporations of shell banks and the development of business relationships with such entities.

Prohibition of establishment of shell banks (c. 18.1)

972. According to Art. 25 (2) of the AML/CFT Law, the performance of financial activities by shell banks in any manner is prohibited in "the former Yugoslav Republic of Macedonia".

973. This prohibition is accompanied by corresponding provisions in the Law on Banks. According to Art. 3, banking activities may be conducted only upon and within the remits of a licence, issued by the Governor of the National Bank. The bank shall start operating within 90 days after the adoption on the decision on issuing the licence, otherwise the Governor of the National Bank shall revoke the license (Art. 21(2) in conjunction with Art. 154(1) (4) Banking Act).

Prohibition of correspondent banking with shell banks (c. 18.2), requirement to satisfy respondent financial institutions of use of accounts by shell banks (c. 18.3)

974. Art. 25 (1) of the AML/CFT Law prohibits to the financial institutions to enter into or to continue a business relation with shell banks or to start or continue a correspondent business relation with a bank known to allow opening and working with shell banks accounts.

975. In addition, Art. 20(1) (5) of the NBRM Decision 103 requires that when establishing a correspondent banking business relationship, the domestic bank shall make an assessment as to

whether the correspondent bank operates with shell banks and (does not) allow/s operating with shell banks.

Effectiveness and efficiency

976. During the on-site mission the evaluators have found no indication that banks in "the former Yugoslav Republic of Macedonia" have any kind of direct correspondent relationships with shell banks or with banks known as allowing shell banks to use its accounts.

3.9.2 Recommendation and comments

977. The recommendation is observed.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**C**	

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

Summary of 2008 MER factors underlying the rating

978. "The former Yugoslav Republic of Macedonia" was rated PC on R.23 in the 3rd MER, based on the following factors underlying the rating:

- In practice, apart from the NBRM and (to an unclear extent) the SEC, no other designated supervisory body includes AML/CFT issues as an integrated part in its supervisory activities;
- The legislation to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a bank, savings house, insurance company, brokerage house, money or value transfer service, foreign exchange office and investment fund management company is insufficient; for companies issuing credit/debit cards, pension companies and pension funds no such preventive legislation exists at all;
- There is no special licensing or registration regime for companies issuing credit/debit cards;
- For the operations of pension companies and pension funds no specific supervisory authority is designated.

Authorities/SROs roles and duties & Structure and resources

Recommendation 23 (23.1, 23.2) (rated PC in the 3rd round report)

Regulation and Supervision of Financial Institutions (c. 23.1)

979. The following supervisory authorities are responsible for the AML/CFT compliance monitoring for the financial institutions as defined within the scope of the FATF Recommendations:

The National Bank of the Republic of Macedonia (NBRM)

980. The NBRM's supervisory function regarding the application of AML/CFT measures and actions stems from Art. 46 (1) of AML/CFT Law which places the banks, saving houses, exchange offices and fast money transfer service providers under its competence.

981. The organisation and operations of the NBRM are based on the Law of the National Bank of the Republic of Macedonia. The NBRM's objectives include the contribution "*to the maintenance of a stable, competitive and market-based financial system*" (Art. 6(2) NBRM Law). In order to achieve the tasks, the NBRM shall:

1) design and conduct the monetary policy;

2) *participate in the determination of the exchange rate regime;*
3) *design and conduct the exchange rate policy;*
4) *hold and manage the official foreign reserves;*
5) *issue and manage the banknotes and coins of the Republic of Macedonia;*
6) *record and monitor the international credit operations and prepare the balance of payments of the Republic of Macedonia;*
7) *collect and produce statistics in pursuance of the tasks as required by the law;*
8) *establish, promote, register and oversee sound, safe and efficient payment, settlement and clearing systems;*
9) *regulate, license, and supervise banks, savings houses, e-money companies and other financial institutions as further specified in this Law or any other law;*
10) *supervise the application of the regulations that govern foreign currency operations, exchange operations, money transfer services and anti-money laundering systems and customer protection, as further specified in the relevant laws;*
11) *act as fiscal agent to the Government of the Republic of Macedonia;*
12) *participate in international institutions and organizations concerning matters that are within its fields of competence;*
13) *organize trading and settlement of securities on the OTC markets; and*
14) *carry out any other activities related to the exercise of its tasks under this Law or any other law."*

982. The supervisory tasks are regulated by Art. 34 of the NBRM Law which stipulates that the National Bank shall be responsible for the supervision, including the imposition of measures and misdemeanour sanctions, of banks, savings houses, e-money companies and other financial institutions, in accordance with this and other laws.

983. The NBRM Law does not contain sanctioning provisions for violation of AML/CFT provisions. The sanctioning provisions of the sector specific laws and the AML/CFT Law apply.

Insurance Supervision Agency (ISA)

984. Art. 46 (1) of the AML/CFT Law determines the ISA as the supervisory authority over the insurance companies, insurance brokerage companies, companies for representation in insurance, insurance brokers and insurance agents.

985. According to Art. 158 (a) of the Law on Insurance Supervision, the general objective of the ISA is to create an adequate protection of rights and interests of policyholders and insurance beneficiaries by strengthening and promoting development of the insurance market in the country.

986. The ISA is in charge of licencing and supervising insurance companies, insurance brokerage companies, insurance agencies, insurance brokers, insurance agents and the National Insurance Bureau[96] (Art. 158-b LIS).

987. According to Art. 158(b) (1) of the LIS, the ISA shall have the following competences:

1) *conduct supervision of the insurance companies, insurance brokerage companies, insurance agencies, insurance brokers, insurance agents and the National Insurance Bureau;*
2) *issue and revoke permission, consents and licenses, on the basis of this Law and the other laws within its competence;*
3) *pronounce supervision measures, in accordance with this Law;*
4) *adopt bylaws for implementation of this Law and the other laws within its competence and other acts in regard to prescribing conditions, manner and procedure for conduct of supervision;*
5) *give proposals for adopting laws in the field of insurance, to the Insurance Supervision Agency;*
6) *is a member in the bodies of the International Association of Insurance Supervisors and in*

[96] According to the Law on Compulsory Traffic Insurance the National Insurance Bureau deals among other issues with international agreements for liabilities in the context of motor-driven vehicles.

the bodies of the European Council of Insurance Supervisors and supervisory body of the voluntary pension insurance;

7) *cooperate with other competent supervisory institutions on the financial market in the Republic of Macedonia;*
8) *motivate the development of the insurance in the Republic of Macedonia;*
9) *develop the public awareness of the role of the insurance and of the insurance supervision;*
10) *supervise the implementation of the measures and activities for prevention of money laundering and financing terrorism, in accordance with the Law on Prevention of Money Laundering and other Financial Proceedings from a Crime and Financing Terrorism; and*
11) *perform other activities in accordance with law.*

The Securities and Exchange Commission (SEC)

988. Art. 46 (1) of the AML/CFT Law determines the SEC as the supervisory authority over the brokerage companies, investment advisory services, companies managing investment funds.

989. According to Art. 181 of the Law on Securities, the SEC shall be the independent regulatory body in the area of the capital market. Within its legal powers and authorisations, the SEC provides the legal and efficient functioning of the securities market, as well as the protection of investors' rights, with the aim of continuously building up public trust in the institutions of the securities market in the country.

Agency for Supervision of the Fully Funded Pension Insurance (MAPAS)

990. Art. 46 (1) of the AML/CFT Law determines MAPAS as the supervisory authority over the companies managing voluntary pensions funds. The mandatory fully funded pension funds are not covered by the AML/CFT Law.

991. MAPAS was established in order to supervise the operation of pension companies and pension funds managed by them, and the operations of the legal entities which are custodians of the assets of the mandatory and/or voluntary pension funds and of the foreign asset managers of to mandatory and/or voluntary pension fund in connection with the operations with these assets. MAPAS is responsible for issuing, revoking and taking away of licenses for establishment of companies, management with pension funds and issuing, revoking and cancellation of approvals for managing with compulsory and volunteer pension funds. It supervises the work of the pension companies, of the compulsory and volunteer pension funds as well as the guardians of the property and the foreign managers of funds. (Art 47 of the Law on Mandatory Fully Funded Pension Insurance)[97].

Postal Agency

992. Art. 46 (1) of the AML/CFT Law sets the Postal Agency as the supervisory authority over the Post Office and the legal entities performing telegraphing transmission or delivery of valuable packages since 2010.

993. The Postal Agency was established in 2008 in accordance with the Law on Postal Services. The mandate of the Agency is established in Articles 8 and 9 of the Law on Postal Services. This mandate does however not include AML/CFT supervision, which is solely based on the AML/CFT Law.

Financial Intelligence Office (FIO)

994. According to Art. 46 (2) of the AML/CFT Law, the FIO shall supervise the application of the measures and actions determined by the Law over the reporting entities in cooperation with the general supervisors mentioned above. The FIO and the supervisors shall be bound to mutually inform themselves on the findings of their supervisory actions and coordinate their activities.

[97] The assessment team was not provided with an up-to-date English version of the Law on Mandatory Fully Funded Pension Insurance. The consolidated version exists in Macedonian language only.

Designation of Competent Authority (c. 23.2)

995. The supervisory system in "the former Yugoslav Republic of Macedonia" over financial institutions consists of five primary responsible supervisory authorities (NBRM, ISA, MAPAS, SEC and the Postal Agency) which usually carry out the prudential supervision. In addition to these supervisory authorities, for AML/CFT purposes the FIO acts as additional supervisor.

996. The main legal provision for the regulation and supervision of financial institutions in the area of AML/CFT legislation is Art. 46(1) AML Law.

(1) "The supervision of the application of measures and actions laid down in this Law shall be performed by:

- *the National Bank of the Republic of Macedonia over banks, savings houses, exchange offices and providers of fast money transfer;*
- *the Insurance Supervision Agency over insurance companies, insurance brokerage companies, companies for representation in insurance, insurance brokers and insurance agents;*
- *the Macedonian Securities and Exchange Commission over the brokerage companies, persons providers of investment advisors services and companies for management of investment funds;*
- *the Agency for Supervision of Fully Funded Pension Insurance over the companies managing with voluntary pension funds;*
- *the Public Revenue Office over trade companies organising games of chance (casino), as well as other legal and natural persons performing the following services: trade with real estate, audit and accounting services, provision of services in the area of taxes or provision of consulting services, legal entities obtaining movables and real estate in pledge and citizens associations and foundations; and*
- *the Postal Agency over the Post Office and legal entities performing telegraphic transmissions or delivery of valuable packages.*

997. Additionally, Art. 46(2) of the AML Law regulates the competence of the FIO to supervise these entities: *(2) The Office shall supervise the application of the measures and actions determined by this Law over the entities in cooperation with the bodies referred to in paragraph (1) of this Article and commissions from Article 4798 of this Law or independently.*

998. The following table provides an overview concerning the supervision and licensing regime of financial institutions in "the former Yugoslav Republic of Macedonia":

Table 29: Financial sector supervisors

Financial institutions	Supervisor for AML /CFT purposes	Licensing authority (if licenced)	Legal Basis
Commercial banks	NBRM FIO	NBRM	Banking Law; AML/CFT Law
Savings banks	NBRM FIO	NBRM	Law on Banks and Savings Houses (Part II); Banking Law; AML/CFT Law
Insurance companies (including life)	ISA FIO	ISA	Law on insurance supervision; AML Law
Brokerage companies/brokers	SEC FIO	SEC	Law on Securities, AML Law
Pension funds	MAPAS FIO	MAPAS	Law on compulsory fully funded pension insurance; Law on voluntary fully funded pension insurance; AML Law
Investment funds/	SEC	SEC	Law on investment funds,

[98] Art. 47 covers Bar Chambers and Notary Chambers, see sub Section 4 of this report.

investment fund management companies	FIO		Law on Securities, AML Law
Companies issuing credit/debit cards	FIO	MoF	Law on financial companies, AML Law
Foreign exchange offices	NBRM FIO	NBRM	Law on foreign exchange operations (Art. 43), AML Law
Providers of fast money transfers (money remitters)	NBRM FIO	NBRM	Law on Fast Money Transfer providers, AML Law
Postal organisation	The only postal organisation provides financial services only in cooperation with the "Postenska Banka" (for details see below).		
Leasing companies	FIO	MoF	AML Law
Safekeeping	SEC FIO	SEC	Law on Securities, AML Law

999. While the AML/CFT Law contains the allocation of supervisory powers over a specific obliged entity to a specific authority, there is a simultaneous competence of the FIO in AML/CFT matters. Neither the AML/CFT Law nor the laws governing sector specific supervision deal with the relationship of supervisory competence or with conflicts of competence between the FIO and the general supervisor. In the case of leasing companies, the FIO is the sole AML/CFT supervisor.

Recommendation 30 (all supervisory authorities) (rated PC in the 3rd round report)

Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)

Summary of 2008 factors underlying the rating

1000. In relation to supervisory authorities the following factors underlined the PC rating in the 3rd MER:

- There is insufficient operational independence and autonomy of the supervisory authorities (except the NBRM);
- Apart from employees of the NBRM, there are no specific rules requiring the staff of the supervisory authorities to maintain high professional standards;
- Apart from employees of the NBRM and the SEC, there are no specific rules requiring staff to keep professional secrets confidential;
- The staff, and also training for the staff of the Insurance Supervision Division seem to be insufficient;
- The staff of the FEI seems insufficient and has not been trained on AML/CFT issues.

1001. It was recommended that staff of all supervisory bodies should be required to maintain high professional standards and to keep professional secrets confidential (currently only for employees of the NBRM exist specific rules requiring staff to maintain high professional standards; and only for employees of the NBRM and the SEC exist specific rules requiring staff to keep professional secrets confidential.).

1002. The supervisory tasks are conducted by the on-site supervision department, the off-site supervision department and the banking regulation and financial stability department of the Division of Supervision, Banking Regulation and Financial Stability. The evaluators were informed that in the NBRM there are 8 employees are engaged in the AML/CFT issues and who are regularly trained.

1003. The SEC is established as an independent regulatory body with public authorisations determined by the Securities Law. The President of the SEC and all other 4 appointed Commissioners are elected by the Parliament. The SEC is independently funded by fees from its operation, published in a Tariff Book that is adopted by the Government of the Republic of Macedonia. The SEC currently regularly employees 21 people, of which 7 employees work in the Department for Supervision of the Capital Market which checks AML/CFT issues. The SEC reports that its' staff regularly attends international and domestic trainings.

1004. MAPAS is independent in its operations and has the right and duty to control the entire operation of the institutions in the fully funded pension insurance. Of approximately 20 staff in total, 8 staff work in the control sector which is involved in on-site and off-site supervision. Out of these 8 staff, 2 are devoted to the monitoring of AML/CFT. Those two participate actively in domestic AML/CFT meetings and trainings.

1005. The Postal Agency was established in 2008 in accordance with the Law on Postal Services as an independent regulatory body and non-profit legal entity. In 2010 the Postal Agency was designated a supervisory authority according to Art. 46 AML/CFT Law and it currently employs 16 staff in total.

1006. Within the FIO the supervisory activities are conducted by the Inspection Supervision Department which has three employees. This department is tasked with a multitude of responsibilities, namely:

- supervising the application of the measures and activities for detection and prevention of money laundering and financing terrorism;
- preparation of minutes for the supervision conducted;
- suggesting and pronouncing misdemeanour sanctions;
- implementation of settlement procedure;
- keeping records and statistics;
- implementation of education procedure;
- studying of the errors and irregularities made, and establishing the weaknesses of the system for prevention of money laundering and financing terrorism;
- participation in the training of the entities for taking measures and actions in accordance with the Law;
- participation in designing annual programme for regular supervision of the Office;
- participation in drafting of the annual report and work programme of the Office; and
- preparation of instructions, directions, procedures and rulebooks in order increasing of the efficiency of the work of the Office and System for Prevention of Money Laundering and Financing Terrorism.

1007. The FIO staff is regularly trained domestically and internationally.

1008. The supervision is conducted by the FIO based on the Quality Procedures for Performing Inspection Supervision and in the course of the supervisory activities the supervisors must comply with the Code of professional ethics of the Unit for inspection supervision document, issued in 2010 by the Director of the FIO. The Code contains detailed instructions on the manner in which the officials should behave in the course of executing official duties within his/her competence: act autonomously, professionally and independently; take into account only legally relevant facts in the adoption of decisions; observe the principles of legality, equality, efficiency, trust, independence, publicity, impartiality, honesty and professionalism; and act without discrimination or giving privileges to anyone, thereby respecting human rights and freedoms and human dignity, without any private interest.

1009. From the perspective of supervisory and oversight, the FIO's human resources are considered insufficient, given the multitude of tasks and scope of supervision of more than 16,000 obliged entities (under the sole or shared supervision). The evaluators are of the opinion that a satisfactory level of supervision cannot be achieved in these circumstances.

Authorities' powers and sanctions

Recommendation 29 (rated LC in the 3rd round report)

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1)

Summary of 2008 factors underlying the rating

1010. "The former Yugoslav Republic of Macedonia" was rated LC on R.29 in the 3rd MER, based on the following factors underlying the rating:

- There are no provisions governing the powers of inspectors from the NBRM when performing supervision of foreign exchange offices;
- The AML law does not provide a clear authority to sanction directors or senior management. Apart from the special situation concerning the Banking Law, the Law on Securities and the (amended) Law on Fast Money Transfer (these laws are deficient when it comes to terrorist financing issues), also the sectoral laws have no such provisions with regard to violations of AML/CFT obligations;
- There seem to be no provisions which would assign special powers to the State Foreign Exchange Inspectorate linked with its supervisory responsibilities.

1011. The allocation of supervisory competences over specific financial institutions is laid out in Art. 46 of the AML/CFT Law as described above. The supervisory powers to monitor and ensure compliance by financial institutions with adequate AML/CFT legislation are complemented in the respective laws on the supervisory authorities:

NBRM

1012. Supervision over financial institutions within the supervisory scope of the NBRM is regulated in the following laws:

- Law on the National Bank of the Republic of Macedonia: This law establishes the supervisory responsibility of the NBRM over banks, savings houses, e-money companies, foreign currency operations, exchange operations and money transfer systems (Art. 7 No. 9 and 10 NBRM Law).
- Law on Banks: This law regulates the operations of banks, including licencing conditions and fit and proper criteria, internal procedures, and supervisory measures by the NBRM (Art. 116 sqtn. Law on Banks). Art. 171 Law on Banks requires the NBRM to conduct supervision on AML/CFT systems in banks;
- The Law on Banks and Savings Houses, refers to the Law on Banks for the operations of savings houses (Art. 79 of the Law on Banks and Savings Houses);
- Law on foreign exchange operations: This law contains the authorisation for the NBRM to prescribe the conditions and methods for obtaining a license and performing the exchange offices operations (Art. 36 Law on Foreign Exchange Operations)[99]. The supervisory competence is defined by Art. 43 in conjunction with Art. 45. This law also contains provisions on the reporting of transactions although it has no connection whatsoever to STRs in the context of AML/CFT;
- Law on fast money transfer: this law contains i.a. the requirements for obtaining a license from the NBRM and the obligation to have a program on the prevention of money laundering and financing terrorism approved by the FIO (Art. 7 for providers; Art. 12 for sub-agents), although the misdemeanour provisions do not cover the violation of that obligation; and
- AML/CFT Law.

Insurance Supervision Agency (ISA)

1013. In addition to the general supervisory competence (over insurance companies, insurance brokerage companies, insurance agencies, insurance brokers, insurance agents and the National Insurance Bureau), according to Art. 158 (b) (1) (10) of the LIS, ISA has the competence to *"supervise the implementation of the measures and activities for prevention of money laundering and financing terrorism, in accordance with the Law on Prevention of Money Laundering and other Financial Proceedings from a Crime and Financing Terrorism"*.

The Securities and Exchange Commission of the Republic of Macedonia (SEC)

1014. The SEC's competence to monitor *"the implementation of regulations for anti-money laundering and financing of terrorism by the authorised participants of the securities market"* is stated in Art. 180 (a) (2) in conjunction with Art. 184 The term *"authorised participants of the*

[99] This authorisation was used by the NBRM to issue the Decision on Currency Exchange Operations, see c.23.5.

securities market" is defined in Art. 2 (24) of the Law on Securities comprising securities depositories, stock exchange, brokerage houses, brokers and investment advisors.

Agency for Supervision of the Fully Funded Pension Insurance (MAPAS)

1015. While the supervisory duties of MAPAS are listed in Art. 47 of the Law on mandatory fully funded pension insurance, its rights to perform its duties are regulated in Art. 53 of the Law on Mandatory Fully Funded Pension Insurance.[100] This includes at a minimum basic supervisory powers.

Postal Agency

1016. The supervisory competence in matters of AML/CFT of the Postal Agency over the Post Office and legal entities performing telegraphic transmissions or delivery of valuable packagers is stated exclusively in Art. 46 (1) of the AML/CFT Law. Supervision in general is regulated in Articles 73 and following of the Postal Law.

FIO

1017. According to Art. 46 (2) of the AML/CFT Law, the FIO performs its supervisory functions in cooperation with the bodies mentioned above or independently. Since leasing companies are under the supervision of the MoF only for prudential purposes, the FIO performs AML/CFT supervision over them independently.

Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2);

NBRM

1018. The NBRM's authority to conduct on-site inspections is based on different laws. For the institutions within the scope of the Law on Banks, Art. 116 (1) (2) states that the NBRM shall perform its supervisory function by on-site supervisions.

1019. Art. 45 of the Law on Foreign Exchange Operations provides the basis for supervisory activities by the NBRM which may consist of "*direct and indirect supervision*". Representatives of the NBRM explained that "*direct supervision*" can be understood in the sense of on-site supervision, whereas "*indirect supervision*" consists of desk-based monitoring.

1020. The situation in relation to providers of fast money transfer is similar according to Art. 28 and 29 of the Law on Fast Money Transfer.

ISA

1021. The ISA is authorised to conduct field supervision by virtue of Art. 160 (1) (2) of the LIS.

The Securities and Exchange Commission of the Republic of Macedonia (SEC)

1022. Art. 193 (2) of the Law on Securities states that the inspection may be on-site and off-site. Off-site inspection shall be performed by obtaining data from licensed securities market participants, and on-site inspection shall be performed by direct inspection of the operational data, at the premises of the securities market participant being supervised. Art 195 contains further details on the manner in which the on-site inspections shall be carried out.

Agency for Supervision of the Fully Funded Pension Insurance (MAPAS)

1023. Pursuant to Article 46 of the AML Law, MAPAS independently, or in cooperation with the FIO, supervises the implementation of the AML/CFT measures and activities over the companies managing volunteer pension funds. Art. 53 of the Law on Mandatory Fully Funded Pension Insurance contains basic supervisory rights for MAPAS which include the possibility to go on-site.

[100] MAPAS provided additional information for the pre-meeting on its duties by referring additionally to Art 53-a, 53-b and 53-c of the Law on Mandatory Fully Funded Pension Insurance. Since there was neither an English translation of these articles nor a complete consolidated version of the law in English provided, this additional information could not be taken into account.

Postal Agency

1024. The authority to conduct inspections by the Postal Agency via an authorised person is regulated in Articles 74 and following especially Art. 76 of the Postal Law.

FIO

1025. The FIO's process for supervision is described in Art. 46-a to 46-e AML/CFT Law which authorises the FIO staff to enter and perform examination of the business premises. In addition, the *"Quality Procedure for Performing Inspection Supervision"* issued by the FIO in 2012, describes in detail the process of on-site inspections.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1)

NBRM

1026. Art. 114 of the Banking Law requires that any entity subject to supervision, consolidated supervision and inspection must, under their security procedures, provide to the persons authorised by the NBRM access to any premise, to the available documentation, including data kept electronically, and provide any documentation requested by the authorised persons. During the supervision activities, the authorised persons may keep and take out only copies of the bank's documents, verified by a notary, if needed.

1027. Art. 117 of the Banking Law stipulates that the bank provides for supervision purposes: reports and information on the bank's operations; audit report and additional information on the audit conducted in the bank and the letter sent by the audit company to the bank's Board of Directors; extraordinary reviews for the operations; and reports of the bank's Internal Audit Department.

1028. Art. 31 of the Law on Performing Service Fast Money Transfer provides that during indirect supervision the providers of service fast money transfer and the sub-agents shall be obliged to enable the authorised person to continuously performance of the supervision, insight in the operations, and, at a request, to make available all necessary documentation, information and data.

1029. In relation to foreign exchange offices, Art 45 of the Law on Foreign Exchange Operations covers supervisory activities by the NBRM in general terms. There is, however, no explicit authority to compel the production or obtain access to all information.

Insurance Supervision Agency

1030. When conducting supervision, ISA may request reports and information on the work of the company and other data and material (Art. 160(2) of the LIS). This applies to both situations of "*off-field supervision*" and "*field (complete or partial) supervision*".

The Securities and Exchange Commission of the Republic of Macedonia SEC

1031. During an on-site examination, the SEC's employee is authorised to make and obtain copies of all documents relevant to the inspection (Art. 195(3) (b) of the Law on Securities). In the case off-site inspection, the licensed securities market participants are obliged to submit documentation upon request of the SEC (Art. 196 (3) of the Law on Securities).

Agency for Supervision of the Fully Funded Pension Insurance (MAPAS)

1032. According to Art. 53 (1) of the Law on the Mandatory Fully Funded Pension Insurance MAPAS has the right to obtain all the documents or computer records relating to the supervised entity's or its pension fund's operations.

Postal Agency

[Postal service and telegraphic transfers]

1033. The right to compel the production of records from supervised entities by the Postal Agency is limited to the context of an on-site supervisory activity.

FIO

1034. Art. 46 (d) of the AML/CFT Law stipulates that when performing the supervision activities, the

inspector shall be authorised to: check general and separate acts, files, documents, evidence and information in the scope according to the subject of supervision; demand necessary copies and documents to be prepared and make a list of found documents in the business facility. The authenticity of the copies, the documents, evidence and information required shall be confirmed by the entity with its own seal and the signature of the authorised person.

Powers of Enforcement & Sanction (c. 29.4)

National Bank of the Republic of Macedonia

1035. The NBRM's powers of enforcement and sanction are provided in the sector specific laws. According to Art. 132 of the Law on Banks, the Governor of the NBRM shall undertake regular measures if the bank (*i.a.* fails to meet the anti-money laundering obligations). The range of sanctions available is described under R17.

1036. The Law on Fast Money Transfer similarly only knows supervisory measures (Art. 33 Law on Fast Money Transfer), but no sanctioning powers for past violations of the AML/CFT legislation. Such violations must be sanctioned under the AML/CFT Law.

1037. The same situation applies for FX operations: the Law on Foreign Exchange Operations contains supervisory measures and the penalty and misdemeanour provisions cover violations of the Law on Foreign Exchange Operations. Since there is no mentioning of the AML/CFT Law in the Law on Foreign Exchange Operations, none of its penalty provisions is applicable. Powers of enforcement and sanctioning for failure to comply properly with AML/CFT legislation is thus limited to the provisions of the AML/CFT Law.

Insurance Supervision Agency

1038. The ISA is empowered by Art. 164 of the LIS to impose measures of supervision on the insurance companies. These measures are of a prudential supervisory and forward looking nature. In addition to that the ISA shall revoke the licence, if *"it is proven that the company participates in undertaking activities for money laundering and other financial proceedings from a crime and financing terrorism"* (Art. 168(1)(7) of the LIS). ISA explained that it cannot impose sanctions on directors or senior management of insurance companies and on insurance brokers and insurance agents and that only the FIO based on the AML/CFT Law has the power to impose sanctions against natural and legal persons. According to the assessors' reading of the AML/CFT Law, the ISA should also be empowered to impose sanctions under the AML/CFT Law.

The Securities and Exchange Commission of the Republic of Macedonia SEC

1039. According to Art. 180 (3) of the Law on Securities, the SEC can issue sanctioning measures if an authorised participant to the securities market is found in non-compliance with the regulations on anti-money laundering and financing of terrorism. The nature of the available sanctions is further described under R17

Agency for Supervision of the Fully Funded Pension Insurance (MAPAS)

1040. MAPAS is empowered by Art. 53 (5) of the Law on Mandatory Fully Funded Pension Insurance to request the supervised entity to restore lawful conditions, if an irregularity was established. There exist no provisions empowering MAPAS to sanction for violation of the AML/CFT Law, except for those powers of enforcement and sanctioning for failure to comply properly with AML/CFT legislation according to the provisions of the AML/CFT Law. (Additional legal information provided by MAPAS was not taken into account because it could not be verified with the translated legal text provided.)

Postal Agency

1041. The Postal Agency is not empowered to impose sanctions or enforce them in the context of AML/CFT under the umbrella of the Law on Postal Services, but only with reference to the AML/CFT Law.

FIO

1042. Upon the findings of an on-site inspection the FIO's inspector has the right and obligation towards the entity to propose a settlement procedure or to initiate misdemeanour procedures (Art. 46-(e) (3) and (4) of the AML/CFT Law).

1043. The FIO adopted in 2012 the *Quality Procedure for Acting upon Conducted Misdemeanour*, as an internal Decision which lays down further procedural rules concerning the manner of determining a misdemeanour responsibility for the reporting entities and the person responsible. While this procedure, as an internal act, is of an unbinding legal nature, it is worth noting that the QP also mentions natural persons and contains rules on appeal which would complement and extend the legal provisions of the AML/CFT Law by virtue of a legal text issued by an administrative authority.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

1044. During the on-site interviews, the representatives of the NBRM described the AML/CFT supervision as a risk based. The on-site inspections are performed based on an off-site risk assessment which takes into account (*i.a.* the STRs filed by the banks, saving houses, fast money transfer service providers and exchange bureaux to the FIO). The AML/CFT issues are covered during the regular general supervision and on-site inspections and in case AML/CFT breaches are identified, the FIO is notified.

1045. When determining the aggregate assessment of the ML/FT risk, the supervisors should use the factors stated in the *Procedure for assessment of risk of ML/FT*, issued by the NBRM. This procedure has been divided in three sections: Elements subject to evaluation, Explanation of the significance of the criteria estimations and Supervisory actions. A detailed table rating the compliance levels of the reporting entity with various criteria must be completed by the inspectors.

1046. The SEC performs the AML/CFT supervision as part of their general supervision of the entities under their responsibility. The decision to undertake an on-site visit to a certain company is not risk based. The checks focus on the internal AML/CFT procedures. During the on-site interviews the evaluators were left with the impression that the AML/CFT supervision conducted by the SEC is more of a formal nature and does not take into account the possible vulnerabilities of the preventive measures taken by the obliged entities.

1047. The ISA conducts AML/CFT random checks during their general supervisory activities. As for the SEC, the supervision is limited to the verification of the existence of the respective internal rules and the nomination of an AML/CFT responsible person. MAPAS' supervisory activities take AML/CFT issues only to a limited degree into account.

1048. The FIO's supervisory activity is carried-out following the provisions of the *"Quality Procedures on Performing Inspection Supervision"* from 2012. The Procedures provide that the supervision shall be done in accordance with the Annual Program for Regular Supervision that shall be established in accordance with a series of elements i.a. the risk associated with the entities; random selection; information retained by the FIO on the non-delivery of reports, data and programmes; requests made by other departments in the FIO; requests made by the state bodies and institutions when there is concrete suspicion of money laundering or financing terrorism; findings, sanctions, conclusions and recommendations made by other supervisory bodies in the previous year etc..

1049. Urgent joint inspection supervision with other supervisory body shall be performed in case of: requests made by state bodies and institutions when there is concrete suspicion for money laundering and financing terrorism; request made by the department of the FIO in specific cases; receipt of other information about money laundering and financing terrorism suspicions from other sources.

1050. The effective application of the above described procedures could not be established by the evaluation team due to their recent adoption; namely one month before the on-site visit.

1051. Based on Art. 48 of the AML/CFT Law, all bodies and supervisors from Art. 46 and Art. 47 are obliged to report to the Office about performed inspections in obliged entities and about the findings from those inspections at least two times a year. At the same time, they are obliged to report to the Office about the submitted request for initiating a misdemeanour procedure, about the initiated procedures for alignment and the result of those procedures. While all bodies and supervisors confirmed that they report regularly to the FIO, this appears to be a one-way process. The FIO apparently does not report itself to the bodies and supervisors about its actions in such a regular way. This imbalance is astounding.

1052. During the on-site interviews it was assessed that while some of the financial supervisors know and apply on- and off-site supervisory measures (NBRM, SEC, ISA), especially the FIO appears to consider only on-site supervisory measures as supervision. This – to the outsider – inconsistent approach risks considerable loopholes in the supervisory process and reduces the effectiveness of the supervisory system.

1053. Following from the AML/CFT Law provision that all bodies and institutions referred to in Art. 46 (and the commissions referred to in Article 47) of the AML/CFT Law shall be bound to propose the perpetrator a settlement procedure, it is concluded that these bodies and institutions may impose sanctions on the basis of the AML/CFT Law. Thus, the supervisory laws' sanctioning provisions would be significantly extended and the supervisors would have adequate powers of enforcement and sanctions against financial institutions, including their directors and senior management. However, only limited recourse to the misdemeanour provisions of the AML/CFT Law was made, which points to a reduced level of awareness of this possibility. Thus it is concluded that the supervisory bodies in practice do not apply the misdemeanour provisions of the AML/CFT Law, but constrain themselves to its best limited sanctioning provisions of the respective supervisory laws. This situation is consequently evaluated as a situation of very low effectiveness.

1054. The assessors developed the picture that the application of the misdemeanour provisions of the AML/CFT Law is practically limited to the FIO. Furthermore, the sanctioning powers of the FIO are substantially limited by the requirement to establish the findings of a case for misdemeanour procedures in the course of an on-site inspection. This understandably reduces the incentive to conduct off-site inspection, if findings made during a desk-based review cannot be used for "enforcement" procedures against a failing reporting entity.

Recommendation 17 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating

1055. "The former Yugoslav Republic of Macedonia" was rated NC on R.17 in the 3rd MER, based on the following factors underlying the rating:

- The sanctioning system for infringements of the AML/CFT Law does not work in practice as no sanctions have been imposed so far;
- The pecuniary sanctions of the AML/CFT Law for legal entities are too low and neither dissuasive nor proportionate;
- The AML/CFT Law does not stipulate how the sanctions as provided for by the AML Law should be imposed;
- The AML/CFT Law does not provide for withdrawing or suspending a financial institution's licence for not observing requirements of the AML/CFT Law. The Banking Law, the Law on Securities and the (amended) Law on Fast Money Transfer allow this for AML infringements (but are deficient when it comes to terrorist financing issues). The other sectoral laws do not provide for withdrawing or suspending a financial institution's licence for not observing AML/CFT requirements.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

1056. According to Art. 53(1) of the AML/CFT Law, for the misdemeanours listed in Art. 49, 50, 50-a and 52 AML/CFT Law, the supervisory authorities, bodies and commissions in Art. 46 and

Art. 47 of this Law are obliged to suggest to the person that committed the misdemeanour an alignment procedure before submitting a request for criminal procedure. From this follows that the supervisory authorities, bodies and commissions are empowered to sanction on the basis of the misdemeanour provisions of the AML/CFT Law.

1057. Section VIII of the AML/CFT Law provides for administrative sanctions of the reporting entities in the case of infringements of the provisions of the law. The sanctions are provided both for legal entities and for the *"responsible person of the legal entity"*. The highest fines for legal persons range from €80,000 to €100,000 in denar counter-value, while highest fines for responsible persons range from €5,000 to €10,000 in denar counter-value.

1058. The application of sanctions for lesser misdemeanours (which range of fine from €2,500 to €10,000) requires a strict procedure and cannot be imposed independently and immediately. In the first stage, the FIO inspector during the on-site inspection, must determine that one of the irregularities listed in Art.s 50, 50-a, 51 and 52 of the AML/CFT Law has occurred and reach a *"decision with an indication for elimination of the determined irregularity within 8 days and to simultaneously deliver an invitation for carrying out an education of the person or the entity at which the irregularity has been determined"*. Secondly, the FIO inspector, upon conducting an on-site visit must determine whether the established irregularities (established during the performance of supervision, as mentioned above) have been removed or not. In the latter case, the FIO inspector shall suggest a settlement procedure (Art. 48 (a) (8) AML/CFT Law). Only when the perpetrator does not agree with the settlement procedure, a request for misdemeanour procedures may be filed.

1059. As a general rule prior to initiating a misdemeanour procedure the authorities are obliged to propose to the perpetrator a settlement procedure and in case of acceptance, may issue a payment order (Art. 53(1) AML Law). This rule applies to all cases, except for those listed in Art. 49-a and 51-a AML/CFT Law. (The assessors were told that the most likely explanation for the non-inclusion of Art. 49-a and 51-a AML/CFT Law in Art. 53(1) AML/CFT Law is an oversight when amending the law.)

1060. The AML/CFT Law does not specify if and how procedures for misdemeanours may be initiated without prior steps.

1061. This is regulated in the Law on Misdemeanours. According to Art 46 of the Law on Misdemeanour "*The purpose of the settlement and mediation procedures shall be achieving agreement between the perpetrators and the competent authorities for removal of the harmful consequences of the committed misdemeanour and preventing another misdemeanour and therefore avoiding conducting legal procedure before the competent court, i.e. prosecuting authority.*"

1062. In addition to pecuniary penalties, in certain cases, the AML/CFT Law provides for the prohibition imposed on the responsible person to perform a particular profession, activity or duty from one to two years on the person responsible for the incriminated action. It is not clear whether this person is identical with the "*responsible person of the legal entity*".

1063. The AML/CFT Law does not provide for the withdrawal or suspension of a financial institution's licence for not observing requirements of the AML/CFT Law. This measure may be imposed along the lines of the sectoral laws in the context of prudential measures regarding the respective financial institutions.

Banks and Savings Houses (NBRM)

1064. Article 154 of the Law on Banks allows for the revocation of a licence upon the effective decision of a competent authority that the bank has been involved in ML and other felonies.

Exchange offices (NBRM)

1065. The Law on Foreign Exchange Operations does not provide for the revocation of a licence.[101]

Providers of fast money transfer (NBRM)

1066. Article 33 (a) (5) of the Law on Fast Money Transfer empowers the Governor of the NBRM to revoke the licence, if the provider of fast money transfer services does not respect and acts opposite the provisions of the Law on Fast Money Transfer or other laws.

Insurance companies, insurance brokerage companies, insurance brokers, insurance agents (ISA)

1067. The ISA shall revoke the licence, if *"it is proven that the company participates in undertaking activities for money laundering and other financial proceedings from a crime and financing terrorism"* (Art. 168(1)(7) LIS).

Securities: Brokerage companies, investment advisors, management of investment funds (SEC)

1068. According to Article 180 (a) of the Securities Law, an authorised participant on the securities market is obliged to act in accordance with AML/CFT regulations. In case of non-compliance in accordance with AML/CFT regulations, the SEC may issue a decision to impose appropriate measures, including a decision on revocation of the license (Art. 194(1) Securities Law).

Pension companies, of the compulsory and volunteer pension funds as well as the guardians of the property and the foreign managers of funds (MAPAS)

1069. Art. 164 of the Law on Voluntary Fully Funded Pension Insurance declares MAPAS the competent authority to impose sanctions for numerous breaches of that law and states that the provisions of the Law on Mandatory Fully Funded Pension Insurance for settlements apply. None of the provisions on breaches of the Law on Voluntary Fully Funded Pension Insurance deals with AML/CFT. Thus, the general sanctioning provisions of the AML/CFT Law apply.

1070. According to Art. 53(5) of the Law on Mandatory Fully Funded Pension Insurance, MAPAS shall issue a decision to order the pension company to remove the irregularity within a specified period. If that does not happen, MAPAS may withdraw the approval for managing the pension fund, i.e. the licence (Art. 53(6) Law on Mandatory Fully Funded Pension Insurance).

Postal service and telegraphic transfers (Postal Agency)

1071. The general rules apply. There are no applicable sanctioning provisions in the Law on Postal Services. The breaches of the AML/CFT regime shall be sanctioned by the FIO.

Designation of Authority to Impose Sanctions (c. 17.2)

1072. All supervisory authorities listed in Art.s 46 (a) and 47 of the AML/CFT Law are required to notify the FIO of submissions to initiate misdemeanour procedures and of settlement procedures for offences referred to in Art. 49, 50, 51 and 52 AML/CFT Law (Art. 48). Thus, all those supervisory authorities are authorised to impose sanctions. There is, however, no rule on how to proceed in cases (*e.g.* in case of joint on-site supervision) when more than one or no authority wants to impose sanctions according to Section VIII AML Law.

1073. However, during the on-site interviews the evaluators were informed by several supervisory authorities that in case of AML/CFT breaches in practice they would rather inform the FIO than imposing the sanctions themselves (ISA, SEC, MAPAS).

1074. Misdemeanour proceedings are to be decided by the competent court (Art. 54 AML Law).

1075. It is worth noting that while the misdemeanour provisions have been extended since the 3rd MER by insertion of Art. 49-a, 50-a and 51-a AML Law, there is no reference to these Articles in Art. 48 and 54 AML Law, thus, neither competent authorities nor courts seem to be empowered to act upon violations mentioned in these three new Articles. (The assessors were told that the most

[101] "The former Yugoslav Republic of Macedonia" authorities claimed in its 1st Progress Report (p. 52) that Article 36-a of the Law on Foreign Exchange Operation (for establishment and working of exchange offices) provides for such a possibility. This could not be verified upon examination of the legal text.

likely explanation for the non-inclusion of Art. 49-a, 50-a and 51-a AML/CFT Law in Art. 48 and 54 AML/CFT Law is an oversight when amending the law. Still, this oversight severely limits the authority to impose sanctions.)

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

1076. The AML/CFT Law only allows sanctions to be imposed on legal entities and *"the responsible person within the legal entity"*, but does not explicitly provide a sanctioning regime for directors or senior management. The term *"responsible person"* is defined as *"the responsible person according to the Law on Misdemeanours"*.

1077. Pursuant to Art. 44 (4) of the Law on Misdemeanours, a responsible person in the legal entity is *"a person employed at the legal entity who is given his function or on the basis of specific authorisation with the legal entity is entrusted with particular range of operations which relate to the execution of legal regulations or the regulations adopted pursuant to law or general act of the legal person in the management, use of and disposal with property, management of the production or other economic procedure or their supervision"*.

1078. With one exception, the authorities explained that on the basis of this provision, penalties are imposed on directors. ISA explained that it can neither sanction directors nor senior management. It remains, however, unclear whether the responsible person in case of the AML/CFT breaches can also be the compliance officer. In any case, senior management cannot be sanctioned on this basis.

Market entry

Recommendation 23 (rated LC in the 3rd round report)

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)

1079. The AML/CFT Law does not contain provisions in line with c.23.3 and c.23.3.1. The sector specific laws apply.

Banks and Savings Houses (NBRM)

1080. According to Art. 13 of the Banking Law, a shareholder in a bank may be domestic or foreign legal entity or natural person. The shareholder of a qualified holding must not be a natural person or under the control of a natural person, who

2. *who was imposed a misdemeanor sanction i.e. ban on performing a profession, activity or duty,*
3. *which has been imposed minor penalty:*
   - prohibition on obtaining permission for the founding and operation of bank
   - revocation of the license for founding and operation of bank
   - prohibition on establishing new legal entities and
   - temporary or permanent prohibition on performing banking activities;
4. *against whom a bankruptcy proceeding has been initiated,*
5. *who does not enjoy any reputation, thus compromising the safe and sound operations of the bank; and*
6. *who fails to comply with the provisions of this Law and the regulations adopted on the basis of this law and/or failed or has failed to implement and/or acted or has been acting contrary to the measures imposed by the Governor, that compromised or have been compromising the safety and soundness of the bank and its creditors.*

1081. A *"qualified holding in a bank"* is defined as a direct or indirect ownership of at least 5% of the total number of shares or the issued voting shares in a bank or which makes it possible to exercise a significant influence over the management of that bank. (Art. 2 (21) of the Banking Law).

1082. Although Art. 13(2)(5) of the Banking Law contains a reference to *"reputation"*, this reference points to safe and sound operations of the bank and is not understood in a sense to include

"integrity". The NBRM explained to the assessors that reputation means honesty, competency, industriousness and assurance that the person does not endanger the stability and the security of the bank, or its reputation and trust. *Inter alia*, this means that the person should not have been included in activities that would be considered as violation of the regulations.

1083. The persons requesting the approval are obliged to fill in the corresponding NBRM questionnaires which provide detailed data on the following: the qualifications, professional background and the experience of the person, the measures taken towards that particular person by certain authority or towards its beneficial user (in the case of legal entity), cases when other competent authority seized or did not issue an approval for performing of certain profession or activity, or for acquiring shares in a financial institution due to inadequate reputation of the person or its beneficial owner.

1084. Art. 18 (2) (7) of the Banking Law mentions reasonable grounds to doubt the legitimacy of the origin of the funds or the reputation or true identity of persons with considerable influence on the bank as a reason for refusal of a licence by the Governor.

1085. Art. 83 of the Banking Law provides that a person with special rights and responsibilities in a bank shall have a university degree and knowledgeable in the regulations for banking and/or finance and shall have appropriate experience ensuring safe and sound bank management. A person with special rights and responsibilities may not be a person sentenced to imprisonment for crime in the area of banking and finance, a person who was imposed a security measure ban on performing a profession, activity or duty or person without reputation, thus compromising the safe and sound bank operations.

Exchange offices (NBRM)

1086. Pursuant to Art. 36 Law on Foreign Exchange Operations, the National Bank prescribes the conditions and the methods of obtaining a license for foreign exchange operations in a new Decision on Currency Exchange Operations adopted by the Council of the National Bank on 4.10.2012. The Decision states that in order to obtain the necessary licence, the responsible person of the legal entity who performs foreign exchange operations and the responsible person has not faced a misdemeanour sanction, *i.e.* interdiction for performing of profession, activity or duty and that no effective court decision for criminal offence in the area of finances has been pronounced against the responsible person of the legal entity and the authorised persons.

Providers of fast money transfer (NBRM)

1087. Pursuant to Art. 6 no.10 of the Law on Fast Money Transfer, a trading company can obtain a permit for performing fast money transfer service if no misdemeanour sanction, (i.e. interdiction for performing of profession, activity or duty) has been pronounced against the responsible person and the employees performing fast money transfer services and effective court decision for criminal offence in the area of finances.

Insurance companies, insurance brokerage companies, insurance brokers, insurance agents (ISA)

1088. A qualified participating interest is defined by Art. 16(2) of the LIS as the direct or indirect possession of at least 10% of the total number of stocks or of the issued voting stocks in an insurance company.

1089. The LIS clearly states in Art. 13(1)(7) *i.a.* that a stockholder with a qualified participating interest in the insurance company must not be involved in bankruptcy proceedings during the past three years and must not work contrary to the provisions of the AML/CFT Law. There is no clarification as to the meaning of this requirement, which falls short of the requirements of R.23 because the AML Law is silent in this area. Further on, Art. 19(1)(6) of the same law, states however that the application for acquiring a qualified participating interest shall be refused if there is a grounded reason for suspicion in the legality of the origin of the money.

1090. There are no similar provisions for insurance agencies and agents, except for lack of involvement in bankruptcy proceedings.

1091. Additional requirements regarding among others the members of the management board are

stated in a Rulebook issued by the ISA. The legal quality of that Rulebook cannot, however, be assessed, because probably for translation reasons the promulgation clause does not make sense. Subject to that caveat, Art 3 of that Rulebook requires future members of the management board to provide evidence that he was not involved previously in bankruptcy proceedings. There is no requirement to provide evidence for lack of other criminal convictions. A similar situation exists for members of the management body (Art. 23 LIS).

Securities: Brokerage companies, investment advisors, management of investment funds (SEC)

1092. The Securities Supervision Act contains provisions regarding qualified shareholders in Art. 152(a) which states that a *shareholder with qualifying holding in a brokerage house, Stock Exchange or Depository cannot become natural person or/and legal entity controlled by a person:*

1) who was imposed a misdemeanour sanction prohibition to perform a profession, activity or duty, whilst the prohibition is still in force;
2) against whom a bankruptcy procedure has been initiated;
3) against whom has been imposed minor penalty:
- *Prohibition on obtaining permission for operation of brokerage house, Stock Exchange or Depositary,*
- *Revocation of a license to operate as a brokerage house, Stock Exchange or Depository*
- *Temporary or permanent prohibition of dealing with securities and*
- *Prohibition of establishment of new legal entities;*

4) who does not have a good reputation, thus compromising the safe and sound operations of the brokerage house, Stock Exchange or Depositary; and
5) who fails to comply with the provisions of this Law or/and fails to enforce them, or otherwise acts contrary to the measures imposed by the Commission, that compromised or have been compromising the safety and soundness of the securities market.

1093. According to the *Regulation on the Manner and Procedure for Providing Consent for Appointment of a Director of an Authorised Legal Entity for Performing Services in Securities*, issued by the SEC, Official Gazette No. 122/2006, the appointment of a director of an authorised legal entity, shall be done based on the approval of the SEC. The application submitted by the authorised legal entity to the SEC shall contain *i.a.* a short biography or curriculum vitae of the proposed candidate for director of the authorised legal entity and a statement by the proposed candidate for director of the authorised legal entity, given under full moral, criminal and material liability and verified at a notary public, that he/she has not been convicted with a standing verdict for criminal acts of causing insolvency of a legal entity. There is no requirement to provide evidence for lack of other criminal convictions. The evaluators are not aware of any verification procedures on the statement, or on any procedures related to the *"associates"* of criminals.

Pension companies, of pension funds as well as the guardians of the property and the foreign managers of funds (MAPAS)

1094. There are no safeguards to prevent criminals and their associates from being the beneficial owner of a pension fund. Members of the management board and the supervisory board shall be free of monetary fines or other penalties imposed in relation to their work (Art. 28(4) of the Law on Voluntary Fully Funded Pension Insurance). There is no requirement to provide evidence for lack of other criminal convictions.

Postal service and telegraphic transfers (Postal Agency)

1095. There are no requirements for beneficial owners, directors and senior management. The authorities explained that according to the postal directives the licensing system is completely liberalised without specific requirements for the form, founders and the administrator as special condition for getting a licence.

Leasing companies

1096. According to the Law on Leasing the sources of funds for payment of the principal (Art. 3-b(3(4)) shall be submitted in the process of obtaining a permission to carry out this business. Furthermore, proof of non-conviction shall be provided.

1097. The assessors were told that similar provisions exist for members of the management (Art. 3-c (4) Law on Leasing, not provided).

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

1098. The businesses of value transfer and exchange services require a license by the NBRM. Both types of businesses have been described above under the relevant sections.

Licensing of other Financial Institutions (c. 23.7)

1099. The assessors have not identified other financial institutions.

On-going supervision and monitoring

Recommendation 23 & 32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4);

1100. According to the laws, the financial supervisors can apply their full range of prudential measures to AML/CFT matters where it is appropriate to do so. Prudential measures cover the licensing process (as described above), and if the conditions for licensing cease to exist, the supervisor may revoke the license.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

1101. The businesses of value transfer and exchange services require a license by the NBRM. Both types of businesses have been described above under the relevant sections.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

1102. Statistics on the overall supervisory activity deployed by the authorities are maintained to a certain extent.

Table 30: Supervisory activities and measures taken on banks

	Banks						
	NBRM				FIO		
	Performance of supervision	Settlement Procedures	Misdemeanour Procedure	Other supervisory measures	Supervision	Settlement Procedures	Misdemeanour Procedure
2008	21	1			1	1	
2009	16	10			6	2	1
2010	13	3			3	1	
2011	18	8			2		
2012	14	4			1		

Table 31: Supervisory activities and measures taken on saving houses

	Savings Houses						
	NBRM				FIO		
	Performance of supervision	Settlement Procedures	Misdemeanour Procedure	Other supervisory measures	Supervision	Settlement Procedures	Misdemeanour Procedure
2008	14	1			--		
2009	10	2			1		1
2010	9						
2011	8	2			1		
2012	7						

Table 32: Supervisory activities and measures taken on exchange offices

	Exchange Offices						
	NBRM				FIO		
	Performance of supervision	Settlement Procedures	Misdemeanour Procedure	Other supervisory measures	Supervision	Settlement Procedures	Misdemeanour Procedure
2008	223	4			--		
2009	146	6			22		
2010	224	10			14		
2011	196						

2012	128				6		

Table 33: Supervisory activities and measures taken on insurance companies and brokers

	Insurance Companies/brokers						
	ISA				FIO		
	Performance of supervision	Settlement Procedures	Misdemeanour Procedure	Other supervisory measures	Supervision	Settlement Procedures	Misdemeanour Procedure
2008							
2009					2	1	1
2010					1		
2011							
2012	1						

Table 34: Supervisory activities and measures taken on securities brokers

	Securities brokers						
	SEC				FIO		
	Performance of supervision	Settlement Procedures	Misdemeanour Procedure	Cases sent to the FIO	Supervision	Settlement Procedures	Misdemeanour Procedure
2008	30			6			
2009	26			3	2	1	1
2010	26			1			
2011	22			0			
2012	23	1		2			

Table 35: Supervisory activities and measures taken on fast money transfer companies

	Fast Money Transfer						
	NBRM				FIO		
	Performance of supervision	Settlement Procedures	Misdemeanour Procedure	Other supervisory measures	Supervision	Settlement Procedures	Misdemeanour Procedure
2008	16				--		
2009	34						
2010	1				2		
2011	0						
2012	3				4 (sub-agents)		

Table 36: Supervisory activities and measures taken on voluntary fully funded pension funds

	Voluntary fully funded pension insurances			
	MAPAS		FIO	
	Supervision carried out	Findings- sanctions	Supervision	
2008				
2009				
2010	2	0		
2011	2	0		
2012	2	0		

1103. The Postal Agency carried out 21 supervisory inspections in 2012 on the Post Offices and on the entities performing telegraphic transmissions or delivery of valuable packagers. No sanctions have been imposed.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

1104. The authorities informed that so far there has been no case of required assistance.

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. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

1105. In addition to the narrow legal provisions on fit and properness of shareholders and directors, the assessors gained the conviction that such checks are carried out only to a very limited extent in practice. While there is awareness that people involved in the running of a financial company

should be of sufficient knowledge and free of convictions in areas immediately related to their work, the general concept of integrity and morality is not considered that important in this commercial context. Second level management is completely exempt from such rules.

1106. The effectiveness of on-going supervision is uneven amongst various sectors and it appears that it depends on the general supervisors' ability and involvement in the AML/CFT matters. While the monitoring of banks, saving houses and exchange offices by the NBRM seems to be at a satisfactory level, other sectors such as the insurance industry, the Post Offices and the leasing companies do not receive equal attention.

1107. Little information was provided concerning the co-operation between the FIO and the general supervisors on the AML/CFT supervisory activities in practice. In case of SEC, 12 cases concerning ML/FT suspicions were sent to FIO following the inspections on securities intermediaries, but there is no evidence on the action taken by the FIO subsequently.

1108. The two layers of supervision divided between the general supervisor and the FIO is effective only to extent to which the FIO receives valuable and targeted input from the general supervisor in order to identify the AML/CFT breaches. Otherwise, the system of two authorities involved in supervision is not justified and it is obvious that the FIO alone (with 3 employees) cannot properly cover the entire financial sector.

1109. The information about the sanctions imposed to the financial sector for AML/CFT breaches as provided by the authorities shows a very limited sanctioning system. Therefore a positive statement on the effectiveness of the sanctioning regime is not possible.

1110. The evaluators were informed that in the course of the supervision performed by the FIO, the following breaches were identified: the bank does not keep the documentation in accordance with the AML/CFT Law, threshold cash transactions not reported to the FIO; cash related transactions were not reported to the FIO (linked transactions), the exchange office registry was not properly kept by the responsible person, the responsible person did not verify the identity of the client in transactions that above €2,500 euros (fast money transfer service); updated Programs not submitted to the FIO; no AML/CFT department established, suspicious transactions not reported; no identification was carried out of the final owner and verification of his identify, ownership and management structure; and late or incorrect submission of responses following request by the FIO etc..

Table 37: Sanctions imposed by the FIO

Year	Institution(s)	Amount	Comments
2008	1 bank[102]	€29.250	For the legal person
		€5.200	For the Chief Executive Director
		€5.200	For the Executive Director (these orders were paid in the legally foreseen deadline of 8 days)
2009	1 bank	€24.750	For the legal person
		€8.800	For the Chief Executive Director
	1 bank	€2.250	For the legal person
		€800	For the Chief Executive Director
	1 insurance company	€4.500	For the legal person
		€1.600	For the Chief Executive Director
	1 insurance company	€4.500	For the legal person
	1 brokerage house	€2.250	For the legal person
		€800	For the Chief Executive Director

[102] Sanctions for this bank were imposed in 2008, but they were paid by the bank in 2009, so this amount (total of €39,650 appears in the Annual Report of FIO from 2009).

	-Misdemeanour charges were pressed by the FIO to the relevant courts against: 1 bank, 1 saving house and 1 brokerage house.		
2010	1 bank	€24.750	For the legal person
		€7.200	For the Chief Executive Director
	-9 warnings with recommendations for elimination of the irregularities were imposed to 1 bank, 4 exchange offices and 1 insurance brokerage house.		
2011	1 saving house	€4.000	For the legal person
		€1.200	For the Chief Executive Director
2012	The Office carried out education of 2 exchange offices regarding the clearance of deficiencies identified when performing the supervision.		

1111. Technically, the AML/CFT Law provides for an extensive and comprehensive sanctioning regime. The maximum fine in case of AML/CFT breaches is of €100,000 equivalent in Denars, which seems to be dissuasive enough in the context of the "the former Yugoslav Republic of Macedonia" economy and in the context of the fines prescribed in the Criminal Code, which range from €1,600 to €489,000. The minimum fine for the AML/CFT breaches is of €2,500 which provides the possibility of imposing proportionate financial sanctions, depending on the seriousness of the violation. Other sanctions (such as written warnings), are also available. Sanctions have been applied in practice to FI directors and senior management.

1112. On a less positive side, as reflected by the statistics, the level of sanctions actually imposed remains low. The evaluation team considers ineffective that the sanctions can only be imposed following on-site supervisory actions. Given the high number of obliged entities and the limited staff, this will lead to a considerable gap in supervision which will negatively impact the level of compliance of the obliged entities. This situation may be illustrated by the obligation to adopt internal AML/CFT programmes which every obliged entity must have and updated version annually. The fact that an obliged entity does not comply with the requirement of the annual submission is, however, not enough for sanctioning. On the contrary, in order to sanction for lack of submission according to Art. 50 and 51 AML/CFT Law, the FIO must conduct an on-site supervision to establish the fact that the programme was not submitted.

Table 38: Internal Programs delivered by the reporting entities to the FIO

Year	Delivered Programs
2008	314
2009	202
2010	505
2011	853
2012	595
2013 (ending of 31.03.2013)	279

1113. Taking into account that there are about 16,000 obliged entities in total, the number of annually submitted programmes is poor. It demonstrates a low level of compliance which is directly linked with the effectiveness of the FIO's sanctioning powers.

1114. Few financial institutions were subject to sanctions and some industries (such as the exchange offices or the leasing companies) were never sanctioned.

1115. During the on-site interviews, the authorities explained that the reason for the low number of AML/CFT violations identified is due to low development of some financial sectors in "the former Yugoslav Republic of Macedonia" such as in the case of the securities, leasing and insurance markets. While accepting this explanation to a certain extent, the evaluators have the

opinion that other reasons are applicable, including the formalistic approach to supervision and the low number of officials involved in the supervision activities since the FIO is in charge of supervising more than 16,000 obliged entities spread out all over the country.

1116. The FIO explained that it had adopted a risk-based approach recently, in order to allocate scarce resources optimally. The degree of risk of the entities shall be established on the basis of several criteria as the date of starting the activity, *i.e.* date of registration or licensing; the amount of annual income of the entity; the presence of an anti-money laundering and financing terrorism programme provided to the FIO; the existence of any STR submitted to the Office; and findings, sanctions, and recommendations provided in the supervision activity conducted on the entity. However, due to the recent adoption of the *QP for performing inspection supervision* providing for the risk based approach, its effectiveness could not be assessed by the evaluation team.

Guidelines

Recommendation 25 (c. 25.1 – guidance for financial institutions other than feedback on STR-s)

1117. In 2008, the FIO in cooperation with the German Society for International Cooperation developed and published the brochure on "The Unit for Prevention of Money laundering and Financing of Terrorism". This brochure presents the FIO and its position in the entire AML/CFT system and informs the users about the legal provisions and requirements in the field. This brochure has been published on the FIO's website and was distributed to a limited number of financial institutions (250 copies were available).

1118. In order to additionally inform all the entities about their respective obligations deriving from the AML/CFT Law, the FIO developed and published, in cooperation with the Dutch Embassy, a "Handbook on the Implementation of Measures and Activities for AML/CFT by the Entities" in 2010. This handbook informs the users about the definition and characteristics of money laundering and financing of terrorism, informs them about the AML/CFT Law obligations and the manner of their implementation by every group of entities and the indicators for identification of suspicious transactions.

1119. Apart from the NBRM Directive on the manner and the procedure for introduction and implementation of the bank's programs for prevention of money laundering and terrorism financing (the NBRM Directive), no sector specific guidance for the implementation on the AML/CFT Law were issued.

1120. The FIO issued indicators for determining suspicion for money laundering and financing terrorism for all FI subject to the AML/CFT Law (as described under R13 above). However, guidance on TF suspicion indicators is still missing in most of the cases.

1121. General feed-back is provided by the FIO during the training sessions and in the content of the annual reports which include statistics on STRs and disseminations and typologies.

Effectiveness and efficiency (R. 25)

1122. The FIO regularly organises series of AML/CFT trainings which included general feedback on STRs and specific guidance on compliance matters. In 2010, the FIO organised 26 training courses and 352 participants were involved (responsible persons and employees of 192 exchange offices (197 persons), provider of fast money transfer (46 persons), 13 insurance companies (17 persons), 11 insurance brokerage companies (13 persons), and 3 insurance agencies.

1123. The representatives of banks expressed their satisfaction with the cooperation with the FIO (possibility of quick contact via phone), and underlined the assistance provided in the process of preparing ML indicators.

1124. From the on-site interviews the FI representatives indicated that the feed-back from the FIO is an area of improvement.

3.10.2 Recommendations and comments

Recommendation 23

1125. The mandatory fully funded pension insurance should be covered by the AML/CFT Law.

1126. Although the division of supervisory authorities over the sectors under their responsibly is provided in the AML/CFT Law, the relationship between the general supervisor and the FIO on AML/CFT matters is not settled. This should be clarified by the authorities in order to avoid duplications and conflicts of competence between the FIO and the general supervisor.

1127. The authorities should consider including explicit reference to AML/CFT supervision in the laws on the establishment and functioning of all the financial supervisory authorities (MAPAS Law and in the Law on Postal Services), to enhance their involvement and contribution to the global AML/CFT compliance supervision process.

1128. Legal provisions should be adopted to establish the necessary criteria to prevent criminals or their associates from being the beneficial owner or holding a management position in the insurance companies and agencies, in voluntary pension funds and in postal services.

1129. Fit & proper criteria for FI should cover all the aspects required by EC 23.3.1 in terms of all criminal records and in relation to persons that are "associates" to criminals.

Recommendation 17

1130. The designation of authorities to initiate and impose sanctions provided for in the AML/CFT Law should be further clarified, especially for cases of concurring competence, e.g. following joint on-site inspections.

1131. The procedural rules of the AML/CFT Law (e.g. Art 48, Art 53(1) and 54) should be brought in line with the amended sanction provisions by a complete designation of competent authorities in relation to all misdemeanours listed in the AML Law.

1132. The FIO should be given authority to initiate procedures for violation of provisions of the AML Law outside the process of the on-site supervision, *e.g.* upon desk based or standardised off-site supervisory examinations. This could possibly also enhance effectiveness of the sanctioning regime.

1133. There should be the possibility to revoke the licence of foreign exchange operations in case of violations of the AML/CFT provisions.

Recommendation 29

1134. The laws should provide for clear authority of the NBRM to compel the production of records from FX operators.

1135. The ISA should be empowered to sanction directors and senior management for failure to comply with AML/CFT legal provisions.

Recommendation 25(c. 25.1 [Financial institutions])

1136. The authorities should adopt sector specific guidance in the implementation of all AML/CFT requirements in all aspects, not only in the suspicion indicators area.

1137. Guidance on the application of the analysis required under Recommendation 11 should be issued.

1138. The list of TF indicators available for the non-banking financial institutions should be expanded.

1139. Feed-back should be provided to the FIs on a regular basis.

Recommendation 30 (all supervisory authorities)

1140. From the perspective of supervision and oversight of the financial sector, the FIO's human resources are considered insufficient as together with the other supervisory authorities the FIO is in charge of supervision of more than 370 financial institutions. While acknowledging that limited

resources is a challenge for any country and any authority, the pro-active involvement of the general supervisors and the full implementation of the risk based approach might be a solution to the lack of resources.

Recommendation 32

1141. In the course of this assessment the authorities of "the former Yugoslav Republic of Macedonia" provided statistics which each contained valuable information. It proved, however, difficult to bring together these multiple statistics in order to get a complete picture of the situation. While the FIO certainly would be the appropriate institution to collect all information and feed it into a comprehensive statistical system, there is hesitation to suggest additional organisational work for the FIO, which is already overloaded with work of the organisational type.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**PC**	• No possibility to revoke the licence of foreign exchange operations in case of violation of AML/CFT provision; • No designation of authorities to impose sanctions in relation to several violations; • Undue procedural hurdles for the FIO to initiate procedures for violation of AML Law provisions; **Effectiveness** • Procedural hurdles of the sanctioning system and low numbers of sanctions do not allow demonstrating a satisfactory level of effectiveness.
R.23	**PC**	• No clear legal prohibition which would prevent criminals and their associates from holding qualifying participations in insurance companies and insurance agencies; • Fit & proper criteria for FI do not cover all the aspects required by EC 23.3.1, that is in terms of all criminal records and in relation to persons that are "associates" to criminals; • Only limited measures regarding leasing companies; **Effectiveness** • Effectiveness of the FIO's supervision not sufficiently demonstrated; • Very limited cooperation in supervisory measures between the FIO and the relevant sector supervisor; • Several sectors were not subject to supervision by the FIO in recent years (insurance companies/brokers, pension funds, postal offices, leasing companies).
R.25	**PC**	• Guidance on TF suspicions is week; • No guidance on the application of the Recommendation 11 requirements; • Insufficient feed-back to the private sector. Effectiveness • No awareness on the sector specific guidance in the application of all AML/CFT requirements;
R.29	**PC**	• No explicit powers for the NBRM to compel the production of records from FX operators; • No explicit powers for the Postal Agency to compel production of records outside the on-site visits; • No possibility to sanction ***senior*** management for all supervisors. ISA neither empowered to sanction directors nor senior

		management; • The FIO can initiate enforcement procedures and sanctions only upon the findings of on-site inspections; **Effectiveness** • Effectiveness of the powers of enforcement and sanction was not established;

3.11 Money or value transfer services (SR. VI)

3.11.1 Description and analysis

Special Recommendation VI (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1142. In the 3rd round evaluation report SR.VI was rated PC, as the implementation of Recommendations 4-11, 13-15 and 21-23 in the MVT sector suffered from the same deficiencies as those valid for the other financial institutions. Moreover, the sanctioning system for infringements of the AML/CFT Law requiring court decisions via application of the supervisory authorities seems too complicated and does not work in practice as no sanctions had been imposed at that time. No information whether the sanctioning regime of the Law on Fast Money Transfer has ever been applied.

Designation of registration or licensing authority (c. VI.1), adequacy of resources – MVT registration, licensing and supervisory authority (R. 30)

1143. MVT service providers are regulated under the provisions of the Law on Fast Money Transfer (LFMT). The designated authority responsible for registering and licencing legal persons that perform MVT services is the NBRM.

1144. According to Article 3 of the LMFT, only the *providers of service fast money transfers* (hereinafter – providers) and their sub-agents can conduct the MVT service.

1145. The providers and sub-agents are defined in Art. 2 (2) and (3) of LFMT as a *trade company registered in the Republic of Macedonia which obtained from the NBRM a license to provide a service fast money transfer in accordance with the Law, and a bank that obtained a consent for providing services fast money transfer from the NBRM. "Subagent" shall be a trade company dully registered or bank with a license obtained from the NBRM with which the provider of the service fast money transfer has concluded a contract on conducting the service fast money transfer*.

1146. A trading company should be understood as a legal entity established according to the Law on trading companies.

1147. Pursuant to Article 5 of the LMFT, the legal entities not having obtained a licence for fast money transfer or not having concluded a contract with such a provider as subagent; a bank that failed to obtain the consent from the NBRM for providing service fast money transfer; and a natural person that is not employed by a provider of service for fast money transfer or by the sub-agents, shall not be allowed to conduct the service fast money transfer.

Banks that provide MVT services

1148. According to Article 7-a of the LFMT, licensed banks may provide MVT services after obtaining a consent from the Governor of the NBRM. In order to obtain the consent, the banks are obliged to submit a written request to the NBRM including the following documents:

1) agreement from the authorised global system for electronic money transfer;
2) proof that the global system is a legal entity performing electronic money transfer in accordance with the regulations in the country of registration and that it is functional in at least 20 countries out of which at least ten are members of the Organisation for Economic Co-operation and Development;

3) audit reports for the last two years for the authorised global system for electronic money transfer prepared by internationally recognised audit company;
4) policies and procedures for receiving and distribution of cash in the relation with the sub-agents; and
5) address of the premises where the fast money transfer shall be performed.

1149. In addition to the LFMT, the NBRM Decision on Issuing a Licence and Approval for Providing MVT services ("Official Gazette of the Republic of Macedonia" no. 79/07, hereafter NBRM Decision 79), further details the terms for concluding contracts between providers and sub-agents. It should be noted that paragraph 6 of the Decision mirrors the requirements mentioned in the LFMT but elaborates more on the requirement related to policies and procedures, where the following additional obligations are added:

- method of supplying sub-agents with cash by the bank as a fast money transfer service provider;
- method of returning the cash by sub-agents to the bank as a fast money transfer service provider;
- method of settling the cash between the bank as a fast money transfer service provider and sub-agents for the executed fast money transfer transactions; and
- sub-agents' authorised persons allowed to withdraw and return the cash from/to the bank as a fast money transfer service provider.

Trading companies that provide MVT services

1150. According to Art. 6 of the LFMT, in order for the trading companies to obtain a licence from the NBRM for providing MVT services, the following conditions must be met:

1) To be registered in the register of trade companies for conducting ancillary activities during financial intermediation;
2) To have at its disposal an appropriate business premises, technical equipment and information system;
3) To provide appropriate protection and securing of the funds, property and employees;
4) To have adopted policy for safety of the information system including the sub-agents other than banks;
5) To have policies and procedures for receiving and distributing the cash in the relation with the banks and sub-agents;
6) The responsible in the trade company to hold a university degree, at least three years of working experience in the field of financial work and be introduced with the regulations related to the fast money transfer;
7) The employees in the trade company who shall provide the services fast money transfer to have at least high school education;
8) To deposit amount of at least €20,000 to a separate account referred to in Art. 18 (1) of this Law;
9) Not to have initiated a bankruptcy or liquidation procedure;
10) Misdemeanour sanction, i.e. penalty to prohibit performing profession, activity or duty not to have been imposed on the responsible person and employees who perform the services fast transfer of money and no effective court verdict for criminal act in the field of finances to have been imposed;
11) who has not been imposed a secondary sentence:
    - prohibition on obtaining a license for performing the service fast money transfer;
    - revocation of the license for performing the service fast money transfer;
    - prohibition on founding new legal entities; and
    - temporary or permanent prohibition for the performing service fast money transfer; and
12) to possess authorisation in a form of contract from an authorised global system for electronic money transfer.

1151. Additionally, section A of the NBRM Decision 79 elaborates more on the requirements stated in the Law on fast money transfers, specifically describing each requirement in detail.

1152. If the above conditions are met, then the trading company pursuant to Article 7 of the LFMT can submit a written request to the NBRM.

Sub-agents

1153. According to Article 12 of the LMFT, the sub-agents in order to conclude a contract with a provider shall meet *i.a.* the following conditions: have a program on prevention of money laundering and financing terrorism approved by the FIO; and the authorisation from the provider of service fast money transfer for operating via the separate account as referred to in Article 18 paragraph 1 of this Law.

1154. According to Art. 46 AML/CFT Law, the supervisory authority of the fast money transfer providers is the NBRM.

1155. At the time of the on-site visit there were 7 providers of fast money transfer and 79 sub-agents that work for the account of a single provider of fast money transfer.

Application of the FATF 40+9 Recommendations (applying R. 4 – 11, 13 – 15 & 21 – 23 and SR IX (c. VI.2))

1156. According to Art 2 (5) of the AML/CFT Law, financial institutions which are providers of fast money transfers are subject to all AML/CFT requirements set out in the Law.

1157. Notwithstanding that MVT operators are subject to the AML/CFT Law, the various deficiencies identified under Recommendations 4-11, 13, 21-23 may have an impact on the implementation of AML/CFT requirements by these entities.

Monitoring MVT services operators (c. VI.3)

1158. Pursuant to Article 46 paragraph (1) and (2) of the AML/CFT Law, MVT providers and sub-agents are subject to supervision performed by the NBRM and by the FIO.

1159. The supervision conducted by the NBRM can be off-site (based on the reports submitted by MVT operators pursuant to Article 24 of the LFMT) and on-site. Apart from the ML/FT prevention, the supervision also controls the payments on the basis of fast money transfer through special accounts; settlements between the service provider and sub-agents; financial settlements with a global system; centralisation of data from the performed transactions of fast money transfer; the monthly reports; as well as the manner of keeping the accountancy and reports of the company's internal revision.

1160. The table below shows the number of on-site inspections performed by the NBRM and FIO over the fast money transfer providers.

Table 39: Number of on-site inspections performed by the NBRM and FIO

Year	2009	2010	2011	2012
Inspections carried out by the NBRM	34	1	0	3
Inspections carried out by the FIO	0	2	0	4 (sub-agents)

1161. During the on-site interviews, the representatives of the NBRM expressed the opinion that the compliance with the AML/CFT Law supervision is sufficient because the MVT entities do not pose a ML/FT risk.

1162. Nonetheless, the evaluation team considers that the number of on-site inspections is low.

Lists of agents (c. VI.4)

1163. Even though the Criterion obliges countries to require each licensed or registered MVT service operator to maintain a current list of its agents, which must be made available to the designated competent authority, "the former Yugoslav Republic of Macedonia" uses a slightly different approach.

1164. In particular, the NBRM informed the evaluation team that it maintains the Fast Money Transfer Service Provider Registry. The Registry contains data on providers and on sub-agents that concluded contracts with the fast money transfer service providers. The Manual of the Governor of the NBRM prescribes the form, contents and manner of maintaining the Fast Money Transfer Service Provider Registry.

1165. Additionally, it should be mentioned that pursuant to paragraph 3 of Article 14 of the Law on Performing Service Fast Money Transfer sub-agents are obliged to notify the provider of service fast money transfer for any changes to the conditions. Subsequently the fast money transfer service provider according to paragraph 2 of Article 23 of the abovementioned Law shall be obliged to inform the NBRM of all changes to the data of sub-agents. This approach clearly shows that the Registry contains up-to-date information on all providers and sub-agents.

1166. As it was mentioned during the on-site visit, the FIO has an indirect access to the MVT Registry.

Sanctions (applying c.17 – 1 – 17.4 & R. 17 (c. VI.5))

1167. As it was explained above, MVT operators are subject to all relevant measures and requirements foreseen in the AML/CFT Law and other Laws and by-laws. In case of non-compliance with the AML/CFT provisions, sanctions defined in the AML/CFT Law (Articles 49-51-a) apply to MVT services. For non-compliance with the LFMT the NBRM can impose misdemeanour sanctions foreseen in Art.s 36-40 of this Law.

1168. For a more detailed explanation of the sanctioning regime which is applicable in "the former Yugoslav Republic of Macedonia" reference should be made to R.17 in this report.

Additional elements – applying Best Practices paper for SR. VI (c. VI.6)

1169. Certain aspects of the Best Practices paper for SR.VI have been broadly implemented, in particular those issues relating to licencing, regulation, compliance monitoring and sanctions.

1170. However, there appear to be limited efforts made to detect unauthorised MVT's activity. Nonetheless, according to Art. 36 of the LFMT the natural and legal persons are subject to imprisonment for unauthorised fast money transfers.

Effectiveness and efficiency

1171. The authorities established a comprehensive system for licencing and registering MVT operators, however during the on-site mission, the MVT operators demonstrated low awareness of preventive measures.

1172. The representatives of the banking sector (banks are sub-agents), admitted that they are confused about their responsibilities in respect of the AML/CFT requirements.

1173. Moreover, the monitoring and supervision carried out by supervisory bodies is on unsatisfactory level.

3.11.2 Recommendations and comments

1174. The authorities should increase the number of on-site and off-site inspections to detect main deficiencies and problematic issues related to MVT operators when applying the AML/CFT Law provisions.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors relevant
SR. VI	**PC**	• Deficiencies in the AML/CFT Law relating to the preventive measures, particularly on CDD, apply to MVT operators; **Effectiveness** • There is an insufficient number of inspections and unsatisfactory level of monitoring over MVT operators; • Low awareness of preventive measures among MVT operators

		and sub-agents.

4. PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

1175. According to the provisions of the Art. 5 of the AML/CFT Law, the categories of DNFBP that are subject to the AML/CFT requirement are defined as:

- Legal and natural persons performing the following activities:

  a) trade in real estate,
  b) audit and accounting services;
  c) notary public, attorney and other legal services relating to: sale and purchase of movables, real estate, partner parts or shares, trading in and management with money and securities, opening and managing bank accounts, safe-deposit boxes and financial products, establishing or taking part in the management or operation of the legal entities, representing clients in financial transactions etc.,
  d) providing advices in the area of taxes;
  e) providing consulting services; and
  f) providing services of investment advisor.

- Companies organising games of chance in a gambling room (casino);
- Associations of citizens and foundations (domestic and foreign);
- Service providers to legal persons;
- Central Securities Depositary;
- Legal entities taking movables and real estate in pledge;
- Agency for Real Estate Register; and
- Legal entities whose activity is purchase of vehicles.

1176. According to Art. 2 (10) of the AML/CFT Law, the *Service providers to legal entities* are the natural and legal persons who provide services for: incorporation of legal entities; arranging or assisting for another person to act as the management body or a member of the management body of the legal entity; provision of a registered office of the legal entity; arranging or assisting for other persons to act as partner or shareholder for another person other than a company which is listed on the Stock Exchange; and other services stipulated by Law.

1177. The dealers in precious metals and stones, are not included in Art. 5 of the AML/CFT Law. As explained by the authorities, the reason for not listing the above mentioned dealers as reporting entity resides in Art. 24 of the AML/CFT Law, which explicitly prohibits any payment or receipt of cash in an amount of €15,000 or more in denar counter-value, outside the banking system.

1178. Almost all the DNFBPs are covered by the AML/CFT Law obligations with the only exception of the internet casinos.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

Recommendation 12 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

1179. At the time of the 3rd Round Evaluation the general CDD framework of the AML/CFT Law was applicable to DNFBPs. Due to the CDD framework's serious shortcomings identified, Recommendation 12 was therefore rated 'Non-Compliant'.

Applying Recommendation 5 (c. 12.1)

1180. According to the FATF Methodology, DNFBP should be required to comply with the requirements set out in Recommendation 5 (Criteria 5.1 – 5.18) for circumstances specific to casinos, real estate agents, dealers in precious metals and stones, lawyers, and trust and company

service providers (TCSPs). DNFBP should especially comply with the CDD measures set out in Criteria 5.3 to 5.7 but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction.

1181. Article 5 of the AML/CFT Law provides for a list of DNFBP that are subject to the AML/CFT requirements, however it should be noted that internet casinos and foreign trusts are not covered by the AML/CFT Law.

Casinos (Internet casinos / Land based casinos)

1182. According to Art. 5 no. 3 of the AML/CFT Law, companies organising games of chance in a gambling room (casino) are reporting entities. There are no further explanations in the AML/CFT Law in this context. Reference is made to the Law on the Games of Chance and Entertainment Games (Games Law) for clarification of the expression *"in a gambling room"*. According to Art. 2 no. 1 Games Law the term *"games of chance"* is defined as games where the participants have equal opportunities to win a prize by indirect or direct payment of a specific amount (bet), and the outcome of the game depends exclusively or mainly on a chance or any uncertain future event in the game. Chapter VI of the Games Law is devoted to "*Online Games of Chance*". There is no reference to "*in a gambling room*" in the whole Games Law.

1183. Therefore, the use of the words *"in a gambling room"* in Art. 5 no. 3 of the AML/CFT Law must be understood as a limitation of the AML/CFT Law's application to land based casinos. Internet or online casinos are thus not covered by the AML/CFT Law.

1184. In addition to the general requirements as described under Recommendation 5 above, Art. 22 of the AML/CFT Law requires the casino operators, to identify the client in immediately after entering the premises of the casino and upon buying or paying the chips in amount exceeding €2,000.

1185. Additionally, Art. 70 (4) of the Law on the games of chance and entertainment games, requires the organiser of games of chance in casinos to provide uninterrupted audio-video surveillance and recording in the casino. This audio- video surveillance is used *inter alia* to monitor winnings and control persons entering casinos.

1186. All the CDD requirements set out under the AML/CFT Law are applicable to casinos. The deficiencies identified under R.5 also apply to casinos.

Real estate agents

1187. The AML/CFT Law covers real estate agents with all the obligations mentioned before. The deficiencies identified under R.5 also apply, insofar as the standard applies to real-estate agents.

Dealers in precious metals and dealers in precious stones

1188. The dealers in precious metals stones, are not covered by the AML/CFT Law since the FATF Methodology include the dealers in precious stones and metals in the scope of the Recommendations only when they engage in any cash transaction with a customer equal to or above €15,000, which are prohibited outside the banking system. Therefore there is no need to include dealers in precious metals and dealers in precious stones in the catalogue of the entities obliged by the AML/CFT Law requirements. The evaluation team accepted the explanation provided by the authorities.

Lawyers, notaries and other independent legal professionals and accountants

1189. The AML/CFT Law applies to accountants, attorneys, notary public and other legal services relating to all activities of these legal professions referred to under criterion 12.1 (d).

Applying Recommendations 6, 8, 9, and 11(c. 12.2)

1190. Since all DNFBP (except dealers in precious metals and dealers in precious stones) are subject to the AML/CFT Law, all the obligations on PEPs, new and developing technologies, reliance on third parties, record-keeping and complex, unusual large transactions contained within the Law apply to DNFBP. The deficiencies which were identified under R. 6, 8-11 apply to DNFBP.

1191. As it was highlighted during the on-site meetings, DNFBPs are not aware of ML/TF threats arising from new and developing technologies. There are no guidelines for any category of DNFBP in this scope.

1192. The DNFBPs are not allowed to rely on third parties and introducers.

Applying Recommendation 10

1193. DNFBPs are subject to the AML/CFT Law referring to the record-keeping obligations.

Effectiveness and efficiency

1194. Although the AML/CFT provisions concern equally the DNFBPs and the financial institutions, the meetings with the DNFBPs held during the on-site visit demonstrated lower level of awareness of the AML/CFT requirements.

1195. The CDD measures applied by the casinos seemed to broadly cover the AML/CFT Law requirements, at a satisfactory level. The real estate representatives demonstrated satisfactory awareness of the AML/CFT requirements. However, during the on-site interviews, all the representatives of DNPBPs demonstrated lower awareness of the concept of beneficial owner and PEPs. No attempt is made by the notaries, lawyers and accountants to identify the beneficial owner of the transactions they assist or intermediate.

1196. The on-site interviews lead to the conclusion that DNFBPs do not apply a risk-based approach in respect of CDD.

4.1.2 Recommendations and comments

1197. "The former Yugoslav Republic of Macedonia" demonstrated a significant progress in the implementation of the AML/CFT requirements for DNFBPs since 3rd Round Evaluation, by including all the relevant business and professions as subject to the AML/CFT standard. Internet casinos should be included into the AML/CFT Law's scope of application.

1198. The technical findings relating to R.5, 6, 8-11 are also applicable to DNFBPs. On the effectiveness side, the DNFBPs demonstrated a noticeably lower level of consciousness about AML/CFT obligations.

1199. Therefore, the authorities should continue their awareness raising efforts especially on the risk-based approach and on CDD measures focusing on the identification and verification of beneficial owners and PEPs.

1200. As emphasised in the dedicated section of this report, the authorities are recommended to intensify on-site and off-site supervision over DNFBPs to increase effectiveness. More guidelines would be necessary and useful to guarantee appropriate and effective implementation of AML/CFT measures.

Recommendation 5

1201. DNFBPs should be required to determine whether the customer is acting on behalf of another person.

1202. DNFBPs should be required when conducting on-going due diligence on the business relationship to establish, where necessary, the source of funds.

1203. There shall be explicit requirement in the AML/CFT Law which prohibits the application of simplified CDD when there is a suspicion of ML/FT or specific higher risk scenarios apply.

1204. The authorities should consider issuing a specific guidance to assist DNFBPs in implementing the requirements of the AML/CFT Law, especially for the process of identifying the ultimate beneficiaries.

Recommendation 6

1205. More emphasis must be placed on awareness raising programs dedicated to the DNFBPs' representatives concerning PEPs related requirements.

Recommendation 8

1206. As it was highlighted during the on-site meetings, DNFBPs are not fully aware of ML/TF threats arising from new and developing technologies. More guidance is necessary on this respect for all categories of DNFBPs.

Recommendation 9

1207. N/A.

Recommendation 10

1208. As it was demonstrated during the on-site mission, the record-keeping requirements are generally applied by DNFBPs.

Recommendation 11

1209. The authorities are recommended to issue guidelines to assist the private sector in the examination, as far as possible, of the background and the purpose of such transactions.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**	• Internet casinos are not subject to the AML/CFT Law; ***Applying Recommendation 5*** • Deficiencies related to financial institutions also apply to DNFBPs; **Effectiveness** • The understanding and awareness of the obligations dealing with identification of the beneficial owners is insufficient; ***Applying Recommendation 6*** • Deficiencies related to financial institutions also apply to DNFBPs; **Effectiveness** • DNFBP demonstrated very low awareness of the concept of PEP and related CDD measures; ***Applying Recommendation 8*** • Deficiencies related to financial institutions also apply to DNFBPs; **Effectiveness** • There is very low awareness of risks arising from new and developing technologies across all DNFBPs; ***Applying Recommendation 9*** • N/A; ***Applying Recommendation 10*** • Deficiencies related to financial institutions also apply to DNFBPs; ***Applying Recommendation 11*** • Deficiencies related to financial institutions also apply to DNFBPs.

4.2 Suspicious transaction reporting (R. 16)

(Applying R.13 to 15 and 21)

4.2.1 Description and analysis

Recommendation 16 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

1210. In the 3rd evaluation round, Recommendation 16 was rated "Non-compliant" based on the general deficiencies identified with respect to the reporting system and the low level of awareness of DNFBPs on their reporting obligations. It was also identified that some institutions are quite unconcerned about money laundering and terrorism financing risks in their field and others, like lawyers, do not accept their obligations. As was mentioned in the 3rd MER, the identified facts may also be one of the reasons for the small numbers of suspicious transactions reports received from the DNFBP sector.

Applying Recommendations 13-15

Requirement to Make STRs on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBPs)

1211. The same legal provisions in terms of reporting apply both for FI and DNFBP therefore, for the technical compliance the reader is referred to Recommendation 13. Guidance on reporting is provided in Rulebook 38[103] and 140[104].

1212. Rulebook 38 provides two types of STR forms: one valid for the banking sector and the second for all the rest of the reporting entities (including for the DNFBPs) where less information is required and no express field describing the transaction (considered as suspicious) is included. Under the field requiring information about the *"reasons for suspicion"* the reporting entity must provide the number of suspicion indicator from the *"list"* or provide the broader description on the suspicion. There is no explanation or link to what *"list"* the reporter is referred to.

1213. The FIO issued lists of suspicion indicators for the following sectors:

- Gambling rooms (casino);
- Lawyers;
- Accounting companies, audit companies and auditors;
- Notary public.
- Real estate agencies;
- Legal entities which receive movable property and real-estate as collateral; and
- Service providers to legal persons.

1214. None of the list of indicators document contains references to TF suspicions.

1215. In addition to the STRs reporting obligations, by virtue of the Art. 29-a (1) of the AML/CFT Law, the notaries shall submit to the FIO the data collected for composed notary acts, confirmed private documents and verified signed contracts for obtaining property in amount of €15,000 or more, in denar counter-value according to the middle exchange rate of the NBRM on the day of the composition of the notary acts, confirmation of the private document and verification of signatures stated in the contract in electronic form at the end of the day.

1216. According to Art. 29-a (4) of the AML/CFT Law, the legal and natural persons whose business activity is buying and selling of vehicles, shall be bound to submit to the Office the data collected for the concluded contracts on buying and selling of new vehicles in amount of €15,000 or more, in denar counter-value according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day of the conclusion of the contract, in written form at the end of the day.

Legal Privilege

1217. According to Art. 41 of the AML/CFT Law the only legal privilege is related to the lawyers who are excepted from the responsibilities arising from the AML/CFT Law in the cases where they perform the function of defending and representing in a court procedure.

1218. The legal privilege is clearly going beyond the FATF methodology as it provides exception from reporting obligation only in case of lawyers and it does not extend to other legal professions

[103] On the contents of the reports submitted to the FIO.
[104] On the content and the form of the data submitted by the entities to the FIO and the manner of their electronic submission.

or accountants.

No Reporting Threshold for STRs (c. 16.1; applying c. 13.3 to DNFBPs)

1219. The reporting obligation is suspicion based and applied irrespective of any threshold. This obligation is applicable for all obliged entities including DNFBPs.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 16.1; applying c. 13.4 to DNFBPs)

1220. According to the provisions of the CC, ML offence is related to "*obtained through a crime".* Tax crimes are also provided in the CC. The authorities confirmed that there are no such tax-related limitations in STR reporting.

Reporting through Self-Regulatory Organisations (c.16.2)

1221. Suspicious transactions reports are sent directly to the FIO. The AML/CFT Law does not provide the obligation to submit the STRs through a Self-Regulatory Organisation.

1222. However, according to the requirements of Art. 29 (4) of the AML/CFT Law, the reporting entities shall be bound to inform in written form the competent supervision authorities referred to in Art.s 46 and 47 on the submission the suspicious activity reports to the FIO within three days from the date of submission of the report.

Establish and Maintain Internal Programs and Controls to Prevent ML/FT (c. 16.3; applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPS)

1223. The same obligations to prepare the internal programs provided under Art. 40 of the AML/CFT Law and analysed under Recommendation 15 apply to the DNFBPs. The internal procedures must be prepared in writing in order for submission to the FIO and they must be updated at least once a year.

1224. With the exception of public notaries there are no bylaws applicable for the DNFBP sectors further detailing the requirements of the AML Law but in 2010 the FIO prepared Guidelines for the preparation of the AML/CFT programmes according to Art. 40 of the AML/CFT Law.

1225. For the Notaries, *Instructions for the elaboration of programs for the application of the measures and actions for preventing ML and FT* were issued by the Notary Chamber. According to the instructions, the notaries are obliged to adopt an internal program which should contain the following: activities of the obligor; measures to be taken to detect and prevent ML/TF; the authorised person responsible for implementing the program; the manner of cooperation with the FIO; and the plan for performing internal control and audit the manner of implementation of the respective measures. The most comprehensive part of the Instructions is Part 2: Measures to be taken to detect and prevent ML/TF which should detail the procedures for customer acceptance; procedures for analysing the customer; procedure for risk analysis; and procedures for recognising STRs and UTRs etc..

1226. In accordance with Art. 40 (1) indent 8 AML/CFT Law, and in the context of the preparation of the internal programmes, each entity is obliged to appoint an authorised person. The *"authorised person"* is defined in Art. 2 (2) no. 17 AML/CFT Law in the following way: *"authorised person shall mean a manager, appointed by the entity's highest management body, who is responsible for the implementation of the programme and establishing direct contacts with the Financial Intelligence Office"*.

1227. Pursuant to Article 40-a of the AML/CFT Law, in case the DNFBP has more than 50 employees, should have a separate department responsible for implementing the programs and the provisions of the AML/CFT Law, by informing the FIO in written. The department should have at least 3 employees, and the number of the employees should be increased proportionally per one person for every 200 employees. A responsible person manages the working of the department.

Independent Audit of Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.2 to DNFBPs)

1228. The requirement to maintain an adequately resourced audit function to test compliance is not embedded in the AML Law, but must be derived from sector specific laws which in case of

DNFBPs are absent.

1229. The Instructions issued for the notaries only list two principles in case of internal control and audit: the principle of *"four eyes"* on the analysis of the customer and the principle of the "control of the controller".

Ongoing Employee Training on AML/CFT Matters (c. 16.3; applying c. 15.3 to DNFBPs)

1230. Art. 40 (1) (7) of the AML/CFT Law imposes the obligation on all entities to develop and implement a "*plan for continuous training of the employees in the entity from the area of preventing money laundering and financing terrorism that provide realisation of at least two trainings during the year*". Thus, this training plan should be an integral part of the entity's procedures on AML/CFT.

Employee Screening Procedures (c. 16.3; applying c. 15.4 to DNFBPs)

1231. The only requirement on the employees screening is provided by Art 40-a (3) of the AML/CFT Law in the context of the AML department. Employees of the AML department according should fulfil high professional standards. No further explanation as what "high professional standards" should comprise.

1232. There are no employee screening procedures for DNFBPs that have less than 50 employees.

Additional Element—Independence of Compliance Officer (c. 16.3; applying c. 15.5 to DNFBPs)

1233. There was no information on compliance officer independence requirements for DNFBPs.

Applying Recommendation 21

1234. The same obligations apply in case of FI and DNFBPs, therefore most of the findings described under Recommendation 21 remain valid.

Special Attention to Persons from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBPS)

1235. According to Art. 12 (c)(2) of the AML/CFT Law, the entities are obliged to give special attention to the business relations and transactions with natural persons or legal entities from countries that have not implemented or have insufficiently implemented measures for the prevention of money laundering and financing terrorism. The MoF, upon the proposal of the FIO, shall determine the list of countries with weaknesses in the AML/CFT system.

1236. In compliance with this provision, the MoF published a "Rulebook on determining the list of countries that have not implemented or insufficiently implemented the measures for preventing money laundering and financing terrorism", which dates from 17 December 2010. No information on updates was provided.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.2 to DNFBPS)

1237. The DNFBPs are obliged to focus special attention to the business relations and transactions connected with countries that have not or insufficiently implemented measures for the prevention of money laundering and financing terrorism (Art. 12-c (2) AML/CFT Law) and to examine transactions which have no obvious economic justifiability or evident legal purpose (Art. 12 (c) (1) AMLCFT Law).

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBPS)

1238. There are no provisions to apply counter measures by the "the former Yugoslav Republic of Macedonia" in respect of those counties that do not apply or insufficiently apply the FATF Recommendations.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

1239. The AML/CFT Law extends all the obligations to accountants and auditors regardless of the

professional activity carried out.

Additional Elements – Reporting of All Criminal Acts (c. 16.6)

1240. Under the AML/CFT Law the requisite "*obtained through a crime"* means any activity wherever carried out which, under the "the former Yugoslav Republic of Macedonia" or any other law, amounts to a criminal offense or crime. Therefore, subject persons, including the DNFBPs are required to report suspicious transactions notwithstanding that the predicate offence was committed outside "the former Yugoslav Republic of Macedonia".

1241. Thus, since the reporting obligations refers to suspicions of money laundering, it can be concluded that the reporting obligations as formulated in the Macedonian legislation shall be extended to crimes, included those committed outside Macedonia.

Effectiveness and efficiency

Applying Recommendation 13

1242. As emphasised in the table below, the number of STRs received by the FIO from DNFBP's remains very low.

Table 40: Level of reporting DNFBPs

Type of entity	2008	2009	2010	2011	2012
Real Estate Agencies	/	/	1	/	/
Audit companies	/	/	/	/	/
Accounting companies	/	/	2	/	/
Lawyers	/	20	2	2	1
Notaries	4	10	11	26	77
Casinos	/	/	4	1	1

1243. The evaluators were informed during on-site-visit that no TF related STRs were ever submitted to the FIO by the DNFBP sectors.

1244. In addition to the STRs, the notaries and the legal persons involved in the sale/purchase of new vehicles submitted the following threshold based reports.

Table 41: Threshold reports received by the FIO

Entity	2011	2012
Notaries	11,962	13,364
Legal/natural entities engaged sale/purchase of vehicles	2,463	1,760

1245. Excepting the public notaries, very few STRs were filled by the DNFBP sector.

1246. The casino representatives met on-site told the evaluation team that some training seminars on AML/CFT requirements were organised by the FIO. The suspicion elements that would trigger an STR, were related mainly to the customer's behaviour in the premises of the casino. Limited awareness on other risk situation (such as the country of origin of the client) was emphasised which raised some concerns in the context in which the evaluators were informed that 99% of the casino clients are foreigners.

1247. The on-site interviews confirmed that the notaries are the most knowledgeable category of DNFBP in terms of AML/CFT requirements. Between 2008 and 2012, 128 STRs were filled by 173 Public Notaries offices. The FIO signed in 2011 a Memorandum of Cooperation with the Notary Chamber of Republic of Macedonia. Three training seminars were organised for the public notaries, on the electronic submission of data to the FIO and the implementation other obligations under the AML/CFT Law.

1248. The lawyers reported actively only in 2009 when 20 STRs were submitted to the FIO. During the on-site interviews the evaluation team was told that an initial reluctance of the lawyers vis-à-vis the reporting obligation did exist, but now the issue was solved through awareness raising

programs and by introducing the legal privilege excepting them from the reporting obligations in case of criminal procedures carried out in relation to the client. However, the suspicion indicators were not entirely clear for the representatives of the sector and the SRO (Chamber of the Bar Association) representatives maintained that they did not participate at the drafting of the suspicion indicators list. The cash operations and the possible criminal record of the client were the main elements mentioned as reasons for filing an STR to the FIO.

1249. The rest of the DNFBP sectors (the accountants, the auditors, the real estate agents and the legal/natural entities engaged sale/purchase of vehicles) did not file any STR of filed STRs only as an exception. Their level of awareness on the AML/CFT issues confirmed the statistics.

1250. Although listed in the AML/CFT Law as reporting entity, the *Service providers to legal persons* are outside of the reporting regime in practice. The designated supervisory authority for AML/CFT matters is the FIO who issued a list of suspicion indicators for this category. However, this category of DNFBP is absent from the Annual reports of the FIO and never filed an STR.

Applying Recommendation 15

1251. The same obligations in obligation for introducing and implementation of internal procedures for ML/FT prevention valid for the FI apply for the DNFBPs. These internal procedures must be prepared in writing in order for submission to the FIO and they must be updated at least once a year (Art. 40(2) and (3) AML Law).

1252. Sanctions in very few cases have been imposed to the DNFBPs for not complying to this requirement. Given the low number of programme updates submitted to the FIO it is assumed that this obligation is not observed in practice. (See statistics in Chapter 3).

1253. Guidance on the application of the AML/CFT internal programs requirements, internal audit and employees screening should be adopted by the authorities.

Applying Recommendation 21

1254. The same obligations valid for FI apply to DNFBPs.

4.2.2 Recommendations and comments

Applying Recommendation 13

1255. Technical recommendations formulated under R13 apply.

1256. The existing lists of the indicators for the DNFBP must be developed seeking to include more indicators related with terrorism financing.

1257. The internet casinos should be covered by the AML/CFT Law obligations.

1258. The reporting template presented in Rulebook 38 should be improved to include an express field describing the suspicious transaction for the DNFBPs. A reference to the lists of indicators published by the FIO should be included in the Rulebook 38 to guide the reporting entities to their industry related document.

1259. Instruction on on-line STR reporting should be issued and published.

1260. Although such sectors of the DNFBP as *service providers to legal entities* is included to the list of the obliged entities but in reality this sector is in practice outside of the implementation of the AML/CFT Law provisions.

1261. Awareness raising programs should be developed for all DNFBPs to increase compliance with Recommendation 13 and Special Recommendation IV.

Applying Recommendation 15

1262. The technical recommendations valid for the FI are valid for the DNFBPs.

1263. Guidance on the application of the AML/CFT internal programs requirements, internal audit and employees screening should be adopted by the authorities.

Applying Recommendation 21

1264. The technical recommendations valid for the FI are valid for the DNFBPs.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	***Applying Recommendation 13*** • The reporting obligation does not refer to *funds* that are proceeds of criminal offences but to suspicion of laundering of proceeds; • TF suspicions are limited to transactions and clients and do not extend to *"funds"* related to terrorist activities, terrorist organisations or those who finance terrorism; • The internet casinos are outside of the scope of the reporting obligations; **Effectiveness** • The Rulebook 38 does not provide a field for the reporting entities to describe the transaction considered as suspicious; • No instruction on on-line STR reporting; • The lists on suspicion indicators do not include TF indicators; • Limited awareness of most of the DNFBP sector on risk situations and on suspicion indicators; • Low level of reporting for all DNFBPs except the notaries; ***Applying Recommendation 15*** • No guidance applicable for the DNFBP sectors to further explain the content of the AML/CFT internal programs requirements; ***Applying Recommendation 21*** • No possibility for the "former Yugoslav Republic of Macedonia" to introduce counter-measures.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

Recommendation 24 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

1265. "The former Yugoslav Republic of Macedonia" was rated NC on R.24 in the 3rd MER. This was based on the following factors underlying the rating:

- Some of the supervisory commissions for DNFBP have either not yet been established (auditors and accountants) or not yet conducted any kind of supervision (lawyers);
- Though the AML Law designated the Public Revenue Office (PRO) as supervisor for AML/CFT issues for real estate agents, dealers in precious metals, dealers in precious stones; dealers in high value and luxury goods, the PRO has not yet started supervising these entities.
- For the supervisory authorities based on Art. 39 of the AML Law is it unclear which supervisory powers they have;
- Fit and proper requirements for owners and managers of casinos are insufficient;
- Casino providers do not need to prove the legitimate origin of the licence fee or the founding capital;
- The sanctions regime for DNFBP provided by the AML Law is deficient in the same ways as described in section 3.10.

1266. The main legal provision for the regulation and supervision of DNFBPs in the area of AML/CFT legislation are Art. 46 and 47 AML/CFT Law which provides that the supervision of

the application of measures and actions shall be performed by the Public Revenue Office over trade companies organising games of chance (casino), as well as other legal and natural persons performing the following services: trade with real estate, audit and accounting services, provision of services in the area of taxes or provision of consulting services, legal entities obtaining movables and real estate in pledge and citizens associations and foundations. The Bar chambers and notary chambers, within their competences shall establish commissions for performing supervision by their members. The FIO shall supervise the application of the measures and actions determined by this Law over the entities in cooperation with these bodies or independently.

Table 42: The supervisory authorities for the DNFBPs

DNFBP	Supervisory/ Sanctioning authority for AML/CFT purposes	Licensing authority (if licenced)	Legal Basis
Casinos	PRO FIO	MoF	Law on Games of Chance and Entertainment Games, AML Law
Real estate agents	PRO FIO	-	Law on Trade Companies AML Law
Dealers in precious metals	Not covered by AML Law	-	Law on Trade Companies
Dealers in precious stones	Not covered by AML Law	-	Law on Trade Companies
Lawyers	Attorney Committee FIO	Bar Chamber	Attorneys Law AML Law
Notaries	Chamber of Notaries FIO	Chamber of Notaries	Notary Public Law AML Law
Accountants	PRO FIO	MoF	Accountancy Law AML Law
Company Service Providers	FIO	-	AML/CFT Law

Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

1267. According to Art. 5 (3) of the AML/CFT Law, the companies organising games of chance in a gambling room (casino) are subject to the AML/CFT legal framework. The supervisory authorities for casinos are the Public Revenue Office (PRO) and the FIO. As described under Recommendation 12, the internet or online casinos are not subject to AML/CFT provisions, thus they are not subject to AML/CFT supervision. There is no indication that casinos operate other than land based.

1268. The PRO has the power to perform on-site inspections in the virtue of Art. 151 of the Law on the Games of Chance and Entertainment.

1269. The MoF is the licencing authority for the casinos. The issuance of licences is regulated in the Law on the Games of Chance and Entertainment which stipulates that a minimum capital of Euro 2.500.000 in Denar counter value is necessary before the incorporation. In order for the license to be issued, the trade company seeking to become a casino organiser, should mandatorily attach to the request *i.a.* a document for registration from the Central Register; an evidence of the basic capital; a certificate that the trade company's bank transaction account is not frozen in the period of at least six months before the submission of the request; certificates from the Register of Sentences for Committed Crimes by Legal Entities that it has not been imposed a secondary sentence prohibition/ revocation on obtaining a license, or a permanent prohibition on carrying out of a license for organisation of games of chance. An evidence for the origin of the funds, items and rights entered as basic capital and a program for prevention of money laundering and financing of terrorism in accordance with the regulations that regulate the prevention of money laundering and financing of terrorism are also required.

1270. The requirements to be met by applicants for a licence do not contain information on the holders or beneficial owners of a significant or controlling interest, holding a management

function in, or being an operator of a casino.

Monitoring and Enforcement Systems for Other DNFBPS-s (c. 24.2 & 24.2.1)

1271. The PRO is in charge of supervision over "legal and natural persons performing the following services: trade with real estate, audit and accounting services, provision of services in the area of taxes or provision of consulting services, legal entities obtaining movables and real estate in pledge" according to Art. 46 (1) of the AML Law. The FIO shall supervise in cooperation with the PRO, or independently.

Audit and accounting services

1272. Audit and accounting service providers are obliged entities and their supervision is carried out by the PRO and the FIO.

Real estate agents

1273. The real estate agents and the Agency for Real Estate Register are obliged entities and the supervision is carried out by the PRO and the FIO.

Dealers in precious metals and dealers in precious stones

1274. The dealers in precious metals and stones, are not included in AML/CFT regime. As explained by the authorities, the reason for not listing the above mentioned dealers as reporting entity resides in Art. 24 of the AML/CFT Law, which explicitly prohibits any payment or receipt of cash in an amount of €15,000 or more in denar counter-value, outside the banking system.

Lawyers and notaries

1275. According to Art. 47(1) of the AML/CFT Law the Bar chambers and notary chambers, within their competences shall establish commissions for performing supervision of the application of the provisions of this Law by their members. Additionally, the FIO shall supervise in cooperation with the commissions or independently.

1276. The Attorney Committee of the Bar Chamber is the AML/CFT supervisory authority for lawyers. This Committee may go on-site, but so far has limited its activities to off-site measures based on information among the members of the Bar Chamber, like requesting reports if there may be a case for filing an STR. The FIO does not inform the Attorney Committee about its supervisory activities.

1277. Notaries are supervised for AML/CFT purposes by the Notaries Committee of the Notary Chamber. Representatives of the Notaries Committee, who are themselves members of the Notary Chamber, carry out on-site visits on non-working days. It is planned to visit 10 notaries' offices in each of the 5 regions per year. This audit plan is communicated to the FIO, while the Notaries Committee is not aware of the FIO's activities among notaries.

1278. The Notaries Committee does not have sanctioning power, but submits its reports with findings to the Steering Committee of the Notary Chamber, which may impose disciplinary procedures and penalties. While the Notaries Committee assumes that the Notaries Chamber may also impose sanctions according to the AML Law, so far this has not been the case.

Real estate agents

1279. The real estate agents are obliged entities and their supervision is carried out by the PRO and the FIO.

Trust and Company Service Providers

1280. According to information provided by the authorities, trusts must not be established on the territory of "the former Yugoslav Republic of Macedonia".

1281. The authorities of "the former Yugoslav Republic of Macedonia" informed the assessors orally that there are 127 registration agents, which can be considered company service providers. The conditions for their activities are based on the respective laws of companies.

Other obliged entities

1282. Additionally, the AML/CFT Law includes "dealers of vehicles" in the list of obliged entities, but has not identified a supervisory authority. By virtue of Art. 46 para 2 AML/CFT Law, the FIO acts independently as the supervisory authority over all obliged entities which have not been assigned to another supervisory authority in Art. 46 para 1 or Art 47 para 1 AML/CFT Law.

Recommendation 25 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1283. In the 3rd evaluation round, "the former Yugoslav Republic of Macedonia" was rated PC on R.25 due to range of the guidance for DNFBP which appeared to be lower than in relation to the financial sector. Less awareness of money laundering issued and no familiarity with financing of terrorism indicated a lack of guidance.

Guidance for DNFBPs other than feedback on STRs (c. 25.1)

1284. The FIO adopted and published on its website suspicion indicators for the following categories of DNFBPs: Casinos, lawyers, real estate agents, legal entities involved in sale and purchase of vehicles, accounting and audit companies, and public notaries. No other sector specific guidance in the application of the rest of the AML/CFT requirements (e.g. application of the CDD measures) was issued by any authority.

1285. According to the Article 40 item 2 and 3 of AML/CFT Law the entities must submit the AML/CFT internal programs to the FIO within one month from the entry into force of AML/CFT Law for insight and opinion. The entities shall update these programs at least once a year and to submit the amended form to the FIO. The evaluators were informed that in most cases there were no changes made by FIO and no recommendations given for the amendment of programs, but even the lack of recommendation be considered as an indirect guidance given to the DNFBPs, in the sense that their internal procedures have the FIO tacit approval. In cases where the internal programs needed recommendations from the FIO, this constitutes guidance aiming to improve their AML/CFT compliance systems.

1286. During the on-site interviews the DNFBPs indicated the need for specific sectoral guidelines and necessity of trainings in scope of all AML/CFT obligations.

Feedback (applying c. 25.2)

1287. As in the case of the FI, general feedback is provided by the FIO in the content of the annual reports and during the training sessions. There is no specific or case by case feedback.

Adequacy of resources supervisory authorities for DNFBPs (R. 30)

FIO

1288. The FIO's resources dedicated to supervision are considered inadequate. Together with the other supervisory authorities the FIO is in charge of supervision of more than 16,000 obliged entities.

PRO

1289. The PRO reports that it has 10 staff with competence in AML/CFT supervision. This number appears low in relation to the number of supervised entities which is further backed up by statistics, showing a low number of on-site visits.

Chamber of Attorneys / Notaries

1290. While the resources of the Notaries Committee seem sufficient and effectively applied, the adequacy of the Attorney Committee's resources are difficult to assess due to limited supervisory activity.

Effectiveness and efficiency (R. 24-25)

1291. During the on-site interviews with the representatives of PRO, some concerns were raised in

respect of the application of its AML/CFT supervisory function. On the licensing process, the PRO representatives pointed out that the requirement to present excerpts from the registry of criminal penalties is limited to the legal entities, because only those can apply for a licence. It was confirmed that so far no checks on indirect owners of casinos were carried out.

1292. The information provided on the process of verification of origin of funds emphasised a dominance of tax issues. In general, the assessors developed the opinion that the PRO includes AML/CFT in its supervisory function only marginally and only if it can easily be accommodated with its primary focus on fiscal matters.

1293. Art. 151 of the Law on the Games of Chance and Entertainment Games lists the elements to be analysed during on-site inspections but the AML/CFT compliance is not mentioned.

Table 43: AML/CFT supervisory activity on casinos

	Casinos					
	PRO			FIO		
	Audits performed	Settlement Procedures	Misdemeanour Procedure	Supervision	Settlement Procedures	Misdemeanour Procedure
2008						
2009	4			2		
2010	2			1		
2011						
2012						

1294. Art. 151 of the Law on the Games of Chance and Entertainment Games lists the elements to be analysed during on-site inspections but the AML/CFT compliance is not mentioned.

1295. The PRO representatives informed the assessors that during the regular on-site visits to the casinos, the AML/CFT compliance is automatically included. However, the auditors do not have special knowledge in auditing AML/CFT. With a total of 6 casinos on the territory of the country and no audits performed since 2011, the frequency of on-site visits is considerable low. The annual audit plan developed by PRO is coordinated with the FIO and a decision is taken whether on-site visits are carried out jointly or separately. Sanctions were imposed by the FIO following joint audits.

1296. The assessors are confident that the Notaries Committee plays an active role in its supervisory function, which would benefit from mutual information with the FIO.

1297. With regard to the supervisory function of the Attorney Committee, the assessors are of the opinion that it still has not seriously taken up its function yet. The description of its off-site supervisory activities, based on information obtained through general knowledge of each other's work, was not convincing. This impression was affirmed further by the fact that no on-site visits have occurred so far.

1298. The added value resulting from the car dealers' inclusion in the list of obliged entities was not demonstrated The DNFBPs are generally aware of the guidelines adopted by the FIO on ST reporting. The lack of other AML/CFT compliance guidelines is leads to lower level of knowledge on remaining issues, such as CDD or PEPs related measures.

Table 44: Sanctions applied by the FIO for the DNFBPs

Year	Institution(s)	Amount	Comments
2008	/	/	/
2009	1 casino	€2.250	For the legal person
		€800	For the Chief Executive Director
	1 casino	€4.500	For the legal person
		€1.600	For the Chief Executive Director
	1 real estate agency	€4.500	For the legal person
		€1.600	For the Chief Executive Director
	1 real estate agency	€2.250	For the legal person

		€800	For the Chief Executive Director
	1 real estate agency	€2.250	For the legal person
		€800	For the Chief Executive Director
	-Misdemeanour charges were pressed by the FIO to the relevant courts against: 1 real estate agency.		
2010	1 real estate agency	€4.000	For the legal person
		€1.200	For the Chief Executive Director
	-29 warnings with recommendations for elimination of the irregularities were imposed to 22 citizens associations and foundations, 5 real estate agencies and 1 casino.		
2011	-The Office carried out education of 28 entities regarding the clearance of deficiencies identified when performing the supervision. Specifically, following a previously conducted regular supervision over 6 citizens associations and foundations, 11 accounting companies, 3 audit companies, 5 lawyers and 3 notary public officers, Office inspectors identified irregularities in accordance with Article 50-a and Article 51 of the Law for which education is stipulated.		
2012	-The Office carried out education of 27 entities regarding the clearance of deficiencies identified when performing the supervision. Specifically, following a previously conducted regular supervision over 8 citizens associations and foundations, 9 accounting companies, 3 real estate agencies, 6 lawyers and 1 legal entity whose business is the purchase of vehicles, Office inspectors identified irregularities in accordance with Article 50-a and Article 51 of the Law for which education is stipulated.		

Table 45: AML/CFT supervisory activity other DNFBPs

	Accounting Companies					
	PRO			**FIO**		
	Conducted inspections	**Settlement Procedures**	**Misdemeanour Procedure**	**Supervision**	**Settlement Procedures**	**Misdemeanour Procedure**
2008						
2009						
2010						
2011	2			11		
2012	7			10		
	Audit Companies					
	PRO			**FIO**		
	Conducted inspections	Settlement Procedures	**Misdemeanour Procedure**	**Supervision**	**Settlement Procedures**	**Misdemeanour Procedure**
2008						
2009						
2010						
2011	3			4		
2012						
	Real Estate					
	PRO			**FIO**		
	Conducted inspections	**Settlement Procedures**	**Misdemeanour Procedure**	**Supervision**	**Settlement Procedures**	**Misdemeanour Procedure**
2008						

2009				5	3	1
2010	10			6		1
2011						
2012	3			3		
	Notaries					
	Notaries' Commission			**FIO**		
	Total supervisions	**Settlement Procedures**	**Misdemeanour Procedure**	**Supervision**	**Settlement Procedures**	**Misdemeanour Procedure**
2008						
2009	2					
2010	53					
2011	17			7		
2012	62			2		
	Attorneys					
	Lawyers Commission			**FIO**		
	Supervision	**Settlement Procedures**	**Misdemeanour Procedure**	**Supervision**	**Settlement Procedures**	**Misdemeanour Procedure**
2008						
2009						
2010						
2011				5		
2012				6		
	Company Service Providers					
	FIO					
	Supervision		**Settlement Procedures**		**Misdemeanour Procedure**	
2011	0					
2012	0					
	Car dealers					
	FIO					
	Supervision		**Settlement Procedures**		**Misdemeanour Procedure**	
2011	0					
2012	1					

1299. The FIO regularly organises series of AML/CFT trainings in the context of which feedback and guidance is provided to the DNFBPs. In 2010, the OPMLFT organised 6 casinos (13 persons) and 60 real estate agencies (62 persons)). From January till September 2011, the OPMLFT organised 2 training courses for NGOs (161 participants from 160 NGOs), training for employees of one new casino (17 persons), one company administering credit cards (13 persons) and 39 auditing companies (45 persons).

4.3.2 Recommendations and comments

Recommendation 24

1300. As already mentioned in the 3rd MER, the authorities should introduce the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino.

1301. The supervisory committee for lawyers, that is the Attorney Committee, should play an active role in supervising the Bar Chamber's members by taking up its supervisory function, including carrying out on-site visits.

1302. The FIO should inform the other supervisory authorities as listed in Art. 46(1) and 47 AML/CFT Law about its activities on a regular basis, especially its on-site visits, in order to design and agree on a yearly on-site visit plan with each supervisory authority for the obliged entities under its scope. Thus, gaps and overlaps in supervision could be effectively mitigated.

Recommendation 25 (c.25.1 [DNFBPS])

1303. The sector specific guidelines adopted by the FIO target only ST reporting. The authorities are

recommended to adopt guidance on all AML/CFT compliance requirements, such as CDD or PEPs related measures.

1304. As it was indicated during on-site meetings, feedback from the supervisors and the FIO to the DNFBP sector is made on ad-hoc basis and therefore is the area for improvement. The authorities should take steps in addressing this shortcoming.

4.3.3 Compliance with Recommendations 24 and 25 (Criteria 25.1, DNFBPS)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	• No measures to prevent criminals or their associates from holding or being the beneficial owner of a casino; **Effectiveness** • The effective performance of AML/CFT supervision by the PRO was not demonstrated; • The Attorney Committee is not actively pursuing its supervisory function.
R.25	**PC**	• No sector specific guidelines for the application of the AML/CFT requirements other than STR reporting; • The feedback from the supervisors and the FIO to the DNFBP sector is made on ad-hoc basis.

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

Recommendation 33 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1305. In the 3rd round MER of "the former Yugoslav Republic of Macedonia" R.33 was rated as 'PC' on the basis that the legal framework does not ensure adequate, accurate and timely information on the beneficial ownership and control of legal persons.

Legal framework

1306. Similarly to the time of the previous round of evaluation, the basic law regulating the incorporation and business activity of the commercial entities in "the former Yugoslav Republic of Macedonia" is the Company Law[105] ("Official Gazette of the Republic of Macedonia" No. 28/2004). Its main structure and scope has not significantly changed since the 3rd round. The forms of companies defined by Art.20 of the Law thus remained the same, in which context the entities that are relevant for the purposes of this evaluation are, similarly to the previous round of evaluation, the limited liability companies and joint stock companies the members of which shall not be held liable for the obligations of the company beyond the amount of their respective shares (contributions).

1307. These companies acquire the status of a legal entity and thus formally come into existence with the entry in the trade (or commercial) register and they cease to exist as a legal person upon deletion from that register (Art. 25). The trade register, as a public book, consists of a registration file (classer) where the registration data are entered and attachments (documentary evidence) in the book of attachments for each entity the registration of which is prescribed by law. The entered data and the delivered documents shall be permanently kept in the register (Art. 82).

1308. As it was discussed in details in the 3rd round MER[106] the trade register that had previously been maintained by the competent courts was transferred to and re-established as the Unique Trade Register within the framework of the Central Register in accordance with the "Law on the one-stop-shop system and keeping of the trade register and the register of other legal persons" ("Official Gazette of the Republic of Macedonia" No. 84/2005 hereinafter OSS-System Law).

1309. Similarly to the time of the 3rd round evaluation, the data that shall be entered in the commercial register are likewise stipulated by the Company Law separately for limited liability companies (Art. 182) and for joint stock companies (Art. 298), in which respect the current legislation does not differ significantly from the one being in force at the time of the previous evaluation. These data include, among many others, designation and identification of the founders and members (by name, personal ID number or passport number, residence/address and, in case of legal persons, the business name, registered office and registration number) as well as that of the manager (also the members of the management body and the supervisory board) by the same range of information registered. There are not significant differences regarding the documents that have to be attached to the registration form[107] which include, among others, copies of identification documents for founders, members, managers etc. as referred to above and also a statement from the founders (in case of legal persons, the legally authorised representative) certified by a notary that there is no obstacle for the respective person to be a founder of the company.

1310. The main rules regulating the registration are also discussed in the 3rd round MER. In the meantime, however, a number of significant amendments of the Company Law had more or less impact on this area. As it was already noted in Section 1.4 of this MER, a significant part of the

[105] Also referred as "Law on Trade Companies" ("*Закон за трговските друштва*").
[106] See paragraph 26 of the 3rd round MER (page 70).
[107] See paragraph 708 *idem* (page 170).

modifications was related to the digitalisation of the public administration through the establishment of a legal basis for the submission of documents in an electronic format. Specifically, the 2008 and 2011 amendments (Laws Amending the Company Law – "Official Gazette of the Republic of Macedonia" No 87/2008 and 42/2011) simplified the registration procedure by introducing an electronic form.

1311. According to the current legislation (Art.92), the procedure for entry in the trade register is initiated by an application on a prescribed form that is to be submitted by (an authorised member of) the managing body either in writing or in an electronic form signed with an electronic signature in accordance with the Law on Data in Electronic Form and Electronic Signature and the aforementioned OSS-System Law, by choice of the submitter. The necessary attachments containing the data entered in the register can equally be submitted in electronic form (Art.93).

1312. The Unique Trade Register, which is now maintained nationally in a centralised manner by the Central Register, contains practically the same information as at the time of the previous MONEYVAL evaluation, that is, the name and personal data of persons authorised to act on behalf of registered entities, the persons who are the managers or members of management or supervisory boards of registered entities as well as the members of the limited liability company.

1313. Art. 182(4) of the Company Law provides that each change of the registered data of a limited liability company, including those related to changes of ownership (accession/withdrawal of a member of the company) shall also be entered in the trade register. According to the general provisions in Art.91(1) such an application must be submitted in a time period of fifteen days as of the day of acquiring the requirements for submitting an application for entry in the trade register. Failure to meet this obligation is sanctioned by a fine of €1,500 to €3,000 by virtue of Art. 601 (1) subpara 2. The ultimate deadline to report the changes to the Central Register is 3 months and once it is expired, the entry application shall not be accepted (Art.91[2]) in which case the natural person who had the obligation to submit the entry application shall be liable, personally and unlimitedly, for any damages occurring (para [3]).

1314. The commercial register and all the data entered therein are public as this principle is implemented by Art.85 of the Company Law. As it was already described in the previous MER, each person, without having to prove legal interest, can peruse the particulars entered into the registration files and the book of attachments, and request that they be issued a copy or verified transcript (in case of certain company forms without legal personality, however, the inspection of the book of attachments requires a legal interest). All these data are publicly available at the website of the Central Register (www.crm.com.mk) for a fee stipulated by Art.18-a of the Law on the Central Register ("Official Gazette of the Republic of Macedonia" No 50/2001) which, however, does not apply to public authorities (including law enforcement and prosecutorial authorities as well as the FIO) that have a general access to this database free of charge.

1315. While the details of members of limited liability companies are available in the trade register, the data related to the shareholders of a joint stock company are available at the Central Securities Depository (CSD) and accessible on its web site www.cdhv.mk. Pursuant to Art. 67(6) of the Law on Securities the CSD publishes on its website, on the first business day of each month (as from 2013: at the beginning of every week) a list of individuals and legal entities holding in excess of 5% of any class of securities of a joint stock company with reporting requirements, which data are available free of charge. Furthermore, Art. 67(5) of the same law provides that the CSD is obliged to issue a list of all owners of a particular issuer's securities to governmental bodies authorised by law. (For example, the FIO can request such data on the basis of Art. 34(1) of the AML/CFT Law that the CSD has to provide within 10 working days.)

Measures to prevent unlawful use of legal persons (c. 33.1)

1316. In the 3rd round of evaluation, "the former Yugoslav Republic of Macedonia" was criticised for the lack of verification process as a result of which the information available on commercial legal entities was not necessarily reliable.

1317. The examiners of the present round can see no fundamental changes in this field, considering that Art.92(4) of the Company Law still provides, as a general rule, that the *"authorised*

submitter" that is the person or body authorised to submit an application for registration in the trade register *"shall be liable for the validity and legality of the data"*. As a consequence, the extent to which the applications are actually examined by the registering authority are very narrow. In this respect, Art.94 provides as follows: *"Prior to the adoption of a decision for entry in the trade register, it shall be determined whether all registration requirements anticipated by this Law have been met. During the entry the legality and validity of the content of the attachments (documents and proofs) submitted upon the entry in the trade register nor the legality of the procedure regarding their adoption shall not be inspected, nor shall be inspected whether the data entered in the trade register are valid, nor whether they are in accordance with law. The person, that is persons determined by this Law shall be liable for their validity and legality".*

1318. As it was already noted by the 3rd round evaluators, controls that are performed are thus formal on the completeness of the documents and the registering authority is only obliged to determine whether the application contains all requirements and if the necessary attachments have been enclosed.

1319. There is no further enquiry into the veracity of the data entered for registration: there is no authority to check, for example, the identity of the natural persons subject to registration (to prevent registering somebody with a false identity etc.). The result is a rather mechanical procedure, fully in line with Art. 39(2) of the OSS-System Law according to which *"during the entry, the registrar shall (1) not examine the lawfulness and reliability of the content of the enclosures (documents and proofs) submitted during the entry in the registers; (2) not examine the lawfulness of the procedure of submission and (3) not examine whether the data entered in the register are true and in accordance with law."* As a consequence, there is no room for the Central Register to verify the submitted documentation and thus any rejection of entry would only be possible in case of obvious incorrectness or invalidity of the data or attachments submitted.

1320. As noted above in Section 1.4 there is one aspect in which the current Company Law shows significant development as compared to the legislation being in force at the time of the previous evaluation. The provisions that facilitate the liquidation procedure are important for the purposes of this report considering how many of the ML cases were related to fictitious companies. The amendment to the Company Law, as introduced by the Law Amending the Company Law ("Official Gazette of the Republic of Macedonia" No 166/2012), provides for an easier procedure for deletion of demonstrably inactive companies. For the entities that have not submitted annual accounts and financial reports to the Central Register a procedure is initiated for proclaiming them as *"inactive entity"*. The entities proclaimed *"inactive"* for three years in a row shall automatically be removed from the trade register by the Central Register.

Timely access to adequate, accurate and current information on beneficial owners of legal persons (c. 33.2)

1321. Similarly to the time of the 3rd round evaluation, neither the Company Law nor the company registration system in general contains any provision concerning the recording, registering or public availability of data and documents specifically related to the beneficial owner, that is, the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted, and those persons who exercise ultimate effective control over a legal person.

1322. As noted above, the concept and definition of *"beneficial owner"* has been introduced by the AML/CFT preventive legislation. In this context, Art. 9(1)b) of the AML/CFT Law requires the financial institutions to identify the beneficial owner, the ownership and management structure of legal person customers in the framework of the CDD procedure and so does the respective NBRM Decision 103 too. Nonetheless, the evaluators experienced on-site that some of the representatives from the financial sector could not clearly distinguish between beneficial owners and proxies, furthermore the identification of the proper Macedonian equivalent for *"beneficial owner"* seemed to be a challenge for some of the interlocutors.

Prevention of misuse of bearer shares (c. 33.3)

1323. Art. 274 of the Company Law provides that all shares shall be "*issued, transferred and kept in*

the form of an electronic record in the Central Securities Depository" where they are registered in the shareholders' register (the *"book of stocks"*) of the company. This register indicates the name and full identification data of the shareholder be it a natural or legal person, domestic or foreign, as it is stipulated in details by Art. 283 of the Law. Changes resulting from the transfer of shares (by trading on the stock exchange or in another manner allowed by law) shall equally be registered.

1324. As it was already noted in the previous round of evaluation, the requirement that all shares must be registered in "the former Yugoslav Republic of Macedonia" automatically excludes the possibility to issue shares made out to the bearer (bearer shares). The examiners noted, however, that the term *"bearer share"* appears in the definition of *"beneficial owner"* as provided by Art.2 (9) of the AML/CFT Law *("a natural person who has a direct or indirect share of at least 25% of the total stocks or share, or rather the voting rights of the legal entity, including possession of bearer shares...")* nonetheless, as it was subsequently clarified, this part of the definition addresses foreign legal entities that can issue bearer shares according to their respective legislation (while the companies registered in "the former Yugoslav Republic of Macedonia" are expressly prohibited by the Law on Securities from issuing bearer shares).

Additional element - Access to information on beneficial owners of legal persons by financial institutions (c. 33.4)

1325. Pursuant to Art. 11 (1) of the AML/CFT Law, the financial institutions are required to identify and verify the beneficial owner.

1326. However, there is no requirement in the AML/CFT Law that obliges the financial institutions to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source so the financial institution shall be satisfied that it knows who the beneficial owner is. The only circumstance when financial institutions are required (paragraph 2 of Art. 11) to verify the identity of the beneficial owner using information from independent and reliable source when they are not able to identify the beneficial owner.

1327. In general, the banks take the required measures to identify the beneficial owner, but it was acknowledged during the on-site interviews that in case of complicated client legal person structure, the attempts to fully identify the beneficial owner may stop at certain level of ownership structure.

5.1.2 Recommendations and comments

1328. The steps taken before and since the 3rd round evaluation by "the former Yugoslav Republic of Macedonia" to centralise the registration and to digitalise (and thereby to simplify and to speed up) the registration process for legal entities as well as to provide full availability of registered data are to be appreciated.

1329. Notwithstanding that, the concept of beneficial ownership, which has otherwise been established in the domestic legislation by the AML/CFT Law, is entirely absent from the legislation governing corporate entities and their registration and therefore the examiners have serious doubts that any registers of legal entities contain any relevant information on beneficial owners of legal persons as this term is defined by the AML/CFT Law.

1330. While the financial institutions that enter into business relationship with the respective legal persons are generally obliged by the AML/CFT Law to identify the beneficial owners and therefore they can be in the position to provide such information to law enforcement or other authorities, this solution cannot serve as a *"direct and timely access"* to this information as required by Criterion 33.2.

1331. Apart from that, the registration mechanism performed by the Central Register remained rather formal (focusing at whether all registration requirements as set out by the law have been met) and fully relies upon the information and documentation provided by the applicants. In lack of any kind of verification, the registration of business entities cannot ensure an adequate level of reliability of information registered and the transparency of ownership structure does not provide more information on beneficial ownership.

1332. The evaluators reiterate the recommendation made in the previous round that "the former Yugoslav Republic of Macedonia" reviews its commercial, corporate and other laws with a view to taking measures to provide adequate transparency in this respect.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• The registration of corporate entities still does not ensure an adequate level of reliability of information registered; • The transparency of ownership structure does not provide information on beneficial ownership.

5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)

Recommendation 34 (rated N/A in the 3rd round report)

5.2.1 Description and analysis

Legal framework

1333. There are no provisions under the Macedonian legislation that permit the formation of trusts. Furthermore, as trusts are not recognised it is not possible for a trust to conclude or enforce a contract through the courts. Therefore it can be concluded that R34 does not apply in "the former Yugoslav Republic of Macedonia". All other forms of legal arrangement are dealt with under R.33 above and SR.VIII below.

5.2.2 Recommendations and comments

1334. N/A.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and analysis

Special Recommendation VIII (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

1335. In the 3rd round MER, "the former Yugoslav Republic of Macedonia" was rated NC for Special Recommendation VIII based on the following deficiencies identified:

- No special review of the risks and not any sort of ongoing monitoring of the NPO sector have been undertaken; and
- Financial transparency and reporting structures are in practice not existing and thus do not amount to effective implementation of criteria VIII.2 and VIII.3.

1336. Similarly to the time of the 3rd round of MONEYVAL evaluation, the non-profit sector in "the former Yugoslav Republic of Macedonia" comprises mainly associations and foundations. The key legislation that regulates this area, including the establishment, registration and legal status of these entities is the Law on Associations and Foundations (LAF) which entered in force in April 2010 replacing the old Law on Citizens' Associations and Foundations ("Official Gazette of the Republic of Macedonia" No 31/1998 hereinafter: LCAF).

1337. Apart from the lifting of restrictive conditions for the founders in the new LAF, the notion and principles of associations and foundations have not changed significantly since the time of the 3rd round evaluation. At the time of the present on-site visit, there were altogether 12,061 such entities registered in the country (showing a significant increase to the total number of 2,297 noted at the time of the 3rd round on-site visit) out of which 11,860 were registered as associations and

201 as foundations. As it was subsequently clarified, the number of associations also comprises other forms of NPOs such as unions of organisations (419 registered) and organisational forms of foreign organisations (26 registered) hence there were 11,415 associations proper.

1338. The LAF is not applicable to political parties, churches, religious communities and groups, trade unions, chambers and other types of association governed by separate legislation (Art.2 of LAF). In this respect, Art.13 of the same act expressly prohibits associations and foundations from performing activities for a political party including the direct or indirect financing of a particular political party as well as influencing the elections either by participating or by campaigning or financing a campaign of a political party.

1339. At the time of the previous round of evaluation, citizens' associations could only be founded by natural persons who were adult citizens of "the former Yugoslav Republic of Macedonia" (Art.16 LCAF) but this personal scope was significantly enlarged by the adoption of the current LAF in the following aspects:

- the legal entities may also be founders of both associations and foundations (Art.15[1] and Art.28[2]);
- citizenship is no longer a requirement for natural persons as founders (probably this is why the associations are no longer called "citizens' associations" although the latter term still occurs in the LAF e.g. in Art. 15(3) without any distinctive meaning) and Art.37(1) clearly provides that foreign persons may also be founders of an organisation;
- instead of citizenship, it is enough if at least three of the minimum five founders of an association have at least a temporary place of residence (for legal entities: a head office) in "the former Yugoslav Republic of Macedonia" (Art. 15[2]) whereas not even this limitation applies to the founders of a foundation; and
- founding an association does not even require the adulthood of natural person founders: these NPOs may also be established by juveniles from the age of 15 years (it comes from Art. 15[3] that all founders can be minors) if providing a statement of consent from their legal representative (furthermore, 14 years of age is already enough for being a member of an association).

1340. As for the management of these organisations, the representative of an association as well as the director of a foundation must be a natural person with capacity to contract who has, at least, a temporary place of residence in "the former Yugoslav Republic of Macedonia" (Art.25[2] and Art. 36[3] of the LAF).

1341. In the former legislation, foreign citizens were only allowed to join ordinary associations as members (not founders) but foreigners residing in "the former Yugoslav Republic of Macedonia" could have been founders of a specific type of association ("Foreigners' Association") upon more restrictive conditions and only for the promotion of certain purposes (science, sport, humanitarian or social reasons). As described above, this limitative approach has since been abandoned by the new LAF which, however, goes even further in this direction allowing that foreign associations and foundations may act in "the former Yugoslav Republic of Macedonia" in accordance with the provisions of the LAF and through a subsidiary, office or other organisational form that has a head office on the territory of the country (Art.38).

Review of adequacy of laws and regulations (c.VIII.1)

1342. Criterion VIII.1(i) prescribes that countries should review the adequacy of domestic laws and regulations that relate to NPOs with a view to provide adequate legislative response to the particular vulnerability of this sector to the abuse for TF purposes. In this context, however, the evaluation team has no information on any substantial and target-oriented revision of the respective legislation since the 3rd round of evaluation. Certainly, the old LCAF was replaced by the new LAF in 2010, but this change does not seem to be generally motivated by the threat of terrorist financing. There is, however, at least one CFT aspect in which the new legislation goes beyond the former one, and this refers to the possibility to prohibit the operations of an NPO in case of terrorism-related and similar activities.

1343. Art.65 of the LAF provides that the operations of an NPO shall be prohibited if its activity is aimed at the unlawful purposes defined by Art.4(2) (violent destruction of the constitutional system, terrorism-related activities etc.). Prohibition of the operations can be ordered, in an urgent procedure, by the competent court upon the motion of the public prosecutor who may act ex officio or upon an initiative submitted by any person.

1344. As provided by Art.55 of the LAF, the property of an organisation the operation of which was prohibited by the court shall be transferred to the municipality where the organisation has its head office. On the other hand, it does not come from the provisions of the LAF that the prohibition of operations means (or at least it leads to) the termination or liquidation of the organisation and neither is there any indication in the law whether the same prosecutor would also be expected to initiate criminal proceedings against the respective entity.

1345. No systemic domestic review of the NPO sector, as required by Criterion VIII.1(ii) has ever been performed in the "the former Yugoslav Republic of Macedonia". Not even any notable *ad hoc* surveys were carried out in this field, let alone the regularly repeated reviews that Criterion VIII.1(ii) requires so as to obtain timely information on the activities, size and other relevant features of the NPO sector. It goes therefore without saying that Criterion VIII.1(iii) which requires periodic reassessments by reviewing new information on the sector's potential vulnerabilities can neither be considered as met.

1346. In the period relevant for the purposes of the evaluation the FIO received altogether 12 STRs (all from banks) for terrorism financing suspicions with the involvement of an NPO. This figure is not extraordinary in itself, however it represents a remarkable proportion of the 29 FT-related STRs. After the analysis these reports were submitted to the MoI's Agency for Security and Counterintelligence where they are still in the process of gathering additional intelligence information.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1347. In order to raise awareness in the NPO sector about the risks of terrorist abuse, the FIO carried out a series of activities in the past years. First and foremost, the FIO developed and issued various documents in this field, starting with the Guideline for the NPOs on Prevention of Financing of Terrorism issued in May 2009, which is publicly available on the official FIO's website.

1348. This Guideline briefly introduces the CFT aspects and risks of the NPO sector, contains a list of key TF-specific high risk indicators, provides a number of case examples to illustrate the trends of using the NPOs for TF purposes and recommends preventive measures to achieve financial transparency (precise financial accounting and the use of bank accounts) to verify the implementation of their program (self-assessment and monitoring) and to the responsible management of the respective entity.

1349. The FIO also issued a specific list of indicators for identifying suspicious transactions for ML and TF within civil associations and foundations. These sources of guidance were reiterated in Section 3.2.5 of the FIO's Handbook for implementation of AML/CFT measures and activities by the entities (issued in 2010) which is accessible on the FIO website but was also distributed to the NPOs in hard copy (it contains some general information on the sector based on the Guideline and the list of indicators mentioned above).

1350. Since the previous round of evaluation, the FIO delivered 4 trainings specifically for the NPOs out of which two were held in 2008 and 2009 and two other in 2011. The evaluators were informed that these trainings, which involved a large number of participants from many NPOs, had particularly been focused at issues in the area of financing of terrorism and the risk of abuse to which these organisations are exposed in this field. The two trainings in 2011 were assisted, both in organisational and financial terms, by the EU-co-financed TACSO (Technical Assistance for Civil Society Organisations) Regional Project that provides assistance for transparency and publicity in the NPO sector of "the former Yugoslav Republic of Macedonia".

1351. Taking all these measures into account, the requirements of Criterion VIII.2 (i) and (ii) appear

to be considered as met.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

1352. Art. 41 LAF defines which data are to be entered in the NPO registers upon the basis of the documents required. The register contains the articles of incorporation itself as well as basic information about the entity (name, head office etc.) personal data of the founders and representatives (name, personal identification number) the goals and activities, the status of public interest (see below) and in case of foundations, the initial assets too.

1353. Since the register is public, all these data are available on the website of the Central Register (www.crm.com.mk) for a fee determined according to Art.18-a of the Law on the Central Register ("Official Gazette of the Republic of Macedonia" No 50/2001) which fee, however, does not apply to *"users and the individual beneficiaries of the funds from the Budget of the Republic of Macedonia in the field of legislative, executive and judiciary authority and by the local self-government units"* that is, public authorities including the FIO as well as law enforcement and prosecutorial authorities have a general access free of charge.

1354. In case of changes to the statute or other relevant data entered in the register, the associations and foundations are required to file an application to the Central Register for entering the changes within 30 days (Art. 46 of LAF). Likewise, all status changes occurring to the registered organisations such as their acquisition (transfer of the rights and obligations of one organisation to another) merger and division are to be registered (Chapter IX). As a result, Criterion VIII.3.1 can be considered as being met.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

1355. The evaluation team found appropriate measures being in place to sanction. The generally unlawful functioning of an NPO (including terrorism-related activities) can lead to a specific court procedure and eventually to the prohibition of operations of the NPO and the deprivation of its assets (Art. 65 LAF).

1356. Otherwise, performing an activity not in accordance with the goals determined by the statute or using the assets of the NPO for purposes other than these goals (Articles 91 and 94 LAF) is considered a misdemeanour that can be fined up to €300 in MKD equivalent. Failure to meet various registering, report-making and auditing obligations (Chapter XIII LAF), as well as failure to meet obligations from the Law on Accountancy of Non-Profitable Organisations (Chapter VII of the law) are also misdemeanours for which the NPO and/or the responsible person can be fined.

1357. On the other hand, a sanctioning regime can only be sufficient if competent authorities are in the position to notice the malfunctioning of an NPO and/or violations of oversight measures or rules, which in turn requires that these authorities perform an adequate supervision over the functioning of the NPO sector.

1358. As it was discussed above (and already in the previous MER too) there appears no state authority in "the former Yugoslav Republic of Macedonia" to carry out any sort of actual supervision over the veracity of the data entered into the register and the validity of the attached documents (apart from the formal notarial authentication). It is also doubtful whether and with what effectiveness the competent authorities would actually supervise and monitor the lawful functioning of the associations or foundations, be it exercised off-site (on the basis of documents submitted) or on-site, occasionally or regularly in order to establish whether all economic resources of those entities are applied exclusively to their goals or for their established purposes.

1359. In this respect, Art. 58 of the LAF provides that the Ministry of Justice supervises the legality of the application of its provisions, which appears to imply, on the face of it, that the Ministry is authorised to perform some control over the legal functioning of the NPOs. However, as it was subsequently clarified by the authorities, the competence the Ministry has in this respect is limited to the supervision of the LAF in terms of drafting and proposing the respective legislation but

does not extend to any control and/or supervision over the functioning of the associations and foundations as these are defined as independent in the managing, determining and achieving their goals and activities as established by their statutes, the monitoring of which shall be carried out, pursuant to Art. 56 LAF, by the supervisory body of the respective NPO. (That is, the legal functioning of an NPO can only be assessed by itself, which does not appear a strict control particularly as only public interest organisations are obliged to establish such a supervisory body.)

1360. Art.4 (5) of the AML/CFT Law renders associations and foundations obliged of undertaking measures and actions for prevention and detection of ML and TF. In case of these NPOs, the supervision of the application of these measures and actions is performed primarily by the Public Revenue Office (Art.46 [1]) and/or by the FIO (Art. 46[2]) for the purpose of which the latter is authorised, to request the necessary data from the Central Register.

1361. Presumably, the Public Revenue Office is authorised to perform further supervisory activity over the financial activities of the NPOs particularly on the basis of reports these entities are obliged to submit. At the time of the previous MONEYVAL evaluation, the LCAF still provided (Art.44) that control over the legality in acquiring, use and disposal of the organisations' assets are made by *"an authorised organ in charge for public revenues"* which meant the Public Revenue Office that performed supervision over the business activity of NPOs in order to check whether the incomes derived from such activity had actually been expended for the purposes which are the registered activities of the given association or foundation.

1362. The current LAF does not contain such a provision and the Law on Accountancy of Non-Profitable Organisations only requires the NPOs to submit financial reports to the PRO. As it was clarified subsequently, the PRO performs its audits of NPOs pursuant to the Law on tax procedure by examining the fulfilment of tax obligations, on the basis of the annual financial reports from the NPOs that the PRO receives via the Central Register (it appears therefore that NPOs send these reports to the Central Register and not directly to the PRO). That is, the financial reports are thus examined solely for taxation purposes and the PRO has no further supervisory role over the legality of the NPO sector.

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

1363. All NPOs must be registered in order to obtain legal capacity, in line with the requirements of Criterion VIII.3.3. In this respect, Art.6 and Art.43(4) of the LAF provide that associations and foundations are legal entities that acquire this capacity by being entered into the respective register kept by the Central Register. Once registered, associations and foundations cannot be transformed into other types of legal entities. Registration is mandatory pursuant to Art. 42(1) which provides that an application for entry in the register shall be filed within 30 days from the adoption of the articles of incorporation (in case of foreign organisations, from the decision on establishing its organisational form in "the former Yugoslav Republic of Macedonia").

1364. Associations and foundations have to be registered in their respective register as kept by the Central Register. Pursuant to Art.40 of the LAF these are the register of associations and unions (of associations), the register of foundations and the register of organisational forms of foreign organisations which all make part of the Register of Other Legal Entities. Registers are kept in a written form as well as in a single central electronic database that is publicly accessible on the website of the Central Register (Art.47).

1365. Together with the entry application, the associations and foundations have to enclose the following documents in accordance with Art.42(3):

- the articles of incorporation (as an alternative, foundations can also be established by the founder's last will expressed in a testament or legacy) which contain basic data regarding the organisation (name and head office of the entity; name, address or head office and personal identification number of the founders; the goals of the organisation, and, in case of a foundation, the amount of the initial assets by which it is established (Art. 17 and Art. 29);
- the statute of the entity that provides for the internal rules of the respective association or foundation including, among others, the goals of the entity and its activities for achieving

these goals, the representation of the entity, the manner of acquiring and disposing with assets, adopting financial and other reports, establishing publicity and reporting of the work etc. (Art.18 and Art. 31);
- the program of activities of the organisation;
- the decisions on electing the bodies of the organisation and their members as well as the representative;
- minutes from the founders' assembly or report on the establishment; and
- a statement verified by a notary and signed by the representative, confirming that the performance of the activity is in accordance with law and that the conditions for entry have been met.

1366. In case an organisational form of a foreign organisation is registered, the following has to be attached to the entry application:

- a verified copy of the articles of incorporation of the foreign organisation and verified translation of its registration in the country of establishment or other document confirming that the organisation can be active;
- a verified copy and translation of the decision of the competent body for founding the organisational form in "the former Yugoslav Republic of Macedonia" (which contains basic data regarding the foreign organisation and its organisational form established in the country including the goals of the original organisation and those of the organisational form, respectively) signed by an authorised person of the foreign organisation and verified by a notary (Art.39);
- copy and verified translations of the statute or other corresponding act;
- the program of activities in "the former Yugoslav Republic of Macedonia"; and
- verified decision and translation for the election of the bodies of the organisation and their members as well as that of the representative in "the former Yugoslav Republic of Macedonia" (it comes from Art. 42[4] that the representative must have permanent residence in the country).

1367. The LAF and its predecessor legislation on associations and foundations provide similarly when rendering the Central Register responsible only for the registration procedures so that it has no further duties regarding the verification of the data entered into the register. To the surprise of the evaluators, however, the LAF appears even more restrictive in this respect than the previous legislation.

1368. As it was discussed in the 3rd round MER[108] in more detail, Art.17 of the LCAF clearly required that the registering authority (formerly the competent court but then already the Central Register) ascertain the circumstances before entering an association or foundation into the register, in which context *"ascertaining the circumstances"* referred to the examination whether all the required documents were listed and, particularly, whether the statute and the program of the entity were in accordance with the Constitution and other laws of the country. In case of non-accordance, the deficiencies needed to be remedied within a deadline of maximum 30 days or else the application was rejected. As a contrast, the current LAF only requires the Central Register to ascertain whether the entry application is in accordance with the formal requirements as prescribed by Art. 42 that is, whether the representative of the association or foundation submitted the entry application within the 30-days deadline and whether all the required documents were attached thereto.

1369. Art. 4(2) LAF provides that *"the establishment of an organization shall be forbidden if the program and its actions are directed towards violent destruction of the constitutional system of the Republic of Macedonia, encouragement and incitement to military aggression and instigation of ethnic, racial or religious hatred or intolerance, if it undertakes terrorism-related activities, activities against the Constitution or law and violate the freedom and rights of other persons"*.

1370. The law does not provide further definitions for these terms which are rather imprecise and

[108] As quoted in paragraph 728 of the 3rd round MER (page 175)

overlap each other, nevertheless it is quite evident that involvement of an NPO in raising and channelling funds for terrorist purposes would definitely fall under the scope of *"terrorism-related activities"*. Notwithstanding that, the evaluators cannot see which authority of "the former Yugoslav Republic of Macedonia" would currently be supposed to recognise such a threat in the phase of establishing i.e. registering an association or a foundation and to carry out or initiate any measure so as to effectively prevent its establishment. What can actually be seen is a rather formal and mechanical procedure in line with the aforementioned Art. 39(2) of the OSS-System Law[109] that excludes any legal responsibility of the Central Register for the lawfulness and truthfulness of the contents of the documents the applicant submits for entry and the legality of the procedure in which these were adopted.

1371. Consequently, there seems to be no room for the Central Register (in fact, even less than at the time of the previous round of evaluation) to verify the submitted documentation, not even under suspicious circumstances. Instead of that, full reliance is placed on the notarial document that must be submitted along with other attachments to the entry application. As mentioned above, this should be a statement signed by the representative of the respective entity *"confirming that the performance of the activity is in accordance with law and that the conditions for entry have been met"* (Art.42[3]) which is then verified by a notary. Nonetheless, this *"verification"* means nothing but the authentication of the signature of the representative (see the definition in Art.3 item 12 according to which a verified statement is *"an act containing a signature verified at a notary"*) which means that the task of systematically *"ascertaining the circumstances"* (in sense of the old LCAF) is performed by neither the Central Register nor the notary (nor any other authority). As a result, the authorities of "the former Yugoslav Republic of Macedonia" must eventually rely on the veracity of the statement made and signed by the representative of the applicant entity which is far from satisfactory.

Maintenance of records by NPOs, and availability to appropriate authorities (c.VIII.3.4)

1372. Pursuant to the Law on Accountancy of Non-Profitable Organisations ("Official Gazette of the Republic of Macedonia" No 24/2003) all NPOs including associations and foundations, are obliged to keep business books (journal, ledger and supplementary books as prescribed by the Law) that provide records for the balance and flow of their assets, liabilities, asset sources, revenues, expenses and the outcome from their operations (Articles 4 and 6). At the end of the business year, the NPOs close and associate their business books which are then to be stored for at least 10 years (for the journal and ledger) or 5 years (for the other supplementary books). During the period of storage, the NPOs are obliged to provide the availability of these business books at any time (Articles 8 and 9). Accounting documents (e.g. those providing the basis for data entry in the business books) also have to be kept for various storage periods depending on their types (Art.11).

1373. The NPOs are required by Art. 17 of the same law to compile basic financial statements (such as the balance sheet on the balance of assets, liabilities and assets sources or the income and outcome statement that presents revenue and expenses realised during the business year) in a manner so as to provide an accurate, realistic and entire preview thereof. Unlike the business books or other documents, these basic financial statements must be kept permanently in their original form. The basic financial statements compose the annual account which must be submitted to the Public Revenue Office and to the Register for Annual Accounts at the Central Register, until the end of February of the following year (Art. 19). Nonetheless, the obligation to compile and submit such financial statements only refers to NPOs the total value of property or annual revenue of which exceeds €2,500 in MKD equivalent. As it was explained by the authorities subsequent to the on-site visit, these two amounts must be dealt with separately (it is thus not sufficient if they can only cumulatively exceed the threshold of €2,500). As for other entities below this threshold, these are exempt from this obligation as they are only required to keep, at least, a treasury book and a revenue/expense book (Art.18).

1374. In this respect, Art.53 LAF also prescribes that associations and foundations prepare annual

[109] Please see the relevant analysis under R33

work reports that must be published on their website or in any other manner. They are also required to make annual financial reports that must be submitted to the competent body in accordance with law (reference is made here to the provisions of the Law on Accountancy of Non-Profitable Organisations as quoted above) and must be published similarly to the work reports.

1375. Failure to meet any of the above-mentioned obligations, including the failure to submit the annual accounts to the Public Revenue Office and the Central Register, is considered a misdemeanour and can be sanctioned by fines. In addition, the OSS-System Law provides that the Central Register shall assign the status "inactive" to the entity that has not submitted the annual account to the Central Register (Art. 61). On the other hand, as it had already been made clear in the previous round of evaluation, the Central Register does not exercise any actual supervision based on the financial documentation submitted by the NPOs.

1376. The LAF stipulates additional obligations for associations and foundations that obtained, under specific conditions, the status of a *"public interest organisation"*. A NPO may be granted this status by the Government on a proposal of the Commission for Public Interest Organisations under the conditions: that it performs *"activities of public interest"* (an exhaustive list of which is provided by Art.74); the activity of public interest is the main income source code in its operations; it has the necessary organisational conditions as well as human and financial resources (the latter means having assets or annual income of a minimum €1,500 in MKD counter-value) and the status of a public interest organisation is entered in the Central Register (Articles 75 and 79) although there has so far been only one organisation that acquired the status of public interest.

1377. Public interest organisations are entitled to additional tax and customs duty exemptions in accordance with the law (Art.88) in return for which they are obliged to submit, by 30th April of the following year, annual business and financial reports to the Government for adoption (Art.85). Such reports shall be submitted to the Secretariat General of the Government where it is the Commission for Organisations with Public Interest Status that decides on their adoption, upon a previous review done by the Organisational Unit for Cooperation with Civil Society Organisations (however it remained unclear what the reasons could be for not adopting a report, where these reasons are provided by law, what the legal consequences are if the report remains not adopted etc.) Furthermore, public interest organisations with an annual budget exceeding €20,000 in MKD equivalent are obliged to make an independent annual audit of their financial operations, and if their budget exceeds €100,000 this audit must be made in accordance with the more severe international accounting standards (Art. 86). Both the annual business and financial report and the annual audit must be made publicly available on the website of the respective organisation (Art.87).

1378. Considering the provisions described above in details, the legislation of "the former Yugoslav Republic of Macedonia" can be accepted as being compliant with Criterion VIII.3.4. There is a general requirement to maintain business books for a time period that is consistent with the Criterion. Such documents appear to be detailed enough so as to allow for verifying that funds have been spent in a manner consistent with the purpose and objectives of the organisation, particularly if read along with the work reports that all NPOs are obliged to prepare and publish. Furthermore, there is an increased level of transparency that applies to NPOs with a property or annual revenue above €2,500 (by the use of financial statements that must be kept permanently and have to be submitted to the tax authority and the Central Register) and particularly to those with a status of public interest organisation (requiring an additional business and financial report to be submitted).

Measures to ensure effective investigation and gathering of information (c.VIII.4); Domestic co-operation, coordination and information sharing on NPO-s (c.VIII.4.1); Access to information on administration and management of NPO-s during investigations (c.VIII.4.2); Sharing of information, preventative actions and investigative expertise and capability, with respect to NPO-s suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

1379. The national authorities including law enforcement and prosecutorial authorities have a general and direct, electronic access free of charge to the data included in the Central Register. In addition to the data and documents entered in the registers and made accessible electronically, there are

further relevant documents the organisations must submit to the Central Register (e.g. the statute). There are also the work reports the NPOs must prepare and publish about their yearly activities pursuant to the LAF and, in case of associations and organisations with a property or annual revenue over €2,500, the financial statements that must be submitted to the Public Revenue Office and to the Central Register whereas further reporting obligations apply to the public interest organisations. All these documents, together with other related materials the NPOs are obliged to maintain for a specified period of time, give access to a sufficient range of information on the administration and management of a particular NPO including financial and programmatic information in line with Criterion VIII.4.2.

1380. On the domestic cooperation and information sharing, the authorities of "the former Yugoslav Republic of Macedonia" claimed that all relevant institutions being, to any notable extent, in charge of the NPOs (the Central Register, the Ministry of Justice, the FIO through its Department for Prevention of Terrorism Financing, the Public Revenue Office and the MoI through its Administration for Intelligence and Counterintelligence) mutually cooperate and share data and information relevant for implementation of activities aimed towards collection and detection of information on NPOs and on eventual suspicions for their involvement in illegal activities. In addition, the FIO and the Administration for Intelligence and Counterintelligence also cooperate in the area of education with mutual trainings related to, among others, suspicious and potentially terrorism-related activities in the country and identification of the NPOs suspected for involvement in such activities.

1381. Although this forum of information sharing appeared to be, on the face of it, free of obstacles, the evaluators have some doubts about its actual frequency and the volume of information exchanged.

1382. In the lack of concrete information about the actual functioning of the system, its effectiveness could not be assessed, which also refers to cases where preventative or investigative actions may be required against a particular NPO that is suspected to be exploited for terrorist financing purposes or it is a front organisation for terrorist fundraising (Criterion VIII.4.3).

1383. Although there are intelligence, law enforcement and prosecuting authorities in place with adequate competence to examine suspicious NPOs as well as to share any related information and to carry out investigative or preventative actions, the evaluators can see no factual ground to draw conclusions about the investigative expertise and capability of those authorities in lack of concrete cases involving suspicious NPOs.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

1384. The FIO was mentioned to the evaluation team as the authority being in charge of exchanging information on the basis of its mandate for international cooperation provided by Articles 44 to 45 of the AML/CFT Law.

1385. By these provisions, the FIO is doubtlessly designated as a point of contact for international cooperation and information exchange in the area of combating money laundering and financing terrorism but only as regards *"authorised bodies from third countries"* and *"foreign international organisations"* involved in this field and, as a general rule, on the basis of a cooperation agreement. It appears therefore that information sharing would mainly be carried out through general channels of cooperation between FIUs (the Egmont Secure Web was mentioned in this respect).

Effectiveness and efficiency

1386. In the past years, the FIO carried out the following on-site supervisions over associations and foundations:

Table 46: Supervision actions over the NPOs carried out by the FIO

Year	Performed regular on-site inspections over the NPO sector	Number of misdemeanours determined	Number of warnings/recommendations imposed	Education procedure performed according to Art. 48-a of the AML/CFT Law
2008	0	0	0	/
2009	0	0	0	/
2010	27	22	22	/
2011	7	6	/	6
2012	8	8	/	8
2013	6	5	/	5
TOTAL	**48**	**41**	**22**	**19**

1387. Obviously, these supervisory actions were targeted at monitoring formal compliance with the AML/CFT preventive legislation in general (including CDD measures, data collection, record keeping and reporting obligations) and therefore this sort of supervision could not extend to issues such as whether the registration and functioning of the NPOs was in line with the requirements of other legislation (above all, the LAF and the Law on Accountancy of Non-Profitable Organisations) and whether their activities were carried out and their funds spent in a manner that is consistent with the registered objectives of the organisation. There have been no fines imposed for non-compliance with the CFT requirements.

1388. As explained in the analytical part, performing an activity which is not in accordance with the goals determined by the NPO statute or using its assets for other purposes than those described as purposes (Articles 91 and 94 LAF) is considered a misdemeanour that can be fined up to €300 in MKD equivalent. In the evaluators' view, the level of fine cannot be considered dissuasive enough.

5.3.2 Recommendations and comments

1389. As opposed to the previous round of evaluation, the present examination team obtained a more comprehensive overview of the NPO sector of "the former Yugoslav Republic of Macedonia" and the legislation governing this area. The evaluators noted a development in legislation (the adoption of the new LAF) and welcome the actual involvement of associations and foundations into the AML/CFT preventive regime (which had been rather formal at the time of the previous evaluation), and the issuance of the guidance material (such as the Guideline and the list of indicators by the FIO).

1390. The Central Register, which had already been established before the 3rd round evaluation, provides a remarkable level of transparency of the NPO sector by facilitating the examination of particular NPOs and accelerating the related procedures and investigations, considering the volume of relevant information and documents it contains (the range of data entered into the register was increased in the new LAF) as well as the public accessibility of all registered data. On the other hand, it appears that no governmental body or authority in "the former Yugoslav Republic of Macedonia" is vested to examine the data and documents submitted for registration so as to ascertain whether the statute and the program of the entity are in accordance with the laws of the country. As a result, the authorities necessarily rely on the veracity of the notarial statement made and signed by the representative of the applicant entity.

1391. In this respect, the examiners noted the lifting of some control responsibilities of the Central Register which, together with the abandonment of a number of restrictions regarding personal conditions for founding an NPO may have a negative effect on the reliability of the registered information and may eventually give rise to abusing the sector for illicit purposes. This risk appears even more realistic taking into account the lack of effective, if any, supervision and monitoring of the lawful functioning of the NPO sector. Thus, the examination team recommends strengthening the mechanism by which the registration of false data and documents as well as the

establishment of NPOs for unlawful purposes can be avoided (first of all, there should be again an authority for *"ascertaining the circumstances"* as the registration authority did at the time of the previous evaluation).

1392. As for the supervision of the NPO sector, the examiners welcome the establishment of a comprehensive technical sanctioning regime. On a less positive side, there is an apparent lack of effective application of the supervision and monitoring measures.

1393. The supervision the FIO and the PRO perform is likely to address areas other than relevant for the purposes of SR.VIII (like the compliance with AML/CFT preventive requirements or the aspects of taxation). By a broad interpretation of the LAF, the Ministry of Justice could have been the authority to supervise whether the activities and expenditures of an NPO are in line with both the laws of the country and the registered objectives of the respective NPO so as to ensure that funds collected by or transferred through NPOs are not diverted to support terrorist activities. Nonetheless, it was clarified that the respective provision of the law was interpreted in a more restrictive manner and thus the monitoring of the legal functioning of an NPO is left to the supervisory body of the same, which is far from being an effective and strict control particularly as the establishment of a supervisory body is not a general requirement for all NPOs (only for those of public interest).

1394. Apparently, no substantial and target-oriented review of the adequacy of domestic laws and regulations has taken place since the 3rd round of MONEYVAL evaluations which should be a priority for the competent authorities. Likewise, there has not been any systemic review of the NPO sector (either randomly or regularly) which questions whether the domestic authorities possess timely information on the activities, size and other relevant features of the NPO sector (the occasional communication between the FIO and the competent body of the MoI does not appear sufficient in this respect). The examiners thus recommend introducing periodic reassessment of the sector so as to explore its potential vulnerabilities.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• No review of the adequacy of domestic laws and regulations that govern the NPO sector; • No mechanism introduced for the periodic/systemic reassessment of the FT vulnerabilities of the NPO sector; • Lack of an adequate control mechanism to ensure the veracity and validity of data and documents registered; • No systemic/programmatic monitoring of the sector with a view to detecting potentially FT-related illicit activities.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31 and R. 32)

6.1.1 Description and analysis

Recommendation 31 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1395. "The former Yugoslav Republic of Macedonia" was rated PC in respect of Recommendation 31 based on the following deficiencies:

- There is no authority or mechanism in place ensuring a nation-wide policy on cooperation or appropriate coordination in the combat against money laundering or financing of terrorism which is particularly problematic as there is widespread uncertainty as to which investigative authority is competent for which cases;
- Apart from a good level of cooperation between the MLPD and the Financial Police, there seem to be no such links with other law enforcement authorities. – during the evaluation was not identified authority or mechanism in place ensuring a national-wide policy on cooperation or appropriate coordination in the combat against money laundering or financing terrorism which is particularly problematic as there is widespread uncertainty as to which investigative authority is competent for which cases. Also was identified the lack of the cooperation between the Financial Intelligence Unit and law enforcement authorities, excluding the Financial Police.

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

1396. The main legal basis for national cooperation in the area of AML/CFT between relevant competent authorities is set out in the Art. 34 of the AML/CFT Law, which states that the FIO may exchange information with the competent authorities for carrying out investigation of money laundering or financing terrorism and the supervisory bodies, for the prevention of money laundering and financing terrorism.

1397. According to Art. 34-a (2 and 3) of the AML/CFT Law, in order to promote the inter-institutional cooperation, the Government of the Republic of Macedonia shall form the Council for Fight against Money Laundering (hereinafter referred to as the AML/CFT Council) on a proposal of the Minister for Finance.

1398. The work of the AML/CFT Council shall be managed by the director of the FIO, and its members are responsible persons from the MoI, Ministry of Justice, MoF, Basic Public Prosecutor's Office for Prosecuting Organised Crime and Corruption, Financial Police Office, Customs Administration, Public Revenue Office, National Bank of the Republic of Macedonia, Insurance Supervision Agency, Securities Supervisory Commission, Agency for Supervision of Fully Funded Pension Insurance, Postal Agency, as well as representatives of the Bar Association and Notary Chamber.

1399. One of the tasks of the AML/CFT Council is to monitor and to coordinate the activities of the institutions competent for implementation of the National Strategy for Prevention of Money Laundering and Financing Terrorism (AML/CFT National Strategy), in order to achieve its goals, to improve the functionality of the system and to propose activities for increasing efficiency. The AML/CFT Council members shall prepare quarterly reports which shall be discussed at the meetings which shall be held at least once a month. Furthermore, they shall have to submit an annual report to the Government.

1400. The evaluation team received a copy of one of the meeting reports where some decisions were taken, such as submitting reports from the FIO to ISA and NBRM in respect of the inspections carried out and the organisation of MoU signing procedures.

1401. Art. 34-a of the AML/CFT Law states that the inter-institutional cooperation is further regulated by the memorandums and protocols concluded between the FIO and other relevant domestic agencies and authorities. The authorities indicated that the memorandums establish the manner of

cooperation, coordination and organisation of joint actions; determines the scope of cooperation; promotes the harmonisation of the work; promotes the identification of opportunities for risks analysis, joint use of the technical means and assistance, professional and technical assistance; and facilitates the sharing of data and information, education and training of staff.

1402. Since the last MER, the FIO concluded the following MoUs:

- Memorandum for Cooperation between the FIO and Securities Exchange Commission (2008);
- Memorandum for Cooperation between FIO and the Pension and Disability Insurance Fund of Macedonia (2008);
- Protocol for cooperation in the prevention and fight against money laundering and organised crime between the FIO and the State Advocate of the Republic of Macedonia (2008);
- Memorandum of Understanding and Cooperation in the area of electronic exchange of information between the FIO and the Customs Administration (2008);
- Memorandum for Cooperation in the prevention and fight against terrorism and organised crime between the MoF – FIO and the Ministry of Defence – Military Service for Security and Intelligence (2009);
- Memorandum for Cooperation between FIO and MAPAS (2009);
- Memorandum for Cooperation between the FIO and the Agency for Supervision of Insurance (2010);
- Memorandum for Cooperation with the National Bank (2010);
- Memorandum for Cooperation between the FIO and the Intelligence Agency (2011);
- Memorandum for Cooperation between the FIO and the Posts Agency (2012);
- Memorandum for Cooperation in the area of identification, prevention and fight against money laundering and financing of terrorism between the FIO and the Notary Chamber of the Republic of Macedonia (2012); and
- Information Sharing Memorandum between the FIO and the Public Revenues Office (2012).

1403. According to Art. 46 (4) of the AML/CFT Law, the FIO and the supervisory bodies shall be bound to mutually inform themselves on the findings of the performed supervision over the implementation of measures and actions determined by this law and if necessary, coordinate the activities during the supervision implementation over the reporting entities.

1404. From the prosecution perspective, the operational cooperation on national level is regulated by the Law on Public Prosecutor's Office, which provides that the Public Prosecutor, for issues related to the implementation of the prosecution function, as well as for issues related to detection of criminal acts and their perpetrators, manages the cooperation and coordinates the activities with other state bodies and legal entities.

1405. The domestic cooperation between law enforcement authorities is also regulated in the *"Guideline on the Manner of Implementation of Criminal Investigations in the Police in the MoI"* which includes a special section on *"Implementation of Joint Criminal Investigation"* on inter-institutional and international level.

1406. Art. 11 of the Law on Police stipulates that the Police shall cooperate with the citizens, state bodies, associations of citizens, and other legal entities for the purpose of prevention or detection of criminal acts or misdemeanours.

1407. According to Art. 35 of the Law on Financial Police, when performing its work under its jurisdiction, the Financial Police Office cooperates with the Public Prosecutor's Office, MoI, Public Revenue Office, Customs, Finance Intelligence Office, State Commission for Prevention of Corruption, Commission for Protection of Competition, National audit, the State Foreign Exchange Inspectorate, State Market Inspectorate and other inspection bodies, government agencies and entities that are legally responsible for the prevention and detection of offenses.

1408. From the Customs Authority's perspective, the LCA (Art. 10 and 21) stipulates that Customs cooperate with other state bodies in order to achieve better efficiency in its work, including in the control of the cross-border transfer of cash, cheques, securities and AML/CFT matters. On the

operational level, in order to ensure better coordination of the activities, liaison officers are appointed with the Border Police and the FIO. Within the Customs Administration, Sector for Control and Investigations, a Department for Coordination and Communication was established, to ensure effective exchange of information with:

- other relevant authorities in charge of control of the borders on operational level (Border Police, MoI, Administration for Intelligence and Counterintelligence and other inspection bodies); and
- the activities of the mobile custom teams, the inspectors for investigation in the Customs administration and other operational teams from other bodies if necessary.

1409. The Customs administration, has signed a number of Memorandums and Protocols in order to improve the cooperation and coordination of activities with other bodies.

1410. According to Art. 34 (2) and (3) of the NBRM Law, in carrying out its supervisory tasks, the NBRM may co-operate with other regulatory and supervisory authorities, both domestically and abroad and may exchange confidential information with other domestic or foreign supervisory authorities, which will be used only for supervisory purposes and shall be treated as confidential by the receiving party.

1411. The SEC's ability to cooperate internally is prescribed in Article 226 of the Securities Law, which states that Agreements with other Macedonian Financial Regulators and Supervisory Bodies may be concluded. The SEC shall have the authority to enter into Memoranda of Understanding and other acts with other domestic financial regulatory and supervisory bodies or other state institutions for the purpose of effective enforcement of this Law and the other laws within its competence. The Commission may share information under the memoranda and other acts entered into.

1412. The SEC signed memorandums of understanding with 8 institutions (NBRM, Public Revenue Office, MoI, Agency for Insurance Supervision, MAPAS, FIO and the Financial Police)

1413. The ISA and the other bodies competent for supervision of the other financial organisations shall be obliged upon a request of the supervisory body to submit all data in regard to a certain insurance company or other financial organisation necessary for conducting supervision of the financial organisation, issuing licenses and adopting decisions upon other matters. The supervisory bodies shall be obliged to share mutual information regarding the illegalities revealed during the supervision, provided that those illegalities referred to the operation of other supervisory bodies. The data referred above, as well as the data obtained from the supervisory bodies of a member state or a foreign state, shall be treated as confidential, and may be used for the same purpose wherefore obtained.

1414. Pursuant to Art. 47 of the Law on Mandatory Fully Funded Pension Insurance, MAPAS shall work with the MoF, NBRM, SEC and other bodies and institutions in the country and abroad to ensure efficient supervision and regulation of fully funded pension insurance and financial sector. The scope, content and the form of the cooperation shall be mutually regulated between MAPAS and competent bodies and institutions.

1415. Within the Public Revenue Office, the General Tax Directorate includes a separate Unit for Cooperation with Other Authorities and International Exchange of Data (established in 2005). One of the competencies of this Unit is the cooperation with the FIO, where a significant achievement in 2009 has been the initiation of an electronic exchange of data between the two institutions. In 2009 and 2010, the PRO together with the FIO performed joint controls of entities within the competence of the PRO with regard to the implementation of measures for ML/FT prevention.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS) (c. 31.2)

1416. There are no formal mechanisms for consultation between the competent authorities and the reporting entities. The authorities informed the evaluators that the collaboration of the FIO with the private sector is conducted directly and indirectly. Examples of direct collaboration are the regular communication with authorised persons for the application of the AML/CFT measures,

and the trainings. The indirect collaboration is done through the professional associations, as the Chamber of Commerce and other associations representing various industries: banking, insurance, brokers etc. An example of fruitful cooperation and regular consultations is the one carried out with the AML Commission of the Banks of the Banking Association (meetings are held quarterly). The FIO also collaborate with the Bar Chamber, the Notary Chamber, the Institute of Authorised Auditors and the Accountants Association.

Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)

1417. On the basis of the amendments of the AML/CFT Law, the Government of the "the former Yugoslav Republic of Macedonia" established a new AML/CFT Council at the end of 2011, which now includes representatives from the MoI, MoF, Ministry of Justice, Basic Public Prosecution Office for prosecution of organised crime and corruption, Financial Police Office, Customs Administration, National Bank of the Republic of Macedonia, Public Revenue Office, Securities Commission, Agency for Insurance Supervision, Agency for Supervision of capital financed pension insurance, Postal Agency, Bar Association and Public Notary Association. The work of the Council is supported by the Administration. The Council coordinates the realisation of activities planned by the National Strategy for the Countering of Money Laundering and Terrorism Financing.

1418. The evaluators were informed on-site that the AML/CFT Council was involved *i.a.* in the execution of the on-line project with the International Monetary Fund "Preliminary Money Laundering Risk Assessment".

1419. The AML/CFT National Strategy adopted by the FIO in October 2011 includes key areas of the prevention of money laundering and terrorism financing and determines a set of activities, aimed to guide the relevant institutions to overcome the identified weaknesses and shortcomings, and improve the system for prevention of money laundering and financing terrorism. Amongst the strategic objectives is the improvement of the inter-institutional cooperation.

1420. The activities corresponding to the efficient inter-institutional cooperation are targeting the AML/CFT supervision and the preventive measures and the possibility to establish joint teams for coordination.

1421. Seeking to improve the existing measures and to establish new mechanisms and instruments for the prevention and the fight against terrorism, in September 2011, the National strategy for fight against terrorism (the FAT Strategy) was adopted. The FAT Strategy considers the terrorism financing as a form of terrorist threat and contains measures related to the identification of sources of financing of terrorism by conducting an investigation, freezing assets and stopping transfers of money.

1422. The FAT Strategy establishes permanent working body with the active participation of members of the Security and Counterintelligence Service in the MoI, and Intelligence Agency – Military Security and Intelligence Service-Sector in the Ministry of Defence, to regularly analyse, integrate and assess the information relating to terrorism. The FIO signed the Memorandum for Cooperation in the area of prevention and fight against terrorism and organised crime with Ministry of Defence –Military Service for Security and Intelligence, and with the Intelligence Agency. The evaluation team did not receive any information about concrete measures, related to the implementation of this strategy in the area of prevention of the financing of terrorism.

1423. In June 2009, the AML and Compliance Commission was established in the framework of the Banking Association within the Economic Chamber of the Republic of Macedonia, consisting of representatives from the banks in "the former Yugoslav Republic of Macedonia". The main role of the Commission is the establishment of an efficient system for the application of the regulations in the banking system, permanent monitoring of the application of the regulations and supervisory standards, improving the functioning of banks and savings banks and cooperation with the institutions working in the area of harmonisation and prevention of money laundering and financing terrorism.

1424. The MoI has established an inter-department working group which prepares an action plan to

connect all the databases as a prerequisite for connecting the national Intelligence databases with the Intelligence databases of the EU, thus providing for a faster and more efficient fight against organised crime on national and international level. According to the authorities, the establishment of the database is under development, currently being in a phase of selection of provider through public procurement announcement.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1425. The main policy maker in the area is the AML/CFT Council. The members of the Council are representatives of the MoI, MoF, Ministry of Justice, Basic Public Prosecution Office for prosecution of organised crime and corruption, Financial Police Office, Customs Administration, National Bank of the Republic of Macedonia, Public Revenue Office, Securities Commission, Agency for Insurance Supervision, Agency for Supervision of capital financed pension insurance, Postal Agency, Bar Association and Public Notary Association. The Council appears to have adequate human and technical resources.

Effectiveness and efficiency

1426. Additional focus has been given by the FIO since the last evaluation to develop the effective inter-agency cooperation with law enforcement institutions and to ensure better coordination of the money laundering and terrorism prevention and combating activity. The AML/CFT National Strategy was adopted and the AML/CFT Council under the leadership of the FIO was created.

1427. During the on-site interviews, the evaluators were left with the opinion that in general, the cooperation between the FIO and Law enforcement agencies is satisfactory. Information flows go both ways upon request: from the FIO to law enforcement agencies and vice-versa.

Table 47: Number of requests submitted by competent bodies to the FIO

Competent body	Number of requests submitted in 2011	Number of requests submitted in 2012
MoI	55	107
Public Prosecutor Office	9	2
Financial Police	13	13
Customs Administration	3	3
State Committee for prevention of corruption	/	1
Agency for management of confiscate property	/	1
Public Revenue Office	3	/
TOTAL:	**83**	**127**

1428. The main partners for the FIO are the law enforcement authorities acting in the MoI (Department of the Police, responsible for the financial investigations, Administration for security and counter-intelligence, responsible for the counter-terrorism issues). Following the on-site discussions, it resulted that the law enforcement authorities are satisfied the cooperation with the FIO and quality of the reports.

1429. During the on-site visit the evaluators were informed that a typical form of the inter-agency cooperation (the MoI, Financial Police, Customs Administration, FIO and PRO) is the participation in the joint criminal investigations groups. Following the joint teams, criminal charges were pressed in the area of illegal drugs trade, smuggling of goods, money laundering, organised economic crime and corruption (2010 – 10 cases; 2011 – 18 charges in 7 cases; 2012 - 15 joint investigations resulted in 16 criminal charges) .

1430. On the supervision side, there are no clear rules or consultation mechanisms between competent authorities. The FIO organises ad-hoc coordinative meetings with all supervisory authorities twice a year, where the exchange of information is reviewed. The FIO prepares minutes of these coordinative meetings, which are accepted and signed by the present representatives of all supervisory bodies. The evaluation team was informed that the supervision plan of the FIO is presented on these meetings.

1431. In practice the FIO seems to play a coordinating role on supervision but the information flow appear to be mainly carried out one-way: from general supervisors to the FIO. During the on-site interviews several supervisory authorities confirmed that the FIO does not always inform them about the on-site supervision plans.

6.1.2 Recommendations and Comments

Recommendation 31

1432. The authorities significantly improved the cooperation between the main stakeholders as important part of the AML/CFT system since the last evaluation.

1433. In order to effectively implement both the AML/CFT National Strategy and the FAT Strategy, the authorities are recommended to harmonize the requirements of the strategies to avoid overlapping.

1434. Given the system of a multitude of supervisory authorities with similar rights and obligations, the AML/CFT system could benefit greatly from a process of coordination between all involved supervisory authorities and from comprehensive and two-way information flow.

1435. The authorities are encouraged to implement mechanism for consultation between the competent authorities and the reporting entities.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

1436. The authorities are recommended to maintain adequate statistics to allow them to review the effectiveness of their system for combating ML and TF on a regular basis.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1437. N/A.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**LC**	**Effectiveness** • No clear rules or consultation mechanisms between competent authorities on supervision; • The information flow between the FIO and the general supervisors incomplete.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Recommendation 35 (rated PC in the 3rd round report) & Special Recommendation I (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1438. In the third round MER of the "the former Yugoslav Republic of Macedonia" both R.35 and SR.I were rated PC as a result of serious insufficiencies in technical implementation of the Conventions particularly in terms of criminalisation as well as the deficient implementation of UNSCR 1267 and 1373.

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1439. All the three international legal instruments listed in Criteria 35.1 and I.1 had already been signed and ratified by "the former Yugoslav Republic of Macedonia" by the time of the previous round of MONEYVAL evaluations.

1440. As it is discussed more in details in the 3rd round MER[110] the 1988 UN Convention against

[110] See paragraph 749 of the 3rd round MER (page 181).

Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) had been ratified by Yugoslavia in 1990 and applies to "the former Yugoslav Republic of Macedonia" by succession as of 17 November 1991. The 2000 UN Convention against Transnational Organised Crime (Palermo Convention) and its two protocols were ratified on 12 January 2005 while the 1999 International Convention for the Suppression of the Financing of Terrorism (FT Convention) was ratified on 30 August 2004.

1441. The Palermo Convention was ratified with only one reservation concerning Art.35 which is, however, indifferent in the context of FATF Recommendations. As to the FT Convention, "the former Yugoslav Republic of Macedonia" made a reservation that 2 out of the 9 treaties, that is, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988) are to be deemed not to be included in the Annex of the FT Convention.

1442. Indeed, the FT Convention contains a derogation in Art. 2(2) that allows a state which is not party to a treaty listed in the Annex to declare that the particular treaty is deemed not to be included in the Annex, which means that, for the purposes of the TF Convention (and thus for SR.I as well) countries only have to criminalise the financing of treaty offences which are contained in those treaties to which they are a party. While the reservation made by "the former Yugoslav Republic of Macedonia" is thus in line with SR.I, it is against SR.II which requires the TF offence to extend to all the 9 treaty offences listed in the Annex, regardless of whether the country is a party to those treaties or not.

1443. As for the transposition of the Vienna and Palermo Conventions, "the former Yugoslav Republic of Macedonia" has achieved significant progress in bringing its anti-money laundering criminal legislation in line with these conventions. Art. 273 CC as amended follows more closely the standards set by these international legal instruments. Nonetheless, as far as the mere acquirement of proceeds is concerned, the ML offence does not meet the standards set by these Conventions.

1444. The trafficking in narcotics and other drug related offences are properly criminalised by the CC which, on the other hand, also provides for the confiscation of proceeds derived from drug related offences and narcotics and instrumentalities in drug related cases and associated money laundering. Extradition is provided for all related offences and MLA is available too. Controlled delivery is available as an operative investigative technique on the basis of the 2nd Additional protocol to the 1959 Strasbourg Convention and, as from December 2013 pursuant to the new MLA Law (Art. 36).

1445. Criminal association *i.e.* creating a criminal organisation is an offence (Art. 394 CC) while committing crimes in an organised criminal manner is an aggravating circumstance in a number of offences under the CC (see Annex 1) is in line with the Palermo Convention. Mutual legal assistance to foreign countries is available also for the purposes of confiscation and extradition is possible too. By virtue of the CPC, the prosecuting authorities have a range of investigative techniques at their disposal (see above for more details).

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1446. As it was discussed above, the current domestic legislation provides for a structure and wording by which the main conducts of collection and provision of funds that may establish the FT offence closely follow Art. 2 of the FT Convention and most of the additional standards set by SR.II.

1447. On the other hand, the FT offence still suffers from technical deficiencies. As it was discussed under SR.II at least 3 out of the 9 *"treaty offences"* remain uncovered and only 2 out of these are actually covered by the above mentioned derogation. While the financing of terrorists organisations and individual terrorists are addressed by the current legislation, the latter term remained undefined which may impede its effective application. In addition, the TF offence should explicitly be applicable to the population or government of *"any country"*. These inconsistencies in implementation might have a consequential impact on the rendering of MLA considering the implicit applicability of the dual criminality standard under the current CPC

regime.

1448. "The former Yugoslav Republic of Macedonia" can extradite a person to a foreign country, the legal framework for which is currently set out in Chapter XXXI CPC. Extradition applies to terrorist financing offences too. It needs to note, however, that the new MLA Law that comes into effect as from December 2013 provides in Art. 53(2) that certain offences, including the act of terrorism shall not be considered as political crimes, nonetheless this provision does not refer to the offence of terrorist financing which is an apparent, perhaps inadvertent deficiency in the implementation of the FT Convention that should urgently be remedied.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1449. The UNSCRs 1267/1988 and 1373 and their successor resolutions relating to the prevention and suppression of the financing of terrorism are implemented to a very limited extent.

1450. The national mechanism for giving effect to the said UNSCRs is seriously deficient and, in many aspects, incomplete. There is a lack of clear, comprehensive and reliable procedural rules for freezing of terrorist funds or other assets of designated persons and entities in accordance with UNSCRs 1267/1988 and 1373.

1451. No legislation is currently available for freezing under procedures initiated by third countries and funds or assets controlled by designated persons and there is no designation authority in place for UNSCR 1373. There is a general absence of publicly known procedures for considering de-listing requests and for unfreezing funds or other assets of delisted persons which also refers to procedures for court review of freezing actions.

Additional element – Ratification or Implementation of other relevant international conventions

1452. "The former Yugoslav Republic of Macedonia" had also ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141) before the third round evaluation. Since then, it also ratified (2009) the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) which entered in force as of September 2009.

6.2.2 Recommendations and comments

1453. Since the 3rd round of MONEYVAL evaluation, the domestic legislation has been amended in order to better implement the aforementioned Conventions. As far as the mere acquirement of proceeds of crime is concerned, however, the ML offence in Art. 273 CC does not fully meet the standards set by the Vienna and Palermo Conventions.

1454. The existing legislation does not cover the full scope of the FT Convention either and hence it is recommended that "the former Yugoslav Republic of Macedonia" further amend its CC so as to bring the ML and particularly the TF offences fully in line with the respective Conventions. Equally, it should be stipulated more precisely that neither the TF offence in Art. 394-c CC can be considered a political crime in the context of mutual legal assistance and extradition.

1455. Serious efforts are required in order to properly implement UNSCRs 1267/1988 and 1373. As it was discussed more in details under SR.III, there is an urgent need for a specific, complex and target-oriented legislation so as to address all aspects of SR.III that are currently not, or not adequately covered, particularly in terms of detailed, comprehensive and calculable procedural rules with roles, responsibilities and deadlines throughout the process. This legislation should be extended to freezing under procedures initiated by third countries and funds or assets controlled by designated persons.

1456. A national designating authority should be established or appointed for the purposes of UNSCR 1373 and there is an overall need for publicly known procedures for considering de-listing requests and unfreezing assets of de-listed persons, for unfreezing the funds and assets of persons inadvertently affected by the freezing mechanism and for the court review of freezing actions.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• Reservations about certain aspects of the implementation of the ML and FT Conventions: o ML and TF offences do not meet the standards set forth by these conventions; o unclear whether the TF offence can be considered a political crime.
SR.I	**PC**	• Reservations about certain aspects of the implementation of the FT Convention; • Deficient and incomplete implementation of UNSCRs 1267 and 1373.

6.3 Mutual legal assistance (R. 36, SR. V)

6.3.1 Description and analysis

Recommendation 36 (rated LC in the 3rd round report)

Summary of 2008 factors underlying the rating

1457. In the third round MER of "the former Yugoslav Republic of Macedonia" R.36 was rated LC due to the shortcomings of the domestic legislation that had been intended to cover the TF offence (particularly Art. 394-a CC then in force) as well as the value threshold applied in the ML offence which could impede mutual legal assistance based on dual criminality.

Legal framework

1458. The international judicial cooperation in criminal cases is still regulated by Chapter XXX (mutual legal assistance) and Chapter XXXI (extradition and transfer of convicted persons) of the CPC as it was at the time of the 3rd round MONEYVAL evaluation.

1459. However, in the meantime, "the former Yugoslav Republic of Macedonia" adopted a new Law on International Cooperation in Criminal Matters ("Official Gazette of the Republic of Macedonia" No 124/2010 of 20 September 2010 hereinafter: MLA Law) which entered in force on 28 September 2010. This Law can only be applied, by virtue of Art.105, from the day when the new CPC (Hereafter NCPC, published in the "Official Gazette of the Republic of Macedonia" No. 150/2010 of 18 November 2010) starts to be applied. As it was noted in the preceding parts of this report, the NCPC entered in force already in November 2010 but has only been applicable and thus in effect (by virtue of Art.568 NCPC as amended), as from 1 December 2013 and therefore this is the date when the new MLA Law also becomes applicable. As noted above, these pieces of legislation (both the NCPC and the MLA Law) had already been in force at the time of the 4th round MONEYVAL on-site visit, yet they were not applicable even in the two-month period immediately following the on-site mission. Since the MLA Law was only *"in force"* but not *"in effect"* in the aforementioned period, it can only be discussed in this report, but it will not be taken into account for ratings purposes.

1460. Legal provisions for providing mutual legal assistance are stipulated by domestic law as well as bilateral and multilateral treaties that apply both to ML and TF. As it was analysed more in detail in the 3rd round MER[111] the Constitution of "the former Yugoslav Republic of Macedonia" provides that the main principles applicable in the field of international cooperation in criminal matters are the precedence of international treaties over national law and the direct applicability of the conventions, while Art.502 CPC provides that international judicial assistance shall only be performed pursuant to the domestic legislation if not provided otherwise by international treaties ratified in accordance with the Constitution such as the 1959 European Convention on Mutual Legal Assistance in Criminal Matters or the 2000 Palermo Convention. The new MLA Law provides similarly (Art.2) and therefore it can be concluded that domestic law remained applicable

[111] See paragraph 756 of the 3rd round MER (page 183).

only in non-treaty based cooperation or for issues not covered by the otherwise applicable international treaty (in lack of an international agreement, however, the execution of a foreign letter rogatory is bound by reciprocity or at least it requires a written warranty from the other state in this respect, as provided by Art.12).

1461. As it was already set out in the 3rd round MER "the former Yugoslav Republic of Macedonia" is a party to a number of relevant international agreements within the scope of R.36 such as the 1959 European Convention on Mutual Legal Assistance in Criminal Matters (ETS 030) and its Additional Protocol (ETS 099) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141). The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) was ratified in May 2009 and it has been in force since September of the same year.

Widest possible range of mutual assistance (c.36.1)

1462. The possible forms of international cooperation in criminal matters cover a wide range including international legal assistance in general (Chapter XXX CPC) extradition (Chapter XXXI subchapter 1) transfer of convicts (Chapter XXXI subchapter 2) and the execution of foreign verdicts (Chapter XXX Art. 505) which are all covered by the new MLA Law as well.

1463. Turning to mutual legal assistance in criminal matters, Chapter XXX CPC still contains only a couple of articles by which this issue is directly addressed, specifically Art. 503 and 504 that deal with general rules of competence in providing legal assistance and the various channels of communication while Art. 505-a regulates assistance concerning confiscation and provisional measures on the request of other countries. Similar to the time of the 3rd round evaluation, these provisions are still too general to form a comprehensive set of rules that determine the details of the procedures through which foreign requests for mutual legal assistance can be executed. As a result, a number of essential issues are still unaddressed by the current legislation such as the minimum content and form of requests for mutual legal assistance, the manner of and deadlines for the procedure or the grounds for refusal.

1464. As it was noted in the previous MER the representatives of the Ministry of Justice had admitted during the 3rd round that the aforementioned CPC provisions had been considered insufficient to meet the needs of regulation and thus a complete new law on international legal assistance was to be introduced (which led to the drafting and adoption of the new MLA Law that will be discussed below).

1465. According to the CPC provisions in force at the time of the 4th round on-site visit, the Ministry of Justice remains the central judicial authority responsible for mutual legal assistance in criminal cases. The Ministry of Justice is thus responsible for delivering the requests of domestic courts to foreign counterparts via the diplomatic channel (through the Ministry of Foreign Affairs) as well as for receiving foreign letters rogatory and forwarding them to the domestic courts (Art.503[1]). Consequently, the courts of "the former Yugoslav Republic of Macedonia" still have a central and exclusive role in the circulation of letters rogatory in both ways: only they are entitled to issue a motion for legal assistance and only they have competence to execute a foreign letter rogatory.

1466. The CPC also provides for direct communication between domestic judicial authorities and their foreign counterparts, even if not stipulated by an international treaty, in two different ways. Direct contact, in both directions, between the competent domestic and foreign courts is regulated by Art. 503(1) CPC as an alternative of taking the classic diplomatic course through the Ministry of Justice. It was not clear at the time of the previous evaluation (and neither is now) when and on what conditions a domestic court could choose this alternative instead of the inter-ministerial channel and how frequently this sort of direct cooperation was applied. The other, exceptional form of direct communication is provided by Art. 503(2) CPC according to which in urgent cases and under the condition of mutuality the motions for legal assistance can be delivered through the MoI (that is, the Police) and then the Ministry of Justice. This way the diplomatic channel (the Ministry of Foreign Affairs) can be skipped and the foreign requests are received by the MoI in the framework of international police cooperation.

1467. In this respect, Art.6 of the new MLA Law has similar provisions, with the sole exception that the pivotal role the courts had in the field of international legal cooperation is now assigned to *"national judicial authorities"*, which means not only a domestic court but also a public prosecutor who, according to the law, is competent for international cooperation. Public prosecutors are thus also empowered to issue letters rogatory to their foreign counterparts and to execute foreign requests upon the decision of the Ministry of Justice. The latter Ministry remains, however, the central authority with exclusive competence for receiving foreign letters rogatory (para 2) while the outgoing requests for mutual legal assistance are communicated with as follows:

- in lack of international agreement (or if it is so required by such an agreement) the national judicial authority sends the letter rogatory to the Ministry of Justice and then it is forwarded abroad via the Ministry of Foreign Affairs (para 5);
- on the basis of an international agreement that allows for direct communication, the national competent authority (*sic!*) sends the letter rogatory directly to the foreign competent authority (para 3);
- but in urgent cases, the same letter rogatory can be delivered via the channels of international police cooperation (para 4).

1468. These three options are present in both the CPC and the MLA Law but there are some differences too. The first option (diplomatic channel) is practically the same in both legislations. In the second and third one, the only problematic issue is the role of the Ministry of Justice considering that the respective paragraphs of Art.6 refer to *"national competent authorities"* instead of the aforementioned *"national judicial authorities"* (which term comprises, as mentioned above, competent domestic courts and public prosecutors). According to Art.5 item 1 of the Law, the term *"national competent authorities"* encompasses the Ministry of Justice, the national judicial authorities and the competent misdemeanour authorities, too. It means that the direct communication para (3) as well as the communication in urgent cases in para (4) might equally be performed by the Ministry of Justice and the otherwise competent national judicial authorities.

1469. Considering that it is always a court or a public prosecutor who initiates requesting legal assistance from a foreign counterpart, there must be two options in both cases:

- the *"actually direct"* communication where a national judicial authority (a court or a prosecutor) issues a letter rogatory and the same authority delivers it to its foreign counterpart either by mail or (in urgent cases) through international police communication (this is where the new MLA Law differs the most from the CPC regime); and
- the *"virtually direct"* communication where the national judicial authority sends the letter rogatory to the Ministry of Justice (which is also a "national competent authority") and this Ministry forwards it to the competent foreign authority by either of the above mentioned ways (practically in line with the CPC regime as described above).

1470. Despite the rather confusing terminology of Art.6(3) and Art.6(4), the MLA Law definitely allows for the "actually direct" forms of communication as these paragraphs prescribe that in case the letter rogatory is forwarded to the foreign authority, a sample thereof shall be also delivered to the Ministry of Justice (which obviously would not make sense if all letters rogatory were sent via the Ministry.) Nonetheless, the MLA Law does not specify the circumstances and conditions that would determine in which cases a letter rogatory could be delivered directly to the foreign judicial authority and when it should be sent via the ministerial channel (though this is not a shortcoming in the context of R.36 that deals with the execution if incoming letters rogatory).

1471. As it was discussed above, Chapter XXX CPC remains silent on the minimum content and form of requests for mutual legal assistance (as opposed to the formalities of extradition requests which are duly defined in other parts of the CPC) and the details of the procedure by which foreign letters rogatory are executed. In this respect, Art.504 (3) only provides that the decision of the competent domestic court *"on allowing and on the manner of performing the activity being subject of the motion of a foreign body"* has to be made in accordance with the domestic

regulations. On the one hand, this provision, just like all the other generic, incomplete and/or superficial articles of Chapter XXX CPC represents a regulation that is far from being satisfactorily exact and detailed, which is likely to cause problems when it comes to implementation as it may leave too much room for judicial discretion. On the other, however, this regime can actually be interpreted broadly and flexibly which appeared be the case in "the former Yugoslav Republic of Macedonia" for which reason the evaluators of the previous round were satisfied (and their opinion is shared by the present evaluation team) that the domestic judicial and other competent authorities can provide a remarkably wide range of mutual legal assistance including any investigative means and measures available in the CPC.

1472. Notwithstanding this, the evaluators appreciate that the new AML introduces a completely new structure of MLA-related domestic legislation with detailed procedural rules regulating, among others, the form and content of the letter rogatory, the procedures by which it can be executed, the grounds for refusal and the various forms of investigative acts that can be carried out on the basis of a foreign request.

1473. According to Art.15 of the AML Law, the international legal assistance may be requested for, or provided by, the performance of certain procedural activities, including:

- carrying out of procedural acts such as delivering records or written evidence (and also extracts from criminal records – Art. 31) related to the criminal procedure in the other country;
- interrogation (interviewing) of persons, also via video or telephone conference (Art.33 and 34) and temporary surrender of detainees and convicts (Art.23);
- coercive measures consisting of search of premises and persons, seizure of objects or property, freezing of funds, bank accounts and financial transactions as well as confiscation thereof (including the surrender of seized/frozen property to the other state and the management of the confiscated property as provided by Art.26 to 28); and
- a range of special investigative measures such as cross-border surveillance (Art.35) controlled delivery (Art.36) the usage of person with concealed identity (Art.37) as well as the monitoring of communications.

1474. The AML Law also permits the national judicial authorities to deliver spontaneous information to their foreign counterparts (without a letter rogatory, see Art.25) and the formation of joint investigative teams in cases related to organised crime and corruption, in line with the 2nd Additional Protocol to the 1959 Strasbourg Convention (Art.38).

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1475. While the CPC remained silent on the potential grounds for refusal (and hereby left it to the discretion of the courts to decide whether or not the execution of a letter rogatory can be allowed) the new AML/CFT Law provides for a list of circumstances under which the international cooperation can generally be rejected (Art.10). Rejection of legal assistance, which always must be explained towards the requesting state, may take place if:

- the execution of a letter rogatory is contrary to the Constitution of "the former Yugoslav Republic of Macedonia" or violates its sovereignty, security or safety;
- it refers to an act which is considered to be, or related to, a political criminal act; or
- it refers to a criminal act consisting in breach of military duties.

1476. It needs to note that Art.10 also provides for further reasons of rejection (such as the standard of double jeopardy) which, however, only apply to other forms of international cooperation e.g. extradition requests but not to mutual legal assistance.

1477. The lack of dual criminality is thus not listed among the reasons for refusal. Furthermore, it is not even mentioned anywhere in those parts of the AML Law that deal with the international legal assistance. Certainly, other parts of the Law such as Art.43 (1) on the conditions of initiating a criminal prosecution on the request of a foreign country, or Art.50 on criminal acts for which extradition is allowed, stipulate conditions based on the principle of dual criminality, but neither of these provisions can be related even indirectly to the applicability of mutual legal assistance.

1478. In fact, not even the respective chapter of the CPC contains rules that would explicitly require dual criminality for mutual legal assistance but this requirement was, as it was noted in the 3rd round MER, implicitly incorporated and thus applicable, at least to a certain extent, indirectly. Art. 504(4) CPC stipulates that *"when the application refers to a criminal act for which according to the domestic regulations extradition is not allowed, the court will request guidance[112] from the Ministry of Justice".* Conditions for extradition are determined by Art.510 CPC where one can find that *"the deed being the reason to request extradition to be a crime both according to a national law and according to the law of the state where it has been committed"*(paragraph 3) which is the usual standard of double criminality. In such cases, the competent court is thus required to ask the Ministry for "*guidance*" which, as it was clarified during the previous round of evaluation, provides an opportunity for the judge, in case he/she finds that a specific foreign request cannot be executed because of not meeting this standard, to turn to the Ministry of Justice for confirmation or verification of this position in this issue. Presumably, if the Ministry confirms the position that dual criminality is not met, the court will not execute the letter rogatory.

1479. As it was noted above, the MLA Law does not contain even such an indirect regulation regarding the application of dual criminality standard in providing international legal assistance in criminal matters, not even for coercive measures such as seizure, freezing or confiscation of property. It appears therefore that foreign letters rogatory can be executed even in a total absence of dual criminality (e.g. the act that is subject of the foreign procedure would not establish any sort of criminal offence had it been committed domestically) although the evaluators were not provided any case practice to support this remarkably broad interpretation of the law.

1480. Apart from these, the evaluators were not informed of any further provision that would make mutual legal assistance subject to unreasonable, disproportionate or unduly restrictive conditions.

Clear and efficient processes (c. 36.3)

1481. As regards clear and efficient processes for the execution of MLA requests in a timely way and without undue delays, neither the CPC nor the new MLA Law provides procedural deadlines and the domestic authorities had the opinion that the time limits are generally dependent on the content of the respective requests. Timeliness of the procedure is only required, even if only in general terms, by the new MLA Law which provides as follows in its Art. 17: *"(1) The national competent authority shall act on the letter rogatory on a manner designated in the letter rogatory; The national competent authority shall decide upon the letter rogatory of the foreign competent authority without any delay; When the national competent authority shall evaluate that it is not able to act on the letter rogatory in the deadline set for it thereof, and in the explanation from paragraph (2) of this Article is explicitly stated that any delay shall lead to significant violation of the procedure before the foreign competent authorities, the national competent authority shall notify the foreign competent authority about the time needed for acting on letter rogatory without any delay; If the national competent authority cannot to act on the letter rogatory entirely or partly, it shall notify the foreign competent authority without any delay stating the manner of procedure and the reasons due to which it cannot act entirely on the letter rogatory.*

1482. The provisions above necessarily denote deadlines the consideration of which was requested by the foreign authority and not deadlines stipulated by domestic law. In any case, these provisions clearly require that the action of the competent domestic authority shall be carried out without delay which doubtlessly serves the timeliness of the procedure.

1483. The average time the execution of a letter rogatory involving investigative measures requires was said, both at the time of the previous evaluation and during the 4th round on-site visit, not to exceed 2 to 3 months but fulfilling more difficult requests may take longer. In a total lack of statistics in this respect, the statements regarding these turnover times could not be verified. Notwithstanding, the examiners were not informed by any other MONEYVAL member states on any negative experiences, including undue delays in executing MLA requests, in the cooperation with the "the former Yugoslav Republic of Macedonia".

[112] Clarified translation in accordance with the authorities, as adopted from the 3rd round MER (footnote 192 on page 185).

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1484. Similarly to the time of the 3rd round evaluation, no ground for refusal for offences involving fiscal matters is regulated in "the former Yugoslav Republic of Macedonia" (either in the CPC or the new MLA Law).

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1485. Neither the rules of the CPC nor the new MLA Law allow for the refusal of foreign requests on the grounds of secrecy or confidentiality requirements on financial institutions or DNFBP. Generally speaking, no financial institution secrecy law appears to inhibit the implementation of the FATF Recommendations in "the former Yugoslav Republic of Macedonia" and this general approach must also be followed when executing foreign letters rogatory.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1486. Pursuant to both the CPC and the new MLA Law as quoted above, the powers of competent domestic authorities of "the former Yugoslav Republic of Macedonia" are available for use in response to requests for MLA. Within the limits of the letter rogatory to be executed, the prosecuting authorities possess the same procedural powers compared to a national criminal investigation.

Avoiding conflicts of jurisdiction (c. 36.7)

1487. Apart from the provisions that deal with taking over (initiation) and surrendering (transfer) of criminal proceedings (Art. 507 and 508 CPC or Art. 42 to 49 of the MLA Law) there is no specific legislation in "the former Yugoslav Republic of Macedonia" to provide for mechanisms for determining the best venue for prosecution of defendants in cases that are subject to prosecution in more than one country in order to avoid conflicts of jurisdiction.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1488. Bearing in mind that pursuant to both the CPC and the new MLA Law all foreign letters rogatory must be received through the Ministry of Justice as the central authority of "the former Yugoslav Republic of Macedonia" (direct communication is only allowed for outgoing requests according to Art.6[2] of the new MLA Law) there is no legal possibility for the domestic judicial authorities to receive and execute direct requests from their foreign counterparts.

Special Recommendation V (rated PC in the 3rd round report) (applying 36.1 – 36.6 in R.36, c.V.1)

1489. The provisions described under R.36 equally apply to the fight against terrorism and the financing thereof. It needs to be reiterated, however, that the technical deficiencies described under SR.II may have a negative impact on the ability of "the former Yugoslav Republic of Macedonia" to provide MLA due to the precondition of dual criminality that implicitly applies in the CPC regime (even though this standard is abandoned in the new MLA Law.

Additional element under SR V (applying c. 36.7 & 36.8 in R. 36, c.V.6)

1490. The provisions described under R.36 equally apply to the fight against terrorism and the financing.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1491. As for the sources available for the purposes of mutual legal assistance in criminal matters, the evaluators learnt that such issues are dealt with by the International Legal Assistance Sector within the Ministry of Justice. Specifically, it is the Department for Acting upon Letter Rogatory in Criminal and Civil Matters that is directly involved in such cases. This Department currently consists of 4 persons (including the head) while there are 3 job positions unoccupied. Considering that half of the potential positions are not occupied, there is a serious risk of work overload in the Department also taking into account that this staff must deal with thousands of criminal and civil letters rogatory every year (see below).

Effectiveness and efficiency & Recommendation 32 (Statistics – c. 32.2)

1492. Despite the attempts the evaluation team made to obtain adequate statistical information from the authorities of "the former Yugoslav Republic of Macedonia" they only received some basic and incomplete information in this respect. In the field of mutual legal assistance, the only information that could be gathered is related to the year 2013 (i.e. the period from 1th January to 31 December 2013 which is in itself partially beyond the timeframe that is relevant for the purposes of the evaluation) according to which there were altogether 3,112 cases involving mutual legal assistance in criminal matters in this period, out of which foreign letters rogatory were executed in 1,809 cases while domestic letters rogatory submitted to foreign authorities in 1,303 cases. On the other hand, there were no statistics available concerning the typical investigative measures requested, the foreign states involved, the occurrence (and number) of ML and TF cases and particularly the overall number of refused foreign requests (and reasons for refusal) without which no conclusion could be drawn regarding the effectiveness of this sector.

6.3.2 Recommendations and comments

Recommendation 36 & Special Recommendation V

1493. The principle of dual criminality is, though implicitly, still present in the CPC that is the domestic legislation to be taken into account for the purposes of the evaluation. This is why the technical shortcomings of the domestic TF offence (e.g. the territorial limitation of the offence or the deficient coverage of the *"treaty offences"*) may possibly cause difficulties in providing mutual legal assistance. On the other hand, the deficiencies of the ML offence do not appear as serious as to pose an impediment to effective provision of legal assistance (while the mere acquirement of proceeds is not considered ML it can be qualified as other criminal offence etc.).

1494. Apparently, the dual criminality standard is abandoned in the new MLA Law which is likely to bring a solution to this shortcoming.

1495. Effectiveness could not be demonstrated due to the absence of comprehensive statistics on MLA requests and particularly those relating to ML and TF offences.

Recommendation 30

1496. The Department for Acting upon Letter Rogatory in Criminal and Civil Matters should have all job positions occupied.

Recommendation 32

1497. The authorities of "the former Yugoslav Republic of Macedonia" should maintain comprehensive statistics on MLA issues and not only total figures on civil and criminal letters rogatory. As for the letters rogatory in criminal matters, these statistics should contain reliable information on the respective criminal offences involved (at least the most important ones and also the occurrence and number of ML and TF cases) the typical investigative measures requested, the foreign states (either requesting or executing) and particularly the overall number of refused foreign requests (and reasons for refusal).

6.3.3 Compliance with Recommendation 36 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36	**LC**	• The application of dual criminality in the CPC may negatively impact the ability of "the former Yugoslav Republic of Macedonia" to provide MLA due to shortcomings in FT criminalisation; **Effectiveness** • Effectiveness cannot be demonstrated.
SR.V	**LC**	• application of dual criminality in the CPC may negatively impact the ability of "the former Yugoslav Republic of Macedonia" to provide MLA due to shortcomings in FT criminalisation;

		Effectiveness • Effectiveness cannot be demonstrated.

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1 Description and analysis

Recommendation 40 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1498. In the third round MER Macedonia was rated PC based on the following facts:

- spontaneous dissemination of information from the FIU to foreign authorities without prior request is not clearly provided for by law;
- FIU is not clearly entitled to provide information to foreign bodies and organisations which have no competence in the AML are (e.g. only in combating financing of terrorism);
- AML Law contains no clear competence for the FIU to request data from foreign authorities;
- No legal basis for the NBRM to cooperate with foreign supervisors, concerning the supervision of saving houses, exchange offices or service providers for fast money transfers.

Legal framework

FIO

1499. The legal basis for cooperation between the FIO and foreign authorities is set out in Art. 3 (2) (10) of AML/CFT Law which provides the FIO's competence to conclude agreements for international cooperation and information exchange with the authorised bodies from third countries and international organisations acting in the AML/CFT field. The international cooperation and information exchange is further regulated by Art.s 44 and 45 of the AML/CFT Law.

Law enforcement authorities

1500. According to the requirement of the Art. 4 of the Law on Police, the MoI is obliged to develop and promote international police cooperation. According to Art. 12 of the Law on Police, the police shall cooperate with foreign polices services and international police organisations in accordance with the ratified international agreement and membership in the international police organisations and institutions.

1501. In accordance with Art.s 10 and 22 of the LCA, the Customs Administration shall cooperate with foreign customs administrations and international organisations (WCO, RILO-ECE, SELEC, Balkan-Info, ZKA, and others), in the field of customs operation, in the detection and prevention of customs misdemeanours and crimes, in training of Customs officers, upgrading technical development and other, in accordance with ratified international agreements.

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1); Clear and effective gateways for exchange of information (c.40.2), Spontaneous exchange of information (c. 40.3)

FIO

1502. Art.s 44 and 45 of the AML/CFT Law provide the powers of the FIO in the area of the international cooperation. The FIO may, within the international cooperation, request data and submit the data received pursuant to the AML/CFT Law, to the authorised bodies and organisations of third countries, spontaneously or upon their request and under condition of reciprocity, as well as to international organisations dealing in the field of fight against money laundering and terrorism financing. The request for information should be explained with the appropriate facts indicating money laundering or financing of terrorism and the purpose for which the requested data and information will be used.

1503. The FIO shall be bound to reply to the requests by providing all appropriate data and information in accordance with the competences set out in the AML/CFT Law. The FIO may

request information from the authorised bodies from third countries, which shall be used for purposes laid down in the AML/CFT Law and under the conditions set out by the body that generated the request.

1504. According to Art. 45 of the AML/CFT Law, the FIO is able to postpone transactions at the request of foreign counterparts and to submit to the competent public prosecutor requests for the application of the provisional measures based on a request of the competent authority from another country. The procedure for the postponement and for the submission of the proposal for imposing the provisional measures is identical as in case of internally generated cases.

1505. The request for postponement should be explained (by the requesting party) and should refer to a transaction related to money laundering or financing terrorism and the refusal (suspension) or postponement (withhold) would be realised if the transaction had been the subject of a domestic suspicious transaction report. Although from the wording of the text it seems that the postponement is possible only if a prior STR had been submitted to the FIO, the authorities explained that the intention of the legislator was to harmonise the domestic provisions with the Warsaw Convention[113].

1506. While Art. 44 makes clear reference to *"indication of money laundering and terrorism financing"*, the authorities stated that since the provisions make also reference to the counterpart as *"authorised bodies"* and *"organisations involved in AML/CFT matters"*, the exchange of information may be carried out not only in respect of ML/TF issues, but also in respect of the predicate offences. To date, there were no cases of requests from foreign FIUs concerning suspicions of a predicate crime.

1507. The FIO signed 49[114] MoUs with the FIU from foreign countries and jurisdictions, out of which, 29 were signed since the last MER.

1508. As was mentioned under Recommendation 26, the FIO became member of the Egmont Group in June 2004. The evaluators were informed that the Financial Intelligence Unit exchanges information mainly via Egmont Secure Web.

1509. Seeking to provide the assistance for the FIU of other countries in a rapid, constructive and effective manner, the FIO established and approved Quality Procedures: on Deliver of data and information request to the FIUs of other countries and international organisations; on Acting upon data and information requests of FIUs of other countries and international organisations; and on Acting upon request for refusal or delay of transaction from another country.

1510. The Quality Procedures includes the guidelines for all steps of the dealing with requests received from foreign FIU's: Reception of the request; Assigning of employee who will respond to the request; Priority identification of the request; Collection of information; Data analysis; Reporting on the data obtained; Drafting of the response to the request; Rejection to respond to the request; Submission of response to the request; Procedure for provision of endorsement for forwarding of information; Confidentiality etc.

1511. As stated by the authorities during the on-site interviews, the FIO provides answers to majority of the requests received from the foreign FIU within one month after the date of the receipt.

NBRM

1512. International cooperation and exchange of information by the NBRM for the use of supervisory

[113] Art. 47 (2) *The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, if the transaction had been the subject of a domestic suspicious transaction report*

[114] Bulgaria, Slovenia, Serbia, Croatia, Albania, Romania, Ukraine, Bosnia and Herzegovina, Poland, Russia, USA, Czech Republic, Kosovo (see footnote 2), Luxembourg, Republic of Moldova, Montenegro, Aruba, Belgium Georgia, Taiwan, Monaco, The Netherland Antilles, Mexico, Guatemala, Turkey, United Arab Emirates, Peru, UK, Portugal, Belarus, Nigeria, Latvia, San Marino, Norway, Argentina, Canada, Estonia, Armenia, British Virgin Islands, Malawi, Hungary, Israel, Australia, Finland, The Netherlands, Andorra, Bermuda, Bahamas

purposes is regulated in the NBRM Law which provides for a wide range of both (Art. 34 NBRM Law). While the domestic and cross-border cooperation with other regulatory and supervisory authorities and the exchange of confidential information with supervisory authorities is provided for in the law, there is however no precision as to the manner of such cooperation and information exchange

The Securities and Exchange Commission of the Republic of Macedonia SEC

1513. According to Art. 225 the Securities Law, the SEC shall have the authority to enter into Memoranda of Understanding or other types of acts with regulators of securities markets from other countries and other financial regulators for the purposes of coordinating and cooperating with regard to enforcement of this Law, other laws and regulations deriving from them.

1514. The SEC has concluded bilateral MoUs with supervisory bodies of mainly neighbouring countries and is a signatory of the IOSCO MMoU.

Insurance Supervision Agency

1515. Cooperation with foreign supervisory bodies is covered by Art. 223 of the Insurance Supervision Act to a certain extent. In the context of "data processing and information delivery" the ISA may deliver certain data to competent supervisory bodies of foreign countries. The legal basis for the conclusion of 9 MoUs with foreign bodies[115] remains opaque.

Agency for Supervision of the Fully Funded Pension Insurance (MAPAS)

1516. Art 47 para. 1 lit. i of the Law on Mandatory Fully Funded Pension Insurance allows MAPAS to work in conjunction with bodies and institutions abroad to ensure effective supervision. The legal basis for the conclusion of 8 MoUs with foreign bodies[116] remains opaque.

Postal Agency

1517. According to Art. 9 of the Law on Postal Services the Postal Agency may provide information to international bodies and may participate in the work of international organisations. There is no legal basis to provide the widest range of international cooperation to foreign counterparts and there should be clear and complete provisions for the exchange of information.

Law enforcement authorities

1518. The international cooperation of the MoI is carried-out on the basis of the ratified international conventions, current laws and memorandums or protocols for the international cooperation concluded with third parties.

1519. Since 2009, "the former Yugoslav Republic of Macedonia" is member of ILECU concluded between the LEA from Austria, Romania, Albania, Slovenia, Bosnia Herzegovina, Croatia, Montenegro and Serbia. The aims of the ILECUs are:

- To enhance the regular cross-border information exchange to combat crime and to exchange relevant information in conducting international investigations, which requires the complete organisational and operational set-up of these units;
- To develop and implement - if needed - the data protection standards reflected in the national legislation on personal data protection which do not yet have the pertinent legislation;
- To create an environment for well-functioning information and intelligence exchange, in which the national ILECUs shall be embedded;
- To strengthen the capacities in the field of criminal investigations; and
- To improve the cooperation and the networking between the ILECUs beneficiary countries and the EU-member states by establishing cooperation mechanisms.

[115] According to the information provided, the ISA concluded MoUs with bodies from Albania, Austria, Bulgaria, Croatia, Kosovo (see footnote 2), Republic of Moldova, Montenegro, Romania and Slovenia.
[116] According to the information provided, the MAPAS concluded MoUs with bodies from Albania, Bulgaria, Croatia, Kosovo (see footnote 2), Poland, Romania, Slovenia and Turkey.

1520. Apart from the ILECU, the international cooperation in the MoI is implemented through the channels of Interpol, Europol, SELEC as well as through 6 liaison officers of the "the former Yugoslav Republic of Macedonia" abroad and 10 liaison officers in charge of the "the former Yugoslav Republic of Macedonia" which Embassies are located in the neighbouring countries. The MoI has a liaison officer in the SELEC centre in Bucharest and one liaison officer in Interpol. In the same time, the Sector for international Police Cooperation is the national central unit for the Vienna Convention for police cooperation of the countries from South-Easter Europe.

1521. The Agreement for Operational and Strategic cooperation between the "the former Yugoslav Republic of Macedonia" and the Europol Office was signed and entered into force in 2011. In the framework of this Agreement, the MoI of the "the former Yugoslav Republic of Macedonia" and have the ability to cooperate and to exchange information with Europol and with the accredited to the Europol liaison officers of the law enforcement institutions of the EU member states and states.

1522. Apart from the multilateral agreements and conventions, since the last MER, the MoI signed 23 memorandums, agreements, protocols or joint declarations with Governments and Law enforcement institutions of the foreign countries[117], related to the implementation of the international cooperation measure in the area combating with different type of crimes.

1523. The evaluators were informed that due to limited human resources, the international cooperation of the Financial Police, is conducted through the MoI – Centre for international police cooperation. On bilateral basis, the Financial Police Office cooperates with several law enforcement agencies from Europe, such as SOCA (UK), Guardia di Finanza (Italy) and OLAF (EU).

1524. The MoI unit in charge of suppressing terrorism is the Administration for Intelligence and Counterintelligence that introduced different forms of cooperation and exchange of information related to organised crime and terrorism. The Administration for Intelligence and Counterintelligence is a member of: SEEIC (Conference of intelligence administrations from South-East Europe) since 2004 which includes 13 administrations from 10 countries; MES (Middle Europe Conference) since 2008 which includes 31 administrations from 23 countries; a number of regional associations for the purpose of improvement of capacities and efficient dealing with the security risks.

1525. In accordance with Art.s 10 and 22 of the LC, the Customs Administration can cooperate with foreign custom administrations and international organisations in the detection and prevention of customs misdemeanours and crimes, training of Customs officers, upgrading technical development and other, all in accordance with ratified international agreements. The Sector for Control and Investigations is the organisational unit in charge of the international cooperation within the Customs Administration.

1526. Gateways for international cooperation and information exchange in customs matters are the WCO, RILO-ECE, SELEC, Balkan-Info, ZKA. The evaluation team learned that the "the former Yugoslav Republic of Macedonia" Customs Administration signed 13 treaties[118] for mutual administrative assistance in the area of prevention, investigation, identification and sanctioning of custom misdemeanours.

1527. The cooperation between the Customs Administration and with the EU and their member-states is conducted in accordance with the Stabilization and Association Agreement between the "the former Yugoslav Republic of Macedonia" and the European Communities.

[117] Poland, Brandenburg, Bulgaria, the Czech Republic, ILECU, Slovakia, Austria, Holland, Republic of Kosovo (see footnote 2), Serbia, Italy, Slovenia, France, Russian Federation, Albania, Montenegro, Ministry of Interior of Bavaria, Croatia, Australia (some MoUs were signed with different authorities in the same country).
[118] France, Albania, Turkey, Russian Federation, Denmark, Holland, Italy, Slovenia, Bulgaria, Poland, Slovakia, Finland, Kosovo (see footnote 2).

Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

FIO

1528. According to part 5.1.4 of the Quality Procedure Acting upon data and information requests of FIUs of other countries and international organisations the procedure for collecting of data shall be identical as the procedure applicable for the domestic STRs analytical process, thus, making inquiries on behalf of foreign counterparts is possible.

1529. When acting upon an information request received from a foreign FIU, an employee of the Department for International Cooperation of the FIO shall perform the following tasks:

- shall submit request for additional data and information to the obliged entities and to the competent state bodies
- perform analysis and processing of (additional) data and information;
- enter data from the data and information requests of the Financial Intelligence Units of other countries and international organisations in the ICM application;
- prepare replies and deliver them to the competent Financial Intelligence Units of other countries and international organisations;
- act upon and provide notification regarding the information forwarding request; and
- keep statistical review of data and information requests of the Financial Intelligence Units of other countries and international organisations etc..

Supervisory authorities

1530. There are no provisions authorising the supervisory authorities of the "the former Yugoslav Republic of Macedonia" to conduct inquiries on behalf of foreign counterparts. The supervisory authorities may do so on existing MoUs (e.g. bilateral MoU, IOSCO MMoU, etc.).

Law enforcement authorities

1531. As the evaluators were informed, the MoI upon the request of the foreign law enforcement institutions and under the obligations identified in the international or bilateral conventions or agreements are obliged to conduct inquiries, to search and provide requested data and information. At the request of foreign law enforcement institutions the authorities may create joint investigation teams.

1532. According to the Stabilization and Association Agreement between "the former Yugoslav Republic of Macedonia" and the European Communities (Art. 88) and the SELEC Convention (Art. 3), the liaison officer responsible for international cooperation within the Sector for Controls and Investigations of the Customs Administration, upon a request from foreign custom administrations may carry out following activities: supervision of persons, locations, transportation means and goods, requests for initiation of investigation, use of evidence, direct assistance, controlled shipment, use of evidence, etc. and the relevant body acts accordingly in the same way like it would act for own request and own needs.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

FIO

1533. According to Art. 44 (5) of the AML/CFT Law, the FIO may refuse the request for information exchange if: it is contrary to the AML/CFT Law; or if it impedes the conduct of the investigation of another competent state authority, or the criminal procedure against the person on which data is requested. The Office shall be bound to explain the reasons for refusing the request. Although there is no clear mention in the AML/CFT Law, the authorities stated that the explanation shall be delivered to the requesting FIU.

1534. During the on-site visit, the authorities advised the evaluation team that the reciprocity principle does not impose limitations in the international exchange of information and that no request was rejected so far by the FIO and no information request was left unanswered.

Supervisory authorities

1535. Regarding the supervisory authorities the limited legal provisions on international cooperation and information exchange (see above sub 40.1. – 40.3) do not contain unreasonable or unduly restrictive conditions on exchange of information.

Law enforcement authorities

1536. The law enforcement authorities act upon requests for international cooperation, joint investigation or verification of data in accordance with the laws and bylaws described under the essential criterions above. No unduly restrictive conditions were identified.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

FIO

1537. No fiscal related limitations in the international cooperation were identified in the AML/CFT Law.

Supervisory authorities

1538. No fiscal related limitations in the international cooperation were identified in the relevant supervisory laws.

Law enforcement authorities

1539. The MoI and Customs Administration carry out the international cooperation in the area of the prevention and investigation of the fiscal crimes as well.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

FIO

1540. The FIO may refuse a request for international information exchange only if it is contrary to the provisions of the AML/CFT Law, or if it impedes the conduct of the investigation of another competent state authority or the criminal procedure against the person on which data is requested. The Office shall be bound to elaborate the reasons for refusing the request.

1541. The detailed procedure to refuse a request of a foreign FIU or international organisation is identified in the PArt. 5.1.8. of the Quality Procedure *Acting upon data and information requests of FIUs of other countries and international organizations*, which stipulates that the decision regarding the refusal of an information request shall be adopted by commission for work on cases. The person responsible shall be obliged to prepare a notification for the requesting counterpart where the reasons for refusal must be explained. The secrecy and confidentiality laws are not amongst the reasons for refusal.

Supervisory authorities

1542. No secrecy and confidentiality related limitations in the international cooperation were identified in the relevant supervisory laws.

Law enforcement authorities

1543. The MoI acts upon all requests sent by other countries or institutions in accordance with the mandate vested by the domestic laws. The verifications in the financial institutions are done on the basis of initially obtained Order from the relevant investigative judge (for all criminal acts).

1544. The law enforcement authorities carry out the international cooperation in accordance with their legal mandate.

Safeguards in use of exchanged information (c.40.9)

FIO

1545. According to Art. 44 of the AML/CFT Law, the FIO shall use the data and information provided by the foreign counterparts for the purposes expressed in the law and under the conditions set out by the body that provided them. The FIO may exchange data and information

provided by the foreign counterparts to conduct investigations, after obtaining their prior consent. The data and information provided are confidential.

1546. Part 5.5 of the Quality Procedure Acting upon data and information requests of FIUs of other countries and international organisations stipulates that data included in the requests received shall be confidential.

1547. The employees of the Financial Intelligence Unit handling the confidential information have security certificates for access to classified information issued by the Directorate for Security of Classified Information.

Supervisory authorities

1548. Pursuant Art. 34 (3) of the Law on the NBRM, the National Bank may exchange confidential information with other domestic or foreign supervisory authorities, which will be used only for supervisory purposes and shall be treated as confidential by the receiving party.

1549. The SEC may share information under the concluded IOSCO MMoU. The exchange of confidential information shall be performed on the principle of reciprocity with the countries with which such memoranda have been concluded. Personal data may be used only according to the regulations for protection of personal data. The SEC collects personal and other required data directly from person to whom they relate, from other persons or from existing collected data which, according to the law, are disposed and manage by competent state authorities, public institutions and other legal entities.

1550. Regarding the other supervisory authorities the limited legal provisions on international cooperation and information exchange (see above sub 40.1. – 40.3) do not contain safeguards on the use of the information exchanged.

Law enforcement authorities

1551. The law enforcement authorities dealing with confidential data and information are obliged to have security certificates for access to classified information. The personal data in all the responsible bodies are saved according to the requirements of the Law on Personal Data Protection.

Additional elements – Exchange of information with non-counterparts (c.40.10 and c.40.40.1); Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

FIO

1552. According to Art. 44 of the AML/CFT Law, the FIO has the legal grounds to conduct information exchange of information with authorised bodies from third countries, as well as with international organisations (which include non-counterparts as no reference is made to foreign FIUs) on ML/TF related issues. No such cases were encountered so far.

1553. As described under criterion 40.4, the international information requests are treated as domestic cases therefore, exchange of information with other competent authorities pursuant to requests from foreign FIU is possible.

Law enforcement authorities

1554. The evaluators were informed during the on-site interviews that in the context of the international information exchange, the requesting body is obliged to include in the content of the request specific information that would facilitate the communication or would enable more complete and more comprehensive checks such as: who or in the name of who the request is sent, what is the purpose of the request and to which criminal act it refers to, as well as all other useful data or documents that would facilitate the verification of evidences.

1555. Police cooperation is centralised through the Sector for International Police Cooperation which shall redirect the request or answer to the request depending on the specific circumstances and data available.

1556. In the course of the international cooperation and exchange of information of the Customs Administration with the foreign partners the purpose of the obtaining of information is usually included in the requests.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5) (rated LC in the 3rd round report)

1557. The same provisions described above apply to TF information exchange.

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

1558. The same provisions described above apply to TF information exchange.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1559. According to the PArt. 5.3. of the Quality Procedure Acting upon data and information requests of FIU's of other countries and international organizations, comprehensive statistics related to the international information requests received/submitted by the FIO must be maintained.

Table 48: Information requests received/submitted by the FIO

	2008	2009	2010	2011	2012	2013*
Requests received (from foreign authorities)	34	40	33	52	27	3
Requests submitted (to foreign authorities)	96	128	79	51	45	5

*To 1 February 2013

1560. In addition, the FIO has a special registry for all spontaneous information on ML and FT which received/submitted from/to FIU's of other countries.

Table 49: Spontaneous reports received/submitted to other countries

	2008	2009	2010	2011	2012	2013
Spontaneous disseminations (reports)	/	/	14	5	15	1
Spontaneous reports received from other FIUs	/	/	1	6	/	/

1561. Each Annual Report on the work of the FIO includes statistics about the number of requests submitted and requests received from FIOs from other countries. International cooperation by the supervisory authorities is very limited. Only the SEC reports international cooperation. The NBRM reports one joint supervisory control. The other supervisors stated that they have no requests submitted or received in relation to international cooperation in the AML/CFT matter.

Table 50: Information exchange with other supervisors conducted by SEC

	2008	2009	2010	2011	2012	2013
SEC	1	0	2	0	1	0

1562. The MoI, Sector for the International Police Cooperation keeps statistics concerning the requests for information exchanged through Interpol, Europol and SELEC.

Table 51: Police cooperation on ML/TF cases

Year	2011	2012	2013
Requests received	16	17	12
Requests submitted	3	4	2

1563. The authorities informed that all these requests refer to money laundering related cases and that there was no request received which related to financing of terrorism.

1564. The MoI took action upon every received request and has provided an answer. The average timeframe for answering the requests is 15 days, but it was stressed that the timeframe depends on the type of checks that are being requested, and if the checks can be performed only within the ministry or data must be required from other bodies.

1565. Since the last evaluation, the Customs Administration received 1,229 requests from foreign Customs administrations for verification of invoices for imported goods especially on suspicions of under invoicing. In the same period, a total of 186 requests were received from foreign Customs authorities for verification of invoices issued by Macedonian companies for exported goods or for verification of invoices issued by foreign companies.

Table 52: International cooperation requests received/submitted by the Customs Administration

Year	Requests received	Requests submitted
2008	42	209
2009	36	434
2010	31	246
2011	29	207
2012	48	133

Effectiveness and efficiency

FIO

1566. The FIO adopted specific "Quality Procedures" to describe the process to be followed in case of the international cooperation requests as described under the analytical pArt. According to the procedure, an international information request is treated in the same manner as an internal case.

1567. The FIO has the necessary powers to collect information from a wide range of sources to support its foreign counterparts' inquiries. In addition, it may issue refusal or postponement of transactions orders at the request of a competent authorities for prevention of money laundering and financing terrorism from another countries.

1568. During the on-site interviews, no impediments for the provision of rapid constructive and effective assistance from the FIO to international requests were identified. The counterparts in information exchange described the international cooperation with Macedonian Financial Intelligence Unit as satisfactory. According to the authorities, no international cooperation request was ever rejected or not replied to by the FIO.

1569. The information exchange comprises both upon request and spontaneously. According to the information provided to the evaluators since 2010, 35 spontaneous reports were submitted by the FIO to foreign counterparts.

1570. However, the average one month timeframe for replying the international requests (confirmed by the feedback received from the third parties) seems to be too long especially in urgent cases.

1571. As a part of the regional initiative for improvement of the regional cooperation in the recent years the FIO participated on regional conferences that took place in Slovenia, Bosnia and Herzegovina, Croatia, Serbia and Montenegro. The FIO hosted the Sixth Regional Conference on 4-5 October 2012 for cooperation in the area of ML/FT prevention. The FIO hosted the highest representatives of the FIUs of Slovenia, Bosnia and Herzegovina, Croatia, Serbia, Montenegro and Albania. The participants on this Conference discussed the following topics: obligations of the financial intelligence units deriving from the FATF revised recommendations, the obligation of each country to carry out National ML/FT Risk Assessment, ML/FT typologies, cooperation between the FIUs and other bodies, supervisory entities as well as other topics important for efficient ML/FT prevention.

1572. Gateways for international cooperation and information exchange in customs matters are the WCO, RILO-ECE, SELEC, Balkan-Info, ZKA. The cooperation between the Customs

Administration and with the EU and their member-states is conducted in accordance with the Stabilization and Association Agreement between the "the former Yugoslav Republic of Macedonia" and the European Communities. The general information exchange was demonstrated by the statistics provided by the authorities. However there is no evidence of international information exchange carried out by the Customs on AML/CFT matters.

Supervisory authorities

1573. The legal provisions on international cooperation and exchange of information by the supervisory authority are limited and do not provide for details as laid out in R.40. Despite this shortcoming, the supervisory authorities seem to participate internationally to a certain degree, which is based on MoUs with relevant foreign counterparts.

Law enforcement authorities

1574. On the law enforcement side different gateways, mechanisms and channels are used in international cooperation and information exchanges which include bilateral or multilateral agreements or arrangements and the use of international or regional organisations or bodies such as Interpol and Europol.

1575. The Financial Police cooperates with several law enforcement agencies from Europe, such as SOCA (UK), Guardia di Finanza (Italy), OLAF (EU) and has signed agreement for cooperation with EUROPOL. However, the Financial Police Office is not directly involved in all the international cooperation and information exchange with foreign counterparts (communication is done through the MoI structures), which could impede the effectiveness of the investigations in the area of ML related to organised crime groups acting in VAT fraud or other serious fiscal crimes.

6.4.2 Recommendation and comments

FIO

1576. According to the statistics and information acquired during the on-site interviews it seems that the FIO has the necessary legal powers and the internal regulation to ensure satisfactory international cooperation and information exchange. However, the average timeframe for replying to the international requests (one month) seems too long and might impede effective investigation/analysis for the foreign counterparts.

1577. Although the authorities stated that this is not an impediment in practice, Art. 44 (3) of the AML/CFT Law provides for the requirement that an "*indication of money laundering and terrorism financing*" is provided by the foreign counterpart in the process of information exchange. From the legal text it appears that the possibility of the information exchange in relation to the predicate offence is not possible. The authorities are recommended to address this deficiency.

Supervisory authorities

1578. It is recommended to legally introduce a full-fledged system of international cooperation and information exchange along the elements of R.40. Among others it is recommended to provide for the following elements:

1579. The NBRM's legal basis for cooperation and information exchange should clearly state that international cooperation should be provided in a rapid, constructive and effective manner and that information exchange should be possible along the lines of c.40.3.

1580. The Securities Law should clearly provide for a legal basis to cooperate internationally and exchange information. Currently, this may be effected only via MoUs.

1581. The ISA should be in a position to provide the widest range of international cooperation to foreign counterparts and there should be clear and complete provisions for the exchange of information. The legal authority to conclude international MoUs should be stated in the law.

1582. The Postal Agency should be in a position to provide the widest range of international

cooperation to foreign counterparts and there should be clear and complete provisions for the exchange of information.

1583. All supervisory authorities should be empowered to conduct inquiries on behalf of foreign counterparts.

1584. The applicable laws for the exchange of information by the supervisory authorities (with the exception of the NBRM Law) should contain safeguards on the use of the information exchanged.

Law enforcement authorities

1585. The Financial Police Office should have international information exchange powers. The officers appointed to exchange the information and to cooperate with the foreign law enforcement institutions must be adequately equipped and trained.

6.4.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.5.4 underlying overall rating
R.40	**LC**	• No legal provision for the FIO to exchange information on underlying predicate offence; • Financial supervisory authorities: Unclear and incomplete legal situation regarding certain aspects of international cooperation: o NBRM and MAPAS: Lack of clarity on the manner of cooperation and information exchange in the Law; o ISA: No legal basis for the provision of the widest range of international cooperation and for the prompt and constructive exchange of information; o The Postal Agency may not cooperate and exchange information with foreign counterparts; o No authorisation for supervisory authorities to make inquiries on behalf of foreign counterparts; • No safeguards on the use of information exchanged in all supervisory laws, but only in the NBRM Law.
SR.V	**PC**	• Shortcomings in the terrorist financing offense described in SR.II may affect the implementation in terrorist financing cases; • Technical shortcomings under R40 apply.

7. OTHER ISSUES

7.1 Resources and Statistics

7.1.1 Description and analysis

Recommendation 30 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1586. Recommendation 30 was rated 'PC' in the 3rd Mutual Evaluation Report based on the following deficiencies:

- The MLPD does not have a sufficient number of staff to cover all its tasks satisfactorily;
- Insufficient staffing of investigative bodies and agencies, and consequently money laundering cases are only investigated in relation to tax matters;
- Officers of the relevant departments within the Ministry of Interior and Customs have not been provided with adequate training for combating money laundering and terrorist financing;
- There is insufficient operational independence and autonomy of the supervisory authorities (except the NBM);
- Apart from employees of the NBM, there are no specific rules requiring the staff of the supervisory authorities to maintain high professional standards;
- Apart from employees of the NBM and the SEC, there are no specific rules requiring staff to keep professional secrets confidential;
- The staff, and also training for the staff of the Insurance Supervision Division seem to be insufficient;
- The staff of the FEI seems insufficient and has not been trained on AML/CFT issues.

1587. Overall, other governmental entities involved in the AML/CFT issues are well structured and have enough human resources to perform their functions properly.

FIU

1588. The FIO is well structured and professional. The material resources provided to the FIO seem to be adequate as all working places are appropriately equipped with hardware devices in order for the users to fulfil their functions according the requirements of the AML/CFT Law. The necessary trainings are also provided to the FIO staff. Nonetheless there are several shortcomings that the evaluation team has identified. For further information please refer to Section 2.5 of this report.

Supervisory authorities

1589. With respect to the supervisors over the financial sector, it appears that the supervisory authorities are well structured and have professional employees, who regularly trained domestically and internationally. For further information please refer to Section 3.10 of this report.

Policy makers

1590. The main policy maker in the area is the AML/CFT Council. The members of the Council are representatives of MoI, MoF, Ministry of Justice, Basic Public Prosecution Office for prosecution of organised crime and corruption, Financial Police Administration, Customs Administration, National Bank of the Republic of Macedonia, Public Revenue Office, Securities Commission, Agency for Insurance Supervision, Agency for Supervision of capital financed pension insurance, Postal Agency, Bar Association and Public Notary Association. The Council appears to have adequate human and technical resources.

Recommendation 32 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1591. In the 3rd MER of "the former Yugoslav Republic of Macedonian" Recommendation 32 was rated 'PC'. The rating was based on the following deficiencies:

- Apart from some basic data kept by the Customs and the Financial Police Office which can serve as a basis to produce statistics and the limited statistics from the Ministry of Interior, no authority keeps comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts indicating not only the number of persons involved but also the number of cases/offences and, in addition, providing information on the underlying predicate crimes and further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.);
- The MLPD keeps the basic data which would allow to produce statistics concerning the number and results of the reports disseminated from the FIU to other institutions (investigations, indictments, convictions, persons involved, cases), but with regard to the low number of these reports it does not maintain such kind of statistics;
- Apart from the statistics kept by the NBM and the SEC, no other supervisory body keeps statistics on supervision;
- No authority keeps comprehensive statistics that would allow to evaluate the effectiveness of the mutual legal assistance system.
- No comprehensive statistics on information exchange by supervisory bodies.

1592. As was noted in this report by the evaluation team the authorities partially maintain the necessary statistics, however these statistics could not always be considered comprehensive. With respect to R.1 no statistics were available on the predicate offences, nor on the autonomous/third party laundering cases. For more information see Section 2.1 of this report.

1593. With respect to confiscation, figures provided by the authorities convincingly prove that the provisional measures and confiscation regime of "the former Yugoslav Republic of Macedonia" is successfully applicable in practice. For more information see Section 2.3.

1594. Additionally it should be noted that there is a lack of complete and integrated AML/CFT supervision statistics and statistics on MLA are not comprehensively maintained.

1595. In general, it can be concluded that the authorities maintain statistics, however these statistics are not used to review the effectiveness of their systems for combating money laundering and terrorist financing on a regular basis.

7.1.2 Recommendations and comments

Recommendation 30

1596. The FIO is well structured and professional. The material resources provided to the FIO seem to be adequate as all working places are appropriately equipped with hardware devices in order for the users to fulfil their functions according the requirements of the AML/CFT Law. However, the number of i2 licences is insufficient for all financial analysts within the FIO.

1597. All the positions available in the FIO structure should be occupied by employees.

1598. The authorities should consider revising the human resources allocation between DPML and DPTF to match the actual number of specific reports.

1599. From the perspective of supervisory and oversight of the financial sector, the FIO's human resources are considered insufficient as together with the other supervisory authorities the FIO is in charge of supervision of more than 16,000 obliged entities spread out all over the country. While acknowledging that the limited resources is a challenge for any country and any authority, the pro-active involvement of the general supervisors and the full implementation of the risk based approach might be a solution to the lack of resources.

1600. The Department for Acting upon Letter Rogatory in Criminal and Civil Matters should have all job positions occupied.

Recommendation 32

1601. The authorities are recommended to maintain adequate statistics to allow them to review the effectiveness of their system for combating ML and TF on a regular basis.

1602. The authorities should keep statistics generally on the predicate offences (not only for the final convictions) and on the autonomous/third party laundering cases.

1603. In the course of this assessment the authorities of "the former Yugoslav Republic of Macedonia" provided statistics which each contained valuable information. It proved, however, difficult to bring together these multiple statistics in order to get a complete picture of the situation. While the FIO certainly would be the appropriate institution to collect all information and feed it into a comprehensive statistical system, there is hesitation to suggest additional organisational work for the FIO, which is already overloaded with work of the organisational type.

1604. The authorities of "the former Yugoslav Republic of Macedonia" should maintain comprehensive statistics on MLA issues and not only total figures on civil and criminal letters rogatory. As for the letters rogatory in criminal matters, these statistics should contain reliable information on the respective criminal offences involved (at least the most important ones and also the occurrence and number of ML and TF cases) the typical investigative measures requested, the foreign states (either requesting or executing) and particularly the overall number of refused foreign requests (and reasons for refusal).

7.1.3 Compliance with Recommendations 30 and 32

	Rating	Summary of factors underlying rating
R.30	**LC**	*FIO* • The human resources allocation between DPML and DPTF do not match the actual number of specific reports; • Not all positions available in the FIO structure are occupied by employees; • FIO's human resources (in its capacity of supervisor) are considered insufficient considering the scope of its supervisory responsibilities.
R.32	**PC**	• The authorities do not maintain adequate statistics to allow them to review the effectiveness of their system for combating ML and TF on a regular basis; • No statistics on provisional measures; • Statistics on the predicate offences were only available for final convictions; • No statistics indicating the autonomous/third party laundering cases; • Lack of complete and integrated AML/CFT supervision statistics; • Statistics on MLA are not comprehensively maintained; • The statistics on rogatory letters do not contain reliable information on the respective criminal offences involved, the typical investigative measures requested, the foreign states, and the overall number of refused foreign requests.

7.2 Other Relevant AML/CFT Measures or Issues

1605. N/A

7.3 General Framework for AML/CFT System (see also section 1.1)

1606. N/A

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

8. TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to "the former Yugoslav Republic of Macedonia". *It includes ratings for FATF Recommendations from the 3rd round evaluation report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating[119]
Legal systems		
1. Money laundering offence	**LC**	• The acquirement of proceeds is not criminalised; **Effectiveness** • Significant backlogs in the trial stage of ML cases are threatening *the effectiveness* of the AML system.
2. Money laundering offence Mental element and corporate liability	*Largely Compliant*	• *Potential backlogs both in general terms and especially in money laundering cases, apparently due to the lack of expertise, threaten the effectiveness of the AML system;* • *Low number of convictions and relatively low number of indictments compared to the number of open investigations;* • *No prosecutions or convictions of legal entities for money laundering, raising concerns as to effective implementation of corporate criminal liability; Restrictiveness of the specific provision in Art. 273(7) as regards criminal liability of legal persons in money laundering cases.*
3. Confiscation and provisional measures	**LC**	• The confiscation regime is still too complicated which may hamper its effective application; this refers particularly to the provisional measures (Art. 203 and 203-a CPC) the respective coverage of which is inaccurately defined; • Confiscation of instrumentalities is in most of the cases only discretionary and the same goes for instrumentalities of money laundering offences; • No value confiscation for instrumentalities and intended instrumentalities; • In lack of statistics or any other data related to the application of seizing and freezing/securing orders in general, the effectiveness of the provisional measures regime in case of proceeds-generating criminal offences (i.e. beyond ML related criminal cases) could not be assessed.

[119] These factors are only required to be set out when the rating is less than Compliant.

Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• Financial institutions are not specifically authorised to share information for the implementation of Recommendation 7.
5. Customer due diligence	**PC**	• No explicit prohibition to open and maintain accounts in fictitious names; • Financial institutions are not required to verify customer's identity from *"reliable, independent source documents, data and information"*; • Definition of beneficial owner does not cover a person who *ultimately* owns or control a client or/and the person on whose behalf a transaction is being conducted; • The requirement to verify the identity of the beneficial owner does not mention *"relevant information or data obtained from a reliable source"*; • Financial institutions are not required to determine whether the customer is acting on behalf of another person in all cases, but only in case of suspicion; • Financial institutions are not bound to meet the CDD requirements when the client is a bank from "the former Yugoslav Republic of Macedonia", EU or equivalent countries; • Apart from the specific situations indicated in the AML/CFT Law, where enhanced CDD measures should be applied compulsorily, regardless of the banks' risk assessment, there are no provisions describing what enhanced CDD measures should mean; • No requirement to prohibit the application of simplified CDD when there are specific higher risk scenarios in case of life insurance policies and insurance policies for pension schemes; • No requirement to terminate the business relationship and to consider making a STR, when the business relationship with the customers has been established, but there are doubts about the veracity or adequacy of the data, or the identity of the existing customers has to be confirmed (under the criteria 5.17), but the financial institutions is unable to comply with criteria 5.3 to 5.5; **<u>Effectiveness</u>** • Financial institutions use documents in foreign languages to carry out CDD measures; • Apart from the banking sector, there is low awareness of the concept of the beneficial owner. No clear understanding among some of the non-banking financial institutions on the distinction between the beneficial owner with the customer or proxy; • Some of financial institutions met on-site maintain a business relationship despite the fact that the ultimate beneficial owner is unknown.

6. Politically exposed persons	**PC**	• Definition of *"holder of public function"* refers only to close members of the family with whom holder of the public function lives in communion at the same address; • There is no obligation to apply enhanced CDD measures and to conduct enhanced ongoing monitoring when the beneficial owner is a PEP; • No requirement for the non-banking financial institutions to obtain senior management approval to continue business relationship when the beneficial owner is subsequently found to be, or subsequently becomes a PEP; • No requirement to establish the *source of wealth* of customers or beneficial owners who are PEPs; **Effectiveness** • Some non-banking financial institutions demonstrated a low level of awareness of the concept of PEP and experience difficulties in identifying them.
7. Correspondent banking	**LC**	• Undue exemption from additional measures for correspondent relationships with credit institutions established in EU countries or other equivalent countries.
8. New technologies and non face-to-face business	**LC**	• There is no obligation for the financial institutions to have policies and procedures to address the specific risks associated with non-face-to-face business relationships when conducting on-going due diligence; **Effectiveness** • Financial institutions (apart from banks) demonstrated low awareness of threats arising from misuse of new or developing technologies.
9. Third parties and introducers	**N/A**	
10. Record keeping	**LC**	• No requirement to maintain records on transactions, identification data, account files and business correspondence longer if requested by a competent authority in specific cases; • No requirement to provide the information on a timely basis to supervisory authorities; • Financial institutions are not required to ensure that all customer and transaction records and information are available upon law enforcement authorities' request.
11. Unusual transactions	**LC**	**Effectiveness** • Insufficient instruction provided in respect of the *analysis* required to be carried out negatively impact effective application of the requirements of the Recommendation.
12. DNFBPS – R.5, 6, 8-11	**PC**	• Internet casinos are not subject to the AML/CFT Law; ***Applying Recommendation 5*** • Deficiencies related to financial institutions also apply to DNFBPs; **Effectiveness** • The understanding and awareness of the obligations

		dealing with identification of the beneficial owners is insufficient; ***Applying Recommendation 6*** • Deficiencies related to financial institutions also apply to DNFBPs; **Effectiveness** • DNFBP demonstrated very low awareness of the concept of PEP and related CDD measures; ***Applying Recommendation 8*** • Deficiencies related to financial institutions also apply to DNFBPs; **Effectiveness** • There is very low awareness of risks arising from new and developing technologies across all DNFBPs; ***Applying Recommendation 9*** • N/A; ***Applying Recommendation 10*** • Deficiencies related to financial institutions also apply to DNFBPs; ***Applying Recommendation 11*** • Deficiencies related to financial institutions also apply to DNFBPs.
13. Suspicious transaction reporting	**PC**	• The reporting obligation does not refer to funds that are *proceeds of criminal offences* but is limited to suspicion of *laundering of proceeds;* • TF reporting obligation does not extend to: funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism* as required by 13.2 and IV.1; **Effectiveness** • Contradicting provisions of NBRM Decision 103 which defines STRs as a form of UTRs might impact effectiveness.
14. Protection and no tipping-off	*Largely Compliant*	• *Apart from the special situation concerning banks, there are no tipping-off provisions in relation to directors of financial institutions;* • *The existing tipping-off provisions are not sanctionable.*
15. Internal controls, compliance and audit	**PC**	• No requirement, for the securities companies foreign exchange offices and providers of fast money transfers to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls; • Inadequate staff screening requirements; **Effectiveness** • Ineffective procedures regarding the internal programs; • AML/CFT not effectively integrated in the internal audit programs (except for banks & savings houses); • Effectiveness of employee training of institutions under the supervision of ISA and the Postal Agency not demonstrated; • Insufficient staff screening practices.

16. DNFBPS – R.13-15 & 21[120]	**PC**	***Applying Recommendation 13*** • The reporting obligation does not refer to *funds* that are proceeds of criminal offences but to suspicion of laundering of proceeds; • TF suspicions are limited to transactions and clients and do not extend to *"funds"* related to terrorist activities, terrorist organisations or those who finance terrorism; • The internet casinos are outside of the scope of the reporting obligations; **Effectiveness** • The Rulebook 38 does not provide a field for the reporting entities to describe the transaction considered as suspicious; • No instruction on on-line STR reporting; • The lists on suspicion indicators do not include TF indicators; • Limited awareness of most of the DNFBP sector on risk situations and on suspicion indicators; • Low level of reporting for all DNFBPs except the notaries; ***Applying Recommendation 15*** • No guidance applicable for the DNFBP sectors to further explain the content of the AML/CFT internal programs requirements; ***Applying Recommendation 21*** • No possibility for the "former Yugoslav Republic of Macedonia" to introduce counter-measures.
17. Sanctions	**PC**	• No possibility to revoke the licence of foreign exchange operations in case of violation of AML/CFT provision; • No designation of authorities to impose sanctions in relation to several violations; • Undue procedural hurdles for the FIO to initiate procedures for violation of AML Law provisions; **Effectiveness** • Procedural hurdles of the sanctioning system and low numbers of sanctions do not allow demonstrating a satisfactory level of effectiveness.
18. Shell banks	**C**	
19. Other forms of reporting	C	
20. Other DNFBPS and secure transaction techniques	*Largely Compliant*	• *The application of the AML Law is extended to an overly wide range of non-financial businesses and professions (other than DNFBP) without undertaking a risk assessment which seems to be counterproductive with regard to effective implementation. Moreover, for these entities no supervisory regime is in place and no other legislative acts apart from the AML Law have been issued for AML/CFT purposes.*
21. Special attention for	**PC**	• There is no legal basis for "the former Yugoslav

[120] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 14.

higher risk countries		Republic of Macedonia" to apply countermeasures; **Effectiveness** • No appropriate updates by the MoF to the list of countries with weaknesses in the AML/CFT system.
22. Foreign branches and subsidiaries	**LC**	• No explicit reference to: home country standards, except for banks; respectively the higher standards.
23. Regulation, supervision and monitoring	**PC**	• No clear legal prohibition which would prevent criminals and their associates from holding qualifying participations in insurance companies and insurance agencies; • Fit & proper criteria for FI do not cover all the aspects required by EC 23.3.1, that is in terms of all criminal records and in relation to persons that are "associates" to criminals; • Only limited measures regarding leasing companies; **Effectiveness** • Effectiveness of the FIO's supervision not sufficiently demonstrated; • Very limited cooperation in supervisory measures between the FIO and the relevant sector supervisor; • Several sectors were not subject to supervision by the FIO in recent years (insurance companies/brokers, pension funds, postal offices, leasing companies).
24. DNFBPS - Regulation, supervision and monitoring	**PC**	• No measures to prevent criminals or their associates from holding or being the beneficial owner of a casino; **Effectiveness** • The effective performance of AML/CFT supervision by the PRO was not demonstrated; • The Attorney Committee is not actively pursuing its supervisory function.
25. Guidelines and Feedback	PC	• Guidance on TF suspicions is week; • No guidance on the application of the Recommendation 11 requirements; • Insufficient feed-back to the private sector; • No sector specific guidelines for the application of the AML/CFT requirements other than STR reporting; • The feedback from the supervisors and the FIO to the DNFBP sector is made on ad-hoc basis; **Effectiveness** • General feedback provided on an ad-hoc basis does not reach all the reporting entities; • No awareness on the sector specific guidance in the application of all AML/CFT requirements.
Institutional and other measures		
26. The FIU	**LC**	• No guidance on the documentation required to be attached to the STR form; • Unclear and incomplete criteria for allocation of disseminated cases (both for ***Reports*** and ***Notifications***): conflicting provisions in case of money laundering suspicions derived from OC; conflicting provisions in case of the ML generating from *"financial crimes"*

		predicates; • Unclear criteria for the authority competent to receive the disseminations in case of financing terrorism; • Risks to the FIOs independence reside the fact that the mandate of a FIO Director, though in theory, of a duration of four years, may be revoked by the appointing authority at any time invoking the *"lack of positive results";* **Effectiveness** • Failure to reply to the FIO request for additional information according to Art. 34 (3) it is not mentioned in Art. 49 in relation to sanctions; • Low number of databases the FIO has on-line access to impede effectiveness; • Inconsistent dissemination system in case of TF suspicions.
27. Law enforcement authorities	*Largely Compliant*	• *The MLPD is disseminating its reports for further investigation either to the Financial Police or to the MoI, but there are no clear legal criteria determining which body is competent in which cases;* • *Money laundering investigations are almost exclusively focused on money laundering in relation to tax evasion.*
28. Powers of competent authorities	*Compliant*	
29. Supervisors	**PC**	• No explicit powers for the NBRM to compel the production of records from FX operators; • No explicit powers for the Postal Agency to compel production of records outside the on-site visits; • No possibility to sanction ***senior*** management for all supervisors. ISA neither empowered to sanction directors nor senior management; • The FIO can initiate enforcement procedures and sanctions only upon the findings of on-site inspections; **Effectiveness** Effectiveness of the powers of enforcement and sanction was not established.
30. Resources, integrity and training	**LC**[121] *(composite rating)*	*FIO* • The human resources allocation between DPML and DPTF do not match the actual number of specific reports; • Not all positions available in the FIO structure are occupied by employees; • FIO's human resources (in its capacity of supervisor) are considered insufficient considering the scope of its supervisory responsibilities.
31. National co-operation	**LC**	**Effectiveness** • No clear rules or consultation mechanisms between competent authorities on supervision; • The information flow between the FIO and the general supervisors incomplete.

[121] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on resources integrity and training of law enforcement authorities and prosecution agencies.

32. Statistics	**PC**[122] *composite rating*	• The authorities do not maintain adequate statistics to allow them to review the effectiveness of their system for combating ML and TF on a regular basis; • No statistics on provisional measures; • Statistics on the predicate offences were only available for final convictions; • No statistics indicating the autonomous/third party laundering cases; • Lack of complete and integrated AML/CFT supervision statistics; • Statistics on MLA are not comprehensively maintained; • The statistics on rogatory letters do not contain reliable information on the respective criminal offences involved, the typical investigative measures requested, the foreign states, and the overall number of refused foreign requests.
33. Legal persons – beneficial owners	**PC**	• The registration of corporate entities still does not ensure an adequate level of reliability of information registered; • The transparency of ownership structure does not provide information on beneficial ownership.
34. Legal arrangements – beneficial owners	**N/A**	
International Co-operation		
35. Conventions	**LC**	• Reservations about certain aspects of the implementation of the ML and FT Conventions: o ML and TF offences do not meet the standards set forth by these conventions; o unclear whether the TF offence can be considered a political crime.
36. Mutual legal assistance (MLA)	**LC**[123]	• The application of dual criminality in the CPC may negatively impact the ability of "the former Yugoslav Republic of Macedonia" to provide MLA due to shortcomings in FT criminalisation; **Effectiveness** • Effectiveness cannot be demonstrated.
37. Dual criminality	*Largely Compliant*	• *The shortcomings of the domestic legislation intended to cover the financing of terrorism as well as the value threshold applied in the money laundering offence may limit mutual legal assistance based on dual criminality;* • *Because financing of terrorism is insufficiently criminalised in the current domestic legislation, the requirement of dual criminality for extradition would mean that not all kinds of terrorist financing offences would be extraditable and the same refers to money laundering cases below the threshold of five officially declared monthly salaries.*

[122] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 38 and 39.

[123] The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 28.

38. MLA on confiscation and freezing	*Largely Compliant*	• *In the complete absence of statistics it is not possible to determine whether and to what extent "the former Yugoslav Republic of Macedonia" provides effective and timely response to foreign requests concerning freezing, seizure or confiscation;* • *No consideration has been given to establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes;* • *There are no arrangements for coordinating seizure or confiscating actions with other countries.*
39. Extradition	*Largely Compliant*	• *In the absence of proper statistics it is not possible to determine whether extradition requests are handled without undue delay.*
40. Other forms of co-operation	**LC** *(composite rating)*	• No legal provision for the FIO to exchange information on underlying predicate offence; • Financial supervisory authorities: Unclear and incomplete legal situation regarding certain aspects of international cooperation: o NBRM and MAPAS: Lack of clarity on the manner of cooperation and information exchange in the Law; o ISA: No legal basis for the provision of the widest range of international cooperation and for the prompt and constructive exchange of information; o The Postal Agency may not cooperate and exchange information with foreign counterparts; o No authorisation for supervisory authorities to make inquiries on behalf of foreign counterparts; • No safeguards on the use of information exchanged in all supervisory laws, but only in the NBRM Law.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Reservations about certain aspects of the implementation of the FT Convention; • Deficient and incomplete implementation of UNSCRs 1267 and 1373.
SR.II Criminalise terrorist financing	**PC**	• The TF offence only covers 2 of the 9 *"treaty offences"* adequately, while 3 offences are covered partially (with various deficiencies) and a 6th one covered only implicitly; the remaining offences are not covered by the TF offence which limits its applicability; • The generic offence of terrorist act in Art. 394-c (1) CC appears to be territorially limited and thus cannot formally be applied to acts committed in order to compel (the government of) "any country"; • There is no statutory definition for the term "terrorist" as used in Art. 394-c (2) CC while the generally understood scope of this term, as derived from logical and systemic interpretation of different articles of the Criminal Code, appears narrower than envisaged by the FATF standards;

		• The definition of "funds" (property) contains no indication whether it refers to all assets "however acquired" including funds whether from a legitimate or illegitimate source.
SR.III Freeze and confiscate terrorist assets	**PC**	• Lack of clear, comprehensive and reliable procedural rules for freezing of terrorist funds or other assets of designated persons and entities in accordance with UNSCRs 1267/1988 and 1373; • No legislation available for freezing under procedures initiated by third countries and funds or assets controlled by designated persons; • No designation authority in place for UNSCR 1373; • No protection is provided to the interests of bona fide third parties; • No procedures for considering de-listing requests and for unfreezing funds or other assets of delisted persons or entities and persons or entities inadvertently affected by a freezing mechanism; • No procedure available for court review of freezing actions.
SR.IV Suspicious transaction reporting	**PC**	• TF reporting obligation does not extend to: funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism* as required by 13.2 and IV.1; • Shortcomings under SRII impact the reporting requirements; **Effectiveness** • The failure to produce an adequate list of TF indicators undermines the effectiveness of reporting.
SR.V International co-operation	**PC** *(composite rating)*	• Application of dual criminality in the CPC may negatively impact the ability of "the former Yugoslav Republic of Macedonia" to provide MLA due to shortcomings in FT criminalisation; • Shortcomings in the terrorist financing offense described in SR.II may affect the implementation in terrorist financing cases; • Technical shortcomings under R40 apply; **Effectiveness** • Effectiveness cannot be demonstrated.
SR.VI AML requirements for money/value transfer services	**PC**	• Deficiencies in the AML/CFT Law relating to the preventive measures, particularly on CDD, apply to MVT operators; **Effectiveness** • There is an insufficient number of inspections and unsatisfactory level of monitoring over MVT operators; • Low awareness of preventive measures among MVT operators and sub-agents.
SR.VII Wire transfer rules	**LC**	**Effectiveness** • The Postal Office did not display sufficient awareness of their obligations; • The effectiveness of the risk-based procedures for identifying and handling wire transfers not demonstrated.

SR.VIII Non-profit organisations	**PC**	• No review of the adequacy of domestic laws and regulations that govern the NPO sector; • No mechanism introduced for the periodic/systemic reassessment of the FT vulnerabilities of the NPO sector; • Lack of an adequate control mechanism to ensure the veracity and validity of data and documents registered; • No systemic/programmatic monitoring of the sector with a view to detecting potentially FT-related illicit activities.
SR.IX Cross Border declaration and disclosure	**PC**	• Bearer negotiable instruments are not covered by the declaration system; • No clear procedures for the Customs Administration regarding cases of non-disclosure or false declaration of currency over the threshold; • The designation of the Customs Administration in SRIII related matters is highly questionable; • No specific legal provision dealing with the unusual movement of gold, precious metals and stones nor a methodology describing how to proceed in cases such assets are identified at the border; • No information concerning any training program deployed by the authorities concerning ML/TF risk identification with a view of STRs submission to the FIO; **Effectiveness** • No sign or billboard requiring the declaration of cash or other bearer instruments at the frontier.

9. 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 authorities of "the former Yugoslav Republic of Macedonia" should urgently revisit the formulation of the core ML offence and provide for the reintroduction of the acquirement of proceeds of crime, which had previously been part of the offence. The criminal offence of self-laundering should be expressly provided as prosecutable for the ML offences in paragraph (2) of Art. 273 of the Criminal Code. The competent authorities of "the former Yugoslav Republic of Macedonia" should analyse why the number of ML cases, including convictions, indictments and even investigations, continues to be relatively low as compared to the predominantly higher number of incriminations for proceeds-generating criminal offences and why classic forms of organised criminality are only seldom represented among the predicates in ML cases. Attention should be paid, among others, to the existence of evidentiary difficulties, staffing and educational issues as well as to the potential backlog occurring at certain authorities. The enormous backlog in the trial stage of ML cases impact on the effectiveness of ML criminalisation, particularly as such delays in achieving final results in cases may also reduce the potential for making successful confiscation orders. This phenomenon should be urgently addressed, for which reason the responsible authorities are recommended to determine what obstacles in court proceedings may have led to this situation and take the necessary measures to overcome that. Rules that allow for the criminal accountability of legal entities should effectively be implemented also in ML cases, with a particular attention to the frequency by which legal persons are involved in laundering activities. Domestic authorities should explore the reasons for the apparent lack of ML prosecutions against legal persons and urge the application of the existing legal framework once it is applicable in concrete cases.
2.2 Criminalisation of Terrorist Financing (SR.II)	The authorities are invited to take legislative measure to bring the list of *"treaty offences"* in line with the SRII requirements. The generic offence of terrorist act should be explicitly applicable to the compelling of (the government of) *"any country"* instead of the present provisions which appears to be territorially limited to "the former Yugoslav Republic of Macedonia". Such unnecessary shortcomings need to be corrected so as to achieve full compliance with SR.II. A clear definition of "terrorist", in line with the FATF definition, should be introduced in the Criminal Code. The definition of *"funds"* (property) needs some clarification or

	completion so as to clearly provide that the notion of *"funds"* equally refers to assets "however acquired" thus covering funds of both legitimate and illegitimate source.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	The overall mandatory and unconditional confiscation of objects used for or intended for use in criminal offences should be reviewed. In particular it is necessary to clarify that the specific, mandatory confiscation rules in Art. 273(13) CC does not refer to the instrumentalities of the ML offence (as it covers the *"corpus"* of the offence *i.e.* the property that has been laundered) which should expressly be provided for, or else its confiscation remains conditional and discretionary. The same goes for Art. 394-c (12) CC which only covers instrumentalities intended for use in a TF offence but not those that have actually been used for this purpose. There is a misleading cross-reference in the text of Art.96-m (3) CC with the (to the non-existent Art. 101-a CC) that should urgently be corrected. Value confiscation for instrumentalities or intended instrumentalities in general should be introduced. A clear relationship should be established between the respective provisions and particularly between Articles 203 and 203-a CPC along with the elimination of overlaps or apparent duplications in the regulation. In addition, it should be prescribed it by law that measures under Art. 203-a should also be applied by courts in procedures under Art. 489 CPC. It remains a deficiency of the provisional measures regime, and should therefore be remedied, that only *"temporary confiscation"* under Art. 219 is mandatory while the measures with a considerably larger scope in Art. 220 are only applicable upon the discretion of the court.
2.4 Freezing of funds used for terrorist financing (SR.III)	A specific, complex and target-oriented legislation should be drafted and adopted (preferably by amending the current IRM Law) so as to address all aspects of SR.III that are currently not, or not adequately covered, particularly in terms of detailed, comprehensive and calculable procedural rules with roles, responsibilities and deadlines throughout the process. The authorities should take measures to extend this legislation to freezing under procedures initiated by third countries and funds or assets controlled by designated persons. A national designating authority for the purposes of UNSCR 1373 should be appointed. The authorities should adopt provisions protecting the interests of bona fide third parties affected by the freezing mechanism. Publicly known procedures for considering de-listing requests and unfreezing assets of de-listed persons should be implemented. Procedures for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the person is not a designated person should be equally adopted. The authorities should create and publicise the procedure for court review of freezing actions.

2.5 The Financial Intelligence Unit and its functions (R.26)	The authorities are recommended to further detail the procedures to be followed when reporting, by clearly indicating to which address (if electronically to which electronic address), if by regular post or by secure post (in case of written forms), the STRs should be sent to the FIO, and on what *"other written forms"* should mean. Specifications regarding the documentation required to be attached to the STRs should be included in the guidance. Security protocols to encrypt the STR should be put in place and made available for the non-banking sector and for the DNFBPs, allowing them to submit reports electronically. A publicly known document should be available for all parties concerned by Rulebook 140 which will contain indication on the URL of the webpage of the FIO, on the procedure of filling in the reports and on the manner of obtaining the username and password. The authorities should consider extending the number of databases the analysts have on-line access to, in order to improve effectiveness. Sanctions should be available in the AML/CFT Law for failure to reply to the FIO request for additional information. The authorities should address the shortcomings identified by the evaluation team (and described in detail under the analytical part) related to the criteria of dissemination of the cases (Reports and Notifications) to a specific LEA, both for ML and TF suspicions. Risks to the FIO's independence may reside in the fact that the mandate of a FIO Director, though in theory of duration of four years, may be revoked by the appointing authority at any time invoking the *"lack of positive results"*. The authorities should take appropriate measures to clarify the matter. The authorities are encouraged to amend the Internal Rulebook of the FIO to simplify the cooperation and information exchange. The authorities are recommended to eliminate the provision requiring the indication of the predicate offence from the QP for work on case DPML. The authorities are recommended to revisit the prioritisation system since some of the criteria are not clearly differentiated and some leave risky areas (PEPs) in a lower range of prioritisation.
2.6 Cross Border Declaration or Disclosure (SR.IX)	The authorities are strongly recommended to take legislative measures in order to provide the disclosure/declaration obligations for all bearer negotiable instruments above the threshold, regardless of the currency they are expressed in. The authorities are encouraged to clarify in the Government Decision 77 that the sums above the threshold expressed in other currencies are subject to declaration obligations. Procedures for the Customs Administration regarding the cases of non-disclosure or false declaration of currency and bearer negotiable instruments over the threshold should be adopted. Specific provisions giving the Customs Administration the competence to stop or restrain the currency or bearer negotiable

	instruments for a reasonable period of time in order to ascertain whether evidence of ML or TF may be found in case of false declaration should be adopted by the "the former Yugoslav Republic of Macedonia" authorities. Guidelines on the procedure or the manner of detecting ML/TF suspicions at the border should be provided to the customs officers to assist them in detecting and reporting STRs to the FIO. The designation of the authority in charge with the application of SRIII requirements at the border should be clearer reflected in the appropriate laws or regulations. Procedures should be available for the customs officers for cases of unusual movement of gold, precious metals and stones describing the steps to be taken if such assets are identified at the border. More training programs targeting ML/TF risks and red flags, with a view to the STRs submission to the FIO are necessary for the Customs officers. A more proactive approach of the Customs authorities on AML/CFT matters is necessary in order to ensure the effective implementation of the requirements of Special Recommendation IX.
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)	Sector specific guidelines and supporting programmes should be introduced by the authorities. ***Recommendation 5*** Art. 8 of the AML/CFT Law provides for the general requirement for all financial institution to apply CDD measures, while Art. 23 requires brokerage firms and banks licenced to operate with securities to identify their clients when the total amount exceeds €15,000. The authorities should eliminate any contradictory requirements concerning the CDD measures to be taken in respect of the securities transactions and clients. The authorities should provide for an explicit prohibition for all financial institutions not to open and keep accounts in fictitious names. Financial institutions should be required to verify customer's identity using reliable, independent source documents, data and information. Financial institutions should be required to verify the status of the legal person or legal arrangement in all cases, *e.g.* by obtaining proof of incorporation or similar evidence, and obtain information concerning the legal structure and its directors. Official translations of the incorporation documents should be required as compulsory part of the CDD measures. The BO definition should cover the natural person who ***ultimately*** owns or controls a customer or/and the person on whose behalf a transaction is being conducted.

	Financial institutions should be required to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source in all cases. Financial institutions should be required to determine whether the customer is acting on behalf of another person, irrespective of whether there is a suspicion that the client does not act on his/her own behalf, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person. Guidance should be issued by the authorities to assist financial institutions in determining higher-risk customers and in the application of enhanced CDD measures. The authorities are recommended to take legislative measures to exclude the possibility of waiving all CDD measures and to provide instructions for applying reduced or simplified CDD measures. A requirement to prohibit the application of simplified CDD when there are specific higher risk scenarios in case of life insurance policies and insurance policies for pension schemes should be introduced. A requirement should be introduced to oblige financial institutions to terminate the business relationship and to consider making a STR, when the business relationship with the customers has been established, but there are doubts about the veracity or adequacy of the data, or the identity of the existing customers has to be confirmed (under the criteria 5.17), but the financial institutions is unable to comply with criteria 5.3 to 5.5. The authorities should consider issuing specific guidance to assist the financial institutions in implementing the CDD requirements of the AML/CFT Law. Particularly, guidance should be adopted for the application of the risk-based approach, for the process of understanding the ownership and the control structure of the legal persons and for the concept of beneficial owner, to avoid any confusion with a proxy or representative of a customer. The authorities should consider conducting training and awareness raising seminars for reporting entities on the concept of the beneficial owner. ***Recommendation 6*** It is recommended to extend the definition of PEP to persons who are close members of the family without an additional requirement related to domicile. Financial institutions should be required to apply enhanced CDD measures when the beneficial owner is a PEP. Financial institutions should be required to obtain senior management approval to continue business relationship when the beneficial owner is subsequently found to be, or subsequently becomes a PEP in the course of the relationship. A provision should be introduced in order to require the financial institutions to establish the *source of wealth* of customers who are PEPs, and both the source of funds and the source of wealth for beneficial owners who are PEPs.

	Financial institutions should be required to conduct enhanced ongoing monitoring when the beneficial owner is a PEP. The authorities are recommended to provide guidance on the risk based identification of PEP and the application of appropriate CDD measures. ***Recommendation 7*** The enhanced CDD measures listed under Art. 14(3) AML Law should apply to all correspondent banking relations, including to banks established in the EU or other equivalent countries. ***Recommendation 8*** Financial institutions should be required to have policies and procedures to address the specific risks associated with non-face-to-face business relationships when conducting on-going due diligence. The authorities should provide guidance to the financial institutions to prevent the misuse of new technologies.
3.3 Third Parties and Introduced Business (R.9)	"The former Yugoslav Republic of Macedonia" authorities should adopt general legal or regulatory provisions applicable to third parties and intermediaries that cover the requirements of R.9 on intermediaries and introduced business. Thus, the recommendation of the 3rd round Report is upheld.
3.4 Financial institution secrecy or confidentiality (R.4)	The possibility to share information between financial institutions in relation to correspondent banking and in relation to identification of customers involved in cross-border or international wire transfers should be stipulated by the positive law.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10*** Financial institutions should be required to keep records on transactions and on identification data longer if requested by a competent authority in specific cases. Financial institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to the competent authority upon request. Law enforcement authorities should be included in the scope of the *"competent authorities"* for R.10 purposes. The authorities should make steps to remove any inconsistency or contradiction between the Law on personal data protection and Article 27 of the AML/CFT Law. ***Special Recommendation VII*** The authorities should consider issuing guidelines for the beneficiary financial institutions in order to implement effectively risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. The authorities should improve monitoring and supervision of the Post Office in order to improve effective implementation of SR.VII requirements.
3.6 Monitoring of Transactions and Relationship	***Recommendation 11***

Reporting (R. 11 and R. 21)	The authorities are recommended to issue guidelines to assist the private sector in the examination - as far as possible – of the background and the purpose of such transactions. ***Recommendation 21*** "The former Yugoslav Republic of Macedonia" authorities should establish mechanisms to apply counter-measures in respect of those countries that insufficiently apply the FATF Recommendations. The list of countries with weaknesses in the AML/CFT system should be updated in regular intervals corresponding to the frequency of Public Statements issued by the relevant regional or international bodies. Taking in to account the focus on the requirement to prepare and submit reports in many occasions (e.g. report on the purpose and the intention of the business relationship, see c.21.2) it is recommended to analyse and assess the usefulness of submission of these reports to the FIO.
3.7 Suspicious transaction reports and other reporting (R.13, 25 & SR.IV)	***Recommendation 13 and Special Recommendation IV*** The provisions of the AML/CFT Law concerning the TF suspicions should extend to funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism* as required by 13.2 and IV.1. The reporting template presented in Rulebook 38 should be improved to include a reference to the lists of indicators published by the FIO (for both ML and TF suspicions) to guide the reporting entities to their industry related document. Terrorist financing indicators available for the financial sector (except banks) should be revised and improved. The provisions of NBRM Decision 103 should be revised to eliminate the cross-reference to the UTRs before filling in an STR which creates confusion amongst the reporting entities. The reporting system in "the former Yugoslav Republic of Macedonia" would greatly benefit from the implementation of an electronic reporting system for all reporting entities or, at a minimum, for the entire financial sector. More involvement of the general supervisors concerning the manner and procedure for adequate STRs identification and submission is necessary to increase effective reporting regime. ***Recommendation 25/c. 25.2 [Financial institutions]*** The general feedback provided to the reporting entities should be done on a regular basis and the authorities should make sure that the information reaches all reporting entities.
3.8 Internal controls, compliance, audit and Foreign Branches (R.15 and 22)	***Recommendation 15*** The obligation to designate an AML/CFT compliance officer at management level should be an express obligation for all obliged entities, and not only in the context of the preparation of the internal programmes. The rights of the AML officer and his staff should be stated in the

	law for all obliged entities, and not only for the case that an obliged entity has 50 or more staff. All financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls. This should be a direct obligation on the obliged entities. The screening procedures to ensure high standards when hiring employees should extend beyond checking professional standards and technical knowledge and should e.g. also cover the status of criminal convictions. ***Recommendation 22*** The legislation should be brought in line with R.22 in order to provide or clarify all elements of R.22.
3.9 Shell banks (R.18)	None
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 and 25)	***Recommendation 23*** The mandatory fully funded pension insurance should be covered by the AML/CFT Law. Although the division of supervisory authorities over the sectors under their responsibly is provided in the AML/CFT Law, the relationship between the general supervisor and the FIO on AML/CFT matters is not settled. This should be clarified by the authorities in order to avoid duplications and conflicts of competence between the FIO and the general supervisor. The authorities should consider including explicit reference to AML/CFT supervision in the laws on the establishment and functioning of all the financial supervisory authorities (MAPAS Law and in the Law on Postal Services), to enhance their involvement and contribution to the global AML/CFT compliance supervision process. Legal provisions should be adopted to establish the necessary criteria to prevent criminals or their associates from being the beneficial owner or holding a management position in the insurance companies and agencies, in voluntary pension funds and in postal services. Fit & proper criteria for banks should cover all the aspects required by EC 23.3.1 in terms of all criminal records and in relation to persons that are "associates" to criminals. Fit & proper criteria for directors and senior managers of insurance companies, insurance agencies, securities companies, volunteer pension funds and of postal services should be provided in the legislation. ***Recommendation 17*** The designation of authorities to initiate and impose sanctions provided for in the AML/CFT Law should be further clarified, especially for cases of concurring competence, e.g. following joint on-site inspections. The procedural rules of the AML/CFT Law (*e.g.* Art 48, Art 53(1) and 54) should be brought in line with the amended sanction provisions by a complete designation of competent authorities in

	relation to all misdemeanours listed in the AML Law. The FIO should be given authority to initiate procedures for violation of provisions of the AML Law outside the process of the on-site supervision, *e.g.* upon desk based or standardised off-site supervisory examinations. This could possibly also enhance effectiveness of the sanctioning regime. There should be the possibility to revoke the licence of foreign exchange operations in case of violations of the AML/CFT provisions. ***Recommendation 29*** The laws should provide for clear authority of the NBRM to compel the production of records from FX operators. ISA should be empowered to sanction directors and senior management for failure to comply with AML/CFT legal provisions. ***Recommendation 25 (c. 25.1 [Financial institutions])*** The authorities should adopt sector specific guidance in the implementation of all AML/CFT requirements in all aspects, not only in the suspicion indicators area. Guidance on the application of the analysis required under Recommendation 11 should be issued. The list of TF indicators available for the non-banking financial institutions should be expanded. Feed-back should be provided to the FI on regular basis.
3.11 Money or value transfer services (SR. VI)	The authorities should increase the number of on-site and off-site inspections to detect main deficiencies and problematic issues related to MVT operators when applying the AML/CFT Law provisions.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	The technical findings relating to R.5, 6, 8-11 are also applicable to DNFBPs. The authorities should continue their awareness raising efforts especially on the risk-based approach and on CDD measures focusing on the identification and verification of beneficial owners and PEPs. The authorities are recommended to intensify on-site and off-site supervision over DNFBPs to increase effectiveness. More guidelines would be necessary and useful to guarantee appropriate and effective implementation of AML/CFT measures. ***Recommendation 5*** DNFBP should be required to determine whether the customer is acting on behalf of another person. DNFBP should be required when conducting on-going due diligence on the business relationship to establish, where necessary, the source of funds.

	There shall be explicit requirement in the AML/CFT Law which prohibits the application of simplified CDD when there is a suspicion of ML/FT or specific higher risk scenarios apply. The authorities should consider issuing a specific guidance to assist DNFBPs in implementing the requirements of the AML/CFT Law, especially for the process of identifying the ultimate beneficiaries ***Recommendation 6*** More emphasis must be place on awareness raising programs dedicated to the DNFBPs' representatives concerning PEPs related requirements. ***Recommendation 8*** More guidance is necessary on ML/TF threats arising from new and developing technologies for all categories of DNFBPs. ***Recommendation 9*** N/A ***Recommendation 10*** The steps recommended under R.10 above should be extended to the DNFBP sector. ***Recommendation 11*** The authorities are recommended to issue guidelines to assist the private sector in the examination - as far as possible – of the background and the purpose of such transactions.
4.2 Suspicious transaction reporting (R.16)	***Applying Recommendation 13*** Technical recommendations formulated under R13 apply. The existing lists of the indicators for the DNFBP must be developed seeking to include more indicators related with terrorism financing. The internet casinos should be covered by the AML/CFT Law obligations. The reporting template presented in Rulebook 38 should be improved to include an express field describing the suspicious transaction for the DNFBPs. A reference to the lists of indicators published by the FIO should be included in the Rulebook 38 to guide the reporting entities to their industry related document. Instruction on on-line STR reporting should be issued and published. *Service providers to legal entities* in practice should not be outside of the implementation of the AML/CFT Law provisions. Awareness raising programs should be developed for all DNFBPs to increase compliance with Recommendation 13 and Special Recommendation IV. ***Applying Recommendation 15*** The technical recommendations valid for the FI are valid for the DNFBPs. Guidance on the application of the AML/CFT internal programs

	requirements, internal audit and employees screening should be adopted by the authorities. ***Applying Recommendation 21*** The technical recommendations valid for the financial institutions are also valid for the DNFBPs.
4.3 Regulation, supervision and monitoring (R.24-25)	***Recommendation 24*** The authorities should introduce the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino. The supervisory committee for lawyers, that is the Attorney Committee, should play an active role in supervising the Bar Chambers members by taking up its supervisory function, including carrying out on-site visits. The FIO should inform the other supervisory authorities as listed in Art. 46(1) and 47 AML/CFT Law about its activities on a regular basis, especially its on-site visits, in order to design and agree on a yearly on-site visit plan with each supervisory authority for the obliged entities under its scope. Thus, gaps and overlaps in supervision could be effectively mitigated. ***Recommendation 25 (c.25.1 [DNFBPS])*** The authorities are recommended to adopt guidance on all AML/CFT compliance requirements, such as CDD or PEPs related measures. The authorities should take steps in addressing this shortcoming related to feedback from the supervisors and the FIO to the DNFBP sector, which is made on ad-hoc basis and therefore is the area for improvement.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	The evaluators reiterate the recommendation made in the previous round that "the former Yugoslav Republic of Macedonia" reviews its commercial, corporate and other laws with a view to taking measures to provide adequate transparency on beneficial ownership.
5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)	None
5.3 Non-profit organisations (SR.VIII)	The examination team recommends strengthening the mechanism by which the registration of false data and documents as well as the establishment of NPOs for unlawful purposes can be avoided (first of all, there should be again an authority for *"ascertaining the circumstances"* as the registration authority did at the time of the previous evaluation). The authorities should review the adequacy of domestic laws and regulations that govern the NPO sector.

	A systemic review of the NPO sector (either randomly or regularly) should be conducted which questions whether the domestic authorities possess timely information on the activities, size and other relevant features of the NPO sector (the occasional communication between the FIO and the competent body of the MoI should be sufficient in this respect). The examiners recommend introducing periodic reassessment of the sector so as to explore its potential vulnerabilities.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	***Recommendation 31*** The authorities are recommended to harmonise the requirements of the AML/CFT National Strategy and the FAT Strategy to avoid overlapping. Given the system of a multitude of supervisory authorities with similar rights and obligations, the AML/CFT system could benefit greatly from a process of coordination between all involved supervisory authorities and from comprehensive and two-way information flow. The authorities are encouraged to implement mechanism for consultation between the competent authorities and the reporting entities.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	It is recommended that "the former Yugoslav Republic of Macedonia" further amend its CC so as to bring the ML and particularly the TF offences fully in line with the respective Conventions. Equally, it should be stipulated more precisely that neither the TF offence in Art. 394-c CC can be considered a political crime in the context of mutual legal assistance and extradition. Serious efforts are required in order to properly implement UNSCRs 1267/1988 and 1373. There is an urgent need for a specific, complex and target-oriented legislation so as to address all aspects of SR.III that are currently not, or not adequately covered, particularly in terms of detailed, comprehensive and calculable procedural rules with roles, responsibilities and deadlines throughout the process. This legislation should be extended to freezing under procedures initiated by third countries and funds or assets controlled by designated persons. A national designating authority should be established or appointed for the purposes of UNSCR 1373 and there is an overall need for publicly known procedures for considering de-listing requests and unfreezing assets of de-listed persons, for unfreezing the funds and assets of persons inadvertently affected by the freezing mechanism and for the court review of freezing actions.
6.3 Mutual Legal Assistance (R.36 & SR.V)	***Recommendation 36 & Special Recommendation V*** The authorities should remedy the deficiencies in the criminalisation of FT offence that might limit the execution of the MLA request when the dual criminality is observed. The authorities should keep comprehensive statistics on MLA

	requests and particularly those relating to ML and TF offences to demonstrate effectiveness.
6.3 Other Forms of Co-operation (R.40 & SR.V)	*FIO* Art. 44 (3) of the AML/CFT Law provides for the requirement that an "indication of money laundering and terrorism financing" is provided by the foreign counterpart in the process of information exchange. From the legal text it appears that the possibility of the information exchange in relation to the predicate offence is not possible. The authorities are recommended to address this deficiency. *Supervisory authorities* The NBRM's legal basis for cooperation and information exchange should clearly state that international cooperation should be provided in a rapid, constructive and effective manner and that information exchange should be possible along the lines of c.40.3. The Securities Law should clearly provide for a legal basis to cooperate internationally and exchange information. Currently, this may be effected only via MoUs. The ISA should be in a position to provide the widest range of international cooperation to foreign counterparts and there should be clear and complete provisions for the exchange of information. The legal authority to conclude international MoUs should be stated in the law. The Postal Agency should be in a position to provide the widest range of international cooperation to foreign counterparts and there should be clear and complete provisions for the exchange of information. All supervisory authorities should be empowered to conduct inquiries on behalf of foreign counterparts. The applicable laws for the exchange of information by the supervisory authorities (with the exception of the NBRM Law) should contain safeguards on the use of the information exchanged. *Law enforcement authorities* The Financial Police Office should have international information exchange powers. The officers appointed to exchange the information and to cooperate with the foreign law enforcement institutions must be adequately equipped and trained.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	***Recommendation 30*** The number of i2 licences should be sufficient for all financial analysts within the FIO. The Department for Acting upon Letter Rogatory in Criminal and Civil Matters should have all job positions occupied. All the positions available in the FIO structure should be occupied by employees. The authorities should consider revising the human resources

	allocation between DPML and DPTF to match the actual number of specific reports. The pro-active involvement of the general supervisors and the full implementation of the risk based approach might be a solution to the lack of resources in the FIO and other supervisory bodies. ***Recommendation 32*** The authorities are recommended to maintain adequate statistics to allow them to review the effectiveness of their system for combating ML and TF on a regular basis. The authorities should keep statistics generally on the predicate offences (not only for the final convictions) and on the autonomous/third party laundering cases. The authorities might consider that the FIO could be the appropriate institution to collect all information and feed it into a comprehensive statistical system. The authorities of "the former Yugoslav Republic of Macedonia" should maintain comprehensive statistics on MLA issues and not only total figures on civil and criminal letters rogatory. The letters rogatory in criminal matters, these statistics should contain reliable information on the respective criminal offences involved (at least the most important ones and also the occurrence and number of ML and TF cases) the typical investigative measures requested, the foreign states (either requesting or executing) and particularly the overall number of refused foreign requests (and reasons for refusal).
7.2 Other relevant AML/CFT measures or issues	None
7.3 General framework – structural issues	None

10. TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

"The former Yugoslav Republic of Macedonia" is not a member country of the European Union. It is not directly obliged to implement **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 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**.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

1.	**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 R. 2 and 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.
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	Corporate entities can generally be held liable for a wide range of criminal offences specified by the Criminal Code including the ML offence. Art. 28-a (1) CC provides that *"in the cases determined by law, the legal entity shall be liable for the crime committed by a responsible person within the legal entity, on behalf, for the account and for the benefit of the legal entity"*. In addition, Art. 28-a (2) CC stipulates that the legal entity shall also be liable for a crime committed by its employee or its representative (thus not only the responsible person) provided that the crime generated a significant property benefit or caused a significant damage, if: - the execution of a conclusion, order or other decision or approval of a governing, managing or supervisory body is considered commission of a crime, or - the commission of the crime resulted from omitting the obligatory supervision of the same body, or - the same body has not prevented the crime, or has concealed it or has not reported it before initiating a criminal procedure against the offender. Notwithstanding, the legal entity shall also be liable for a crime even when there are factual or legal obstacles for determining the criminal liability of the natural person as offender of the crime (Art. 28-b[2] CC). All legal persons (with the exception of the state) have criminal responsibility; foreign entities may be held responsible in case of offences committed on the territory of "the former Yugoslav Republic of Macedonia" regardless of whether they have their office or subsidiary operating in the country. In the context of Art. 28-a CC the term "cases determined by law" refer to criminal offences in the Criminal Code specifically indicated as being committable by legal entities (such as the ML offence by virtue of paragraph 12

	of Art. 273). Apparently, only those criminal offences are excluded from this category that can only be committed by a natural person. Rules on sentencing a legal entity (primary and secondary sanctions etc.) are stipulated in Chapter VI-a CC while special procedural rules applicable in case of legal entities can be found in Chapter XXVII-a CPC. The ML offence in Art. 273 CC goes beyond the standards of the Vienna and Palermo Conventions (R.1) inasmuch as it extends to the criminal sanctioning of infringements of national provisions adopted in line with (even if not for the actual implementation of) the Directive. Specifically, the unlawful violation of the AML preventive regime (regarding, among others, the obligation to cooperate and to report as well as the prohibition to tip off) are rendered a criminal offence by paragraphs (6) and (7) of Art. 273 CC. These offences can also be committed by a legal entity by virtue of the aforementioned Art. 273(12). While the criminal liability of legal persons has long been provided and it is said to be successfully applicable to other criminal offences, the evaluators note that there has not yet been any case in which a legal person was convicted or at least indicted of the offence of ML, particularly as most of the typical laundering methods in "the former Yugoslav Republic of Macedonia" are related to the use of legal entities. Although some practice appears to have been developing in the investigatory phase of the criminal proceedings, the outcome of these cases remained unclear to the evaluators.
Conclusion	The criminal legislation of "the former Yugoslav Republic of Macedonia" is in line with FATF R.2 and Art. 39 of the Directive. On the other hand, this legislation has only been applied to an unexplainably limited extent in ML cases.
Recommendations and Comments	The reasons for the apparent lack of ML prosecutions against legal persons need to be examined and remedied by the domestic authorities so that the rules that allow for the criminal accountability of legal entities can effectively be implemented also in ML cases, with a particular attention to the frequency by which legal persons are involved in laundering activities.

2.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 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	Article 26 of AML/CFT Law prohibits the opening and keeping of anonymous accounts under restriction of sanctions stipulated in Article 49. Due to clear provision in the Law, NBRM Decision 103 does not regulate this area separately. According to MEQ controls performed by the NBRM and FIO confirmed that banks do not open and do not hold anonymous accounts.
Conclusion	The Macedonian AML/CFT regime does not directly prohibit opening anonymous passbooks, however there is indirect provision by obligation of entities to identify clients and verify their identity.
Recommendations and Comments	N/A

3.	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 R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of EUR 15 000 covered?
Description and Analysis	Article 8 of the AML/CFT Law enumerates cases in which the entities are obliged to implement the CDD measures, *inter alia* pursuant to item b) the entities implement CDD when carrying out one or several linked transactions amounting to €15,000 in denar counter-value.
Conclusion	Transaction and linked transactions amounting to €15,000 are covered. The "the former Yugoslav Republic of Macedonia" adopted the provisions of the 3rd Directive which is more restrictive than the FATF Recommendations.
Recommendations and Comments	N/A

4.	Beneficial Owner
Art. 3(6) of the Directive (see Annex)	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) 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 R. 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	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	According to Article 2 item 9 of the AML/CFT Law, the term "beneficial owner" shall mean a natural person who is the owner or who has direct influence on the client and/or natural person in whose name and on whose behalf the transaction is being performed. Simultaneously above article details a beneficial owner of a legal entity as a natural person: • who has a direct or indirect share of at least 25% of the total stocks or share, or rather the voting rights of the legal entity, including possession of bearer shares, who otherwise exercises control on the management of and gains benefits from the legal entity.
Conclusion	The definition of beneficial owner in AML/CFT Act is not fully in line with the FATF standard.
Recommendations and Comments	The authorities should take measures to cover a person who ***ultimately*** owns or controls a client**.**

5.	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 Art. 3(1) or (2) of the Directive. Art. 4 of Commission Directive 2006/70/EC further defines this provision.
FATF R. concerning financial institutions	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 (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	The AML/CFT Law does not provide exemptions for persons and entities who engage in a financial activity on occasional or a very limited basis and where there is a little risk of ML or FT.
Conclusion	The AML/CFT Law does not implement Article 4 of the Directive.
Recommendations and Comments	N/A

6.	**Simplified Customer Due Diligence (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 R. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	According to Article 13 of AML/CFT Law, The entities shall not be bound to meet the requirements for client due diligence when the client is a bank • in the "the former Yugoslav Republic of Macedonia" which is licensed to establish and operate by the Governor of the National Bank and has established adequate measures for prevention of money laundering and financing terrorism; • from a European Union Member State which is established and operates in accordance with the EU legal regulations, • from third countries where the regulations provide for at least identical requirements for taking measures for prevention of money laundering and financing terrorism as the requirements stipulated by this Law. The list of countries which meet the requirements for prevention of money laundering and financing terrorism shall be determined by the Minister of Finance. Additionally, Article 13 para 4 of the AML/CFT Law stipulates that the entities shall not be bound to meet the requirements for client due diligence referred to in Article 8 paragraph (1) items a, b and d, and in Article 9 and Article 11 of this Law, in respect of: • life insurance policies where the annual premium is no more than €1,000 in denar counter-value or the single premium is no more than € 2,500 in denar counter-value, • insurance policies for pension schemes if there is no transfer clause and the policy cannot be used as collateral.
Conclusion	The Macedonian legislation implements paragraph 5 item a) and b) of Article 11 of the EU Directive. However there is no reservation that FI should gather sufficient CDD information.
Recommendations and Comments	The authorities should consider implementing Art. 11 of the Directive with the stipulation of gathering sufficient CDD information where institutions and persons may not apply CDD measures.

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive (see Annex)	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 the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	The definition of PEP is provided in the Article 2, item 11 of the AML/CFT Law and is broadly in line with the definition set down in the Directive and the Commission Directive 2006/70. The AML/CFT Law defines PEP as natural person citizens of other countries who are or have been entrusted with public functions in the "the former Yugoslav Republic of Macedonia" or another country. Persons shall be considered holders of public functions for at least one year after the cessation of the public function, and on the basis of a previously carried out risk assessment by the entities.
Conclusion	"The former Yugoslav Republic of Macedonia" has adopted the FATF approach.
Recommendations and Comments	In order to fully comply with the text of the Directive, the authorities should amend the legislation to cover the Macedonian nationals that reside in another country.

8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Art. 13(3) of the Directive?
Description and Analysis	Macedonian legislative regime in Article 14 para 3 of the AML/CFT Law broadly implement Article 13 (3) of the Directive, however limits application of enhanced CDD also to cross-border relationships with bank from third countries where the regulations provide for at least identical requirements for taking measures for prevention of money laundering and financing terrorism as the requirements stipulated by AML/CFT Law. The list of countries which meet the requirements for prevention of money laundering and financing terrorism shall be determined by the Minister of Finance.
Conclusion	The requirements provided by the AML/CFT Law are not fully in line with Article 13 (3) of the Directive and with the FATF standard.
Recommendations and Comments	The authorities should remove the exemption from ECDD measures for correspondent relationships with credit institutions established in EU countries or other equivalent countries.

9.	**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 R. 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 Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	According to Article 12c para 2 of the AML/CFT Law the entities institutions are required to focus special attention to threats from money laundering and financing terrorism arising from the use of new technologies or developing technologies and to prevent them from being used for money laundering or financing terrorism. Furthermore, Article 12-c of AML/CFT Law implement application of enhanced CDD where the client is not physically present for

	identification purposes.
Conclusion	There is no direct requirement for the financial institutions to pay special attention to any money laundering threats that may arise from products or transactions that might favour anonymity and to apply in these cases ECDD.
Recommendations and Comments	In order to comply with the Directive, the authorities should introduce a requirement for the financial institutions to pay special attention to the money laundering threats that may arise from products or transactions that might favour anonymity. There should be requirement to apply ECDD in case of products and transactions that might favour anonymity.

10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	The legislation of "the former Yugoslav Republic of Macedonia" does not provide a requirement to directly apply the identification procedures, nor prohibits the reliance on third parties. However, in practice, all the participants in the financial market are entities within the scope of the AML/CFT Law.
Conclusion	The AML/CFT Law does not implement the obligations from Article 15 of the Directive.
Recommendations and Comments	The authorities should adopt general legal or regulatory provisions applicable to third parties and intermediaries in line with the provisions of the Directive.

11.	**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 R. 12	CDD and record keeping obligations 1. do not apply to auditors and tax advisors; 2. apply to 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 (2004 AML/CFT Methodology 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 criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	Auditors, accountants and tax advisors are included, by Article 5 para 2 items b) and d) of AML/CFT Law, in the catalogue of the entities obliged to implement AML/CFT measures. The AML/CFT Law provisions do not foresee exceptions in the implementation of the AML/CFT obligations.
Conclusion	The Macedonian legislation implemented the Directive, which is broader that

	the FATF standard.
Recommendations and Comments	N/A

12.	**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 EUR 15 000 or more.
FATF R. 12	The application is limited to those 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	Article 24 of the AML/CFT Law stipulates that payment or receipt of cash in an amount of €15,000 or more in denar counter-value in the form of one or several linked transactions which has not been made through a bank or savings house shall be prohibited. Therefore natural and legal persons trading in goods are not obliged by AML/CFT Law requirements.
Conclusion	Due to the prohibition of cash payments, the traders of high value goods are "de facto" outside the scope of the AML/CFT Law.
Recommendations and Comments	N/A

13.	**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 EUR 2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	According to the Article 22 of the AML/CFT Law, the customer is identified and verified immediately after entering the casino and upon buying or paying the chips in amount exceeding 2.000 Euros in denar counter-value according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day of the buying, i.e. payment.
Conclusion	The Macedonian legislation is in line with the Directive.
Recommendations and Comments	N/A

14.	**Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU**
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which 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 Art. 23 (1) of the Directive?
Description and Analysis	The AML/CFT Law doesn't foresee possibility for the mentioned entities to submit the STRs through self-regulatory body.
Conclusion	The "the former Yugoslav Republic of Macedonia" implemented the FATF

	approach.
Recommendations and Comments	N/A

15.	**Reporting obligations**
Arts. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	According to Article 16 of AML/CFT Law where the entity has discovered the grounds for suspicion that the transaction, the client or the beneficial owner are related to money laundering: • before carrying out the transaction he/she shall immediately inform the Office thereof and postpone the transaction for 2 hours at most after notifying the Office. • in the course of carrying-out the transaction he/she shall immediately inform the Office thereof and postpone the transaction for 4 hours at most after notifying the Office. • after carrying-out the transaction he/she shall inform the Office within 24 hours at most. Within the time limits referred to the AML/CFT Law, the entity shall submit a written report to the Office containing all relevant information in relation to the transaction and the identity of the clients and the other participants in the transaction. However, if the Office does not inform the entity of the further activities within the time limits set out in the Law the entity shall carry out the transaction. According to the Article 17 of the AML/CFT Law where there are grounds to suspect the transaction or the client are related to terrorist activity or that the money or assets which are subject to the transaction are intended for financing terrorism, the entity shall inform the Office before carrying-out the transaction and submit a written report to the Office containing all relevant information in relation to the transaction and the identity of the clients and the other participants in the transaction within 24 hours after detecting suspicion of the transaction.
Conclusion	The AML/CFT Law provides the possibility of ex-ante reporting only for ML suspicions.
Recommendations and Comments	In order to be fully in line with the 3rd AML/CFT Directive, the possibility of *ex-ante* reporting should be extended to TF suspicions.

16.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and	The Article 31 para 3 of the AML/CFT Law requires the Office not to reveal

Analysis	the identity of the employee in the entity submitting the report, except in the cases of suspicion that the employee or the entity committed a punishable act money laundering or financing terrorism, upon written request of the competent court where it is necessary to determine facts in the course of a criminal procedure. Provisions of the Article 42 protect official or responsible persons, employers and the employees from: • a procedure for determining the responsibility for disclosing a professional secret in course of submitting information or reports with regard to the suspicious money laundering transactions with the Office, • procedure for civil or criminal liability for submitting information or reports according to the provisions of the Law, even in the case where the procedure upon the submitted information and reports did not result in determining the liability i.e. an effective ruling. • procedure for civil or criminal liability due to any tangible or intangible damage that occurred as a consequence of the postponement of the transactions according to the provisions of this Law, unless such postponement has elements of a certain criminal act. However Macedonian legislation does not protect employees of reporting institutions from being exposed to threats or hostile actions.
Conclusion	The Macedonian legislation does not protect employees of reporting institutions from being exposed to threats or hostile actions.
Recommendations and Comments	The authorities need to implement the requirements set out in Art. 27 of the Directive.

17.	**Tipping off (2)**
Art. 28 of the Directive	The 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 the prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	Due to the Article 28 of the AML/CFT Law the entities, persons managing with entities and their employees cannot inform the client or a third party on the submission of the data to the Office or on other measures or actions undertaken on the basis of this Law. Above prohibition refers to the submission of data to the supervisory authorities and the law enforcement authorities.
Conclusion	The AML/CFT Law does not directly provide provision for extension of prohibition on tipping off where a money laundering or terrorist financing investigation is being or may be carried out.
Recommendations and Comments	The authorities should amend the legislation to bring it in line with the Directive.

18.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable 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 R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and	Article 34 (2) of the Directive is implemented in Article 26-a, Paragraph 1

Analysis	of the AML/CFT Law according to which the financial institutions having their own subsidiaries or branches in abroad should provide application of the measures for prevention of money laundering and financing terrorism in the subsidiaries, and branches.
Conclusion	"The former Yugoslav Republic of Macedonia" has implemented Art. 34(2) of the Directive.
Recommendations and Comments	N/A

19.	**Branches and subsidiaries (2)**
Art. 31(3) of the Directive	The Directive requires that where 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 R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	Article 26-a, Paragraph 2 of the AML/CFT Law that when the laws of the country where the subsidiaries or branches have their main office do not allow application of the measures for prevention of money laundering and financing terrorism set in AML/CFT Law, the financial institutions should immediately inform the appropriate supervision authority, in accordance with Article 46 of this Law.
Conclusion	The Macedonian legislation follows the FATF approach.
Recommendations and Comments	Measures should be taken to bring the legislation in line with the 3rd EU Directive.

20	**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 R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	According to Article 46, Paragraph 6 of the AML/CFT Law National Bank of the Republic of Macedonia, the Insurance Supervision Agency, the Macedonian Securities and Exchange Commission, the Agency for Supervision of Fully Funded Pension Insurance, the Public Revenue Office, the Postal Agency and the commission for performing supervision established by bar chambers and notary chambers, if during performing supervision determine suspicion for money laundering or financing terrorism, as well as violation of the provisions of this Law, must inform the Office immediately.
Conclusion	Art. 25 (1) of the EU Directive has been implemented.
Recommendations and Comments	N/A

21.	**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 R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	There is no specific requirement for the 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.
Conclusion	The "the former Yugoslav Republic of Macedonia" adopted the FATF standard.
Recommendations and Comments	Legal amendments should be undertaken in order to comply with the requirements of Article 32 of the Directive.

22	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	The provisions of the AML/CFT Law have been extended to other professionals and categories of undertakings than those referred to in Article 2 (1) of the Directive, namely: • Legal and natural persons providing consulting services and services of investment advisor, • Associations of citizens and foundations (domestic and foreign), • Service providers to legal persons, • Central Securities Depositary, • Legal entities taking movables and real estate in pledge, • Agency for Real Estate Register, • Legal entities whose activity is sale and purchase of vehicles.
Conclusion	Article 4 of the EU Directive has been implemented in "the former Yugoslav Republic of Macedonia"
Recommendations and Comments	N/A

20.	**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, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	The AML/CFT Law do not include specific provisions concerning equivalent third countries.
Conclusion	The Macedonian legislation does not provide for the possibility described in Article 11, 16(1)(b), 28(4),(5) of the Directive.
Recommendations and Comments	The authorities should consider the implementation of the Article 11, 16(1)(b), 28(4),(5) of the Directive in their legislation.

Annex to Compliance with 3rd EU AML/CFT Directive Questionnaire

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

Article 2
Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:
(a) heads of State, heads of government, ministers and deputy or assistant ministers;
(b) members of parliaments;
(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
(d) members of courts of auditors or of the boards of central banks;
(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
(f) members of the administrative, management or supervisory bodies of State-owned enterprises.
None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.
The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:
(a) the spouse;

(b) any partner considered by national law as equivalent to the spouse;
(c) the children and their spouses or partners;
(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:
(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.

VI. LIST OF ANNEXES

See MONEYVAL(2014)1ANN