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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

BULGARIA

19 September 2013

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LIST OF ACRONYMS USED

AFFSUAA	Act on Forfeiture in Favour of the State of Unlawfully Acquired Assets
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering Financing of Terrorism
BCP	Border Crossing Point
BGN	Bulgarian Leva
BNB	Bulgarian National Bank
BSE	Bulgarian Stock Exchange
C	Compliant
CAR	Capital adequacy ratio
CC	Criminal Code
CD	Central Depository (Securities Registrar)
CDD	Customer Due Diligence
CDCOC	Chief Directorate Combating Organised Crime
CDNP	Chief Directorate "National Police"
CEPACA	Commission for establishing property, acquired from criminal activity
CETS	Council of Europe Treaty Series
CFSP	Common Foreign and Security Policy
CFT	Combating the financing of terrorism
CISs	Collective investment schemes
CL	Currency Law
CPC	Criminal Procedure Code (Code of Criminal Procedure)
CTCC	Counter-terrorism Coordination Centre
CTR	Cash transaction report
DNFBP	Designated Non-Financial Businesses and Professions
EAW	European Arrest Warrant
EC	European Commission
ECDD	Enhanced Customer Due Diligence
EMI	Electronic Money Institution
ESA	European Supervision Authorities
EJN	European Judicial Network
ESW	Egmont Secure Web
EU	European Union
EUR	Euro
ETS	European Treaty Series
FATF	Financial Action Task Force

FI	Financial institution
FIA	Financial Intelligence Agency
FIDE	Files Identification Database
FID-SANS	Financial Intelligence Directorate of the State Agency for National Security
FIU	Financial Intelligence Unit
FSC	Financial Supervision Commission
FT	Financing of Terrorism
GDCOC	General Directorate for Combating Organised Crime
GDP	Gross domestic product
GFCF	Gross fixed capital formation
GL	Gambling Law
GNFS	Goods and Nonfactor Services
GRECO	Group of States against Corruption
HICP	Harmonised Indices of Consumer Prices
HR	Human resources
JIT	Joint Investigation Team
LAVS	Law on Administrative Liabilities and Sanctions
LC	Largely compliant
LCI	Law on Credit Institutions
LDFSPACA	Law of divestment in favour of the state of property acquired from criminal activity
LEA	Law Enforcement Agency
LMFI	Law on Markets and Financial Instruments
LMFT	Law on Measures against Financing of Terrorism
LMML	Law on Measures against Money Laundering
LPSPS	Law on Payment Services and Payment Systems
LSANS	Law on State Agency for National Security
LTD	Loan-To-Deposit
LTV	Loan-to-value
IFICD	International Financial Institutions and Cooperation Directorate
IIs	Investment intermediaries
IP	Information Purposes Files
IT	Information technologies
KYC	Know your customer
MAB	EU Custom's database system maintained by OLAF
MCs	Management companies

MER	Mutual Evaluation Report
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoF	Ministry of Finance
ML	Money Laundering
MLA	Mutual legal assistance
MoU	Memorandum of Understanding
MVT	Money Value Transfer
NA	Non applicable
NARE	The National Association of Real Estate
NC	Non-compliant
NCA	National Customs Agency
NCCT	Non-cooperative countries and territories
NPMs	New Payment Methods
NPO	Non-Profit Organisation
NRA	National Revenue Agency
OECD	Organisation for Economic Co-operation and Development
OF	Operative File
OFAC	Office of Foreign Assets Control (US Department of the Treasury)
OLAF	Office Europeean de Lutte Antfraude
PEP	Politically Exposed Person
PC	Partially compliant
PI	Payment Institution
PICs	Pension Insurance Companies
REIWSPE	Enforcement and Issuance of Writs for Securing of Property or Evidence
RILMML	Rules on the Implementation of the Law on Measures against Money Laundering
RILSANS	Rules and Regulations on the Implementation of Law on SANS
ROA	Return on assets
ROE	Return on equity
SANS	State Agency for National Security
SCG	State Commission on Gambling
SELEC	Southeast European Law Enforcement Centre
SG	State Gazette
SIS	Schengen Information System
SJC	Supreme Judicial Council

SME	Small and medium enterprises
SR	Special recommendation
SRO	Self-Regulatory Organisation
SPIFs	Supplementary Pension Insurance Funds
SPOC	Supreme Prosecutor`s Office of Cassation
STRs	Suspicious transaction reports
SSD	Special Supervision Directorate
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TCSP	Trust and company service providers
TF	Terrorism Financing
UN	United Nations
UK	United Kingdom
UNSCR	United Nations Security Council resolution
USA	United States of America
VAT	Value Added Tax
WCO	World Customs Organisation
YOY	Year over Year

I. PREFACE

1. This is the seventeenth 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 Bulgaria, and information obtained by the evaluation team during its on-site visit to Bulgaria from 30 September to 6 October 2012, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Bulgaria. 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 experts in criminal law, law enforcement and regulatory issues and comprised: Ms Astghik KARAMANUKYAN (Head of International Relations Department of the Armenian FIU) who participated as legal evaluator, Ms Tanjit SANDHU (Legal adviser and Responsible of the Supervision Division of the Andorra FIU) and Mr Andres PALUMAA (Head of AML Unit, Business Conduct Supervision Division, Estonian Financial Supervision Authority) who participated as financial evaluators, Mr Milovan MILOVANOVIC (Senior Expert for Legal Issues at Legal Unit, Bank Supervision Department, National Bank of Serbia) who participated as a law enforcement evaluator and Mr John BAKER, Ms Irina TALIANU, and Mr Fatih ONDER, 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 26th Plenary meeting – 31 March to 4 April 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 2012 or shortly thereafter.

[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 Republic of Bulgaria at the time of the 4th on-site visit (30 September to 6 October 2012) 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) FATF Recommendations have been re-assessed, as well as all those for which Bulgaria 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 Bulgaria.

2. Key findings

2. In 2010 a risk analysis was carried out by various competent authorities in Bulgaria on the major sectors of the economy. The main vulnerabilities to money laundering were examined in the financial and public sectors, as well as in the construction, gambling, trade (including real estate), tourism and sport sectors; incoming and outgoing money flows in the economy were also included in the review. According to the Bulgarian authorities, no information on terrorism and terrorism financing threats has been identified. Nevertheless, the Bulgarian institutions (including the FIU) authorised with competences in this area, continue to perform monitoring and observation of the ongoing situation.

3. As far as the criminalisation of money laundering is concerned, the examiners note the developments in AML practice achieved by the Bulgarian authorities since the 3rd round evaluation. However, the Bulgarian legislation still needs to extend the list of predicate offences, to include all categories of piracy, market manipulation and insider trading, as well as to cover all the aspects of terrorism financing. Turning to effectiveness, the competent authorities established that it is possible to prosecute all forms of money laundering and actual convictions have been achieved in practice.

4. The offence of financing of terrorism is incriminated in the Bulgarian Criminal Code (CC), although it does not fully encompass the requirements of the TF Convention and Special Recommendation II. Some deficiencies still remain in respect of the criminalisation of all the offences listed in the Annex to the TF Convention. Furthermore, the purposive element required by Article 108a of the CC unduly restricts the application of this provision to the act which constitutes an offence within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention in the sense that it requires an additional mental element.

5. The provisional measures and confiscation regime in Bulgaria is mainly provided by the Criminal Procedure Code (CPC), the Law of Divestment in Favour of the State of Property Acquired from Criminal Activity (LDFSIAP) and the Act on Forfeiture in Favour of the State of Unlawfully Acquired Assets (AFFSUAA), which entered in force since on 19 November 2012, after the on-site visit. While the Bulgarian legal framework for the confiscation regime is convincing, in that it provides for a wide range of forfeiture, seizure and provisional measures with regard to property laundered, proceedings from and instrumentalities used in and intended for use in ML and TF or other predicate offences. However, compared with the estimated economic loss from criminal offences of an economic nature, the total value of confiscated assets remains low and the authorities are encouraged to place greater emphasis on confiscating criminally-derived funds.

6. The Bulgarian authorities have undertaken the relevant measures for ensuring the freezing of terrorist related assets. As an EU member state Bulgaria implements the EU Decisions but has

equally an internal listing mechanism. The web link to the list of designated persons was made available for financial institutions and designated non-financial business and professions. So far, there have not been any cases of blocking of such assets.

7. The Bulgarian Financial Intelligence Agency (FIA) was initially established as an administrative-type FIU within the Minister of Finance. In 2008, the FIU was transformed into the Financial Intelligence Directorate (FID) within the State Agency for National Security (SANS) pursuant to the Law on State Agency for National Security (LSANS). The specialised administrative Financial Intelligence Directorate of SANS (FID-SANS) continues to function as an administrative-type financial intelligence unit.

8. The financial sector demonstrated a high level of understanding of their customer due diligence (CDD) obligations. The Law on Measures against Money Laundering (LMML) is generally in line with the international standards; however some difficulties still remain, mostly related to the concept of beneficial owner which does not fully cover the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. Nevertheless, all the financial institutions were aware of the concept of beneficial owner in the case of legal entities, as provided in article 3 (2) of the Rules on the implementation of the LMML.

9. Supervision and monitoring over the implementation of the AML/CFT requirements is executed twofold: by the general supervisory bodies, which appear to have sufficient resources for fulfilling their obligations and a package of enforcement tools to address breaches, and by the FID-SANS. The primary responsibility for the supervision of AML/CFT measures for all obliged persons rests with FID-SANS. However, all supervisory bodies are required to include inspections for the compliance of obliged persons with the requirements of the LMML and the Law on Measures against Financing of Terrorism (LMFT) when they conduct examinations.

10. Administrative sanctions for non-compliance with the LMML are imposed by the FID-SANS and there has been an increase in the number of off-site and on-site supervision actions and sanctions applied. The maximum sanction for AML/CFT non-compliance is the equivalent of €25,000, which appears not to be dissuasive enough when compared with other sanctions prescribed for the financial sector.

11. According to the LMML, the list of designated non-financial businesses and professions (DNFBP) subject to AML/CFT requirements goes beyond the international standards. External accountants and private enforcement agents (bailiffs) have recently been included as obligors. The DNFBP demonstrated that they are generally aware of their obligations on AML/CFT issues, which is a welcome improvement since the last evaluation report. However, not all the sector was fully aware of the enhanced measures that should be applied with regard to politically exposed person (PEPs).

12. The Bulgarian legal framework establishes the Ministry of Justice (for judicial requests), and the Supreme Prosecutor`s Office of Cassation as well as the Prosecutor's Office (for pre-judicial investigation requests) as the central agencies responsible for international mutual legal assistance. The representatives of the prosecutor's office and the judiciary authorities indicated that all requests are executed in a reasonable timeframe, although the legislation does not prescribe any timeframes for the execution of mutual legal assistance requests.

13. A comprehensive network of mutual bilateral and multilateral agreements gives the Bulgarian authorities a sound basis for effective cooperation. In order to ensure the review of the effectiveness of the AML/CFT systems on a regular basis, the Bulgarian authorities should, as quickly as possible, create a framework for policy makers to review the effectiveness of the system and bring it into operation.

14. International cooperation by the FID-SANS and law enforcement agencies is effective, efficient and in many cases more advanced than the minimum standards required by the FATF Recommendations. The Bulgarian National Bank (BNB) and the Financial Supervision

Commission (FSC) also appear to have broad powers to exchange information with foreign counterparts based on domestic law, international treaties and MoUs.

3. Legal Systems and Related Institutional Measures

15. The physical and material elements of the ML offence are broadly in line with the provisions of Art. 3 (1) (b) and (c) of the Vienna Convention and Article 6 (1) of the Palermo Convention, although some of the wording of the Bulgarian CC does not ensure full compliance with the relevant international requirements. Criminal liability applies to those who acquire, receive, hold, use, transform or assist, in any way whatsoever, in the transformation of property, which is known or assumed, as of its receipt, to have been acquired through crime or another act that is dangerous for the public. The Bulgarian CC provides that there must be knowledge or suspicion of the criminal or socially dangerous origin of the proceeds.

16. On a less positive side, the Bulgarian legislation still needs to extend the list of predicate offences, to include all categories of piracy, market manipulation and insider trading, and to cover all the aspects of terrorism financing.

17. The evaluation team was advised that in practice, the ML investigations and prosecutions involve three key elements: the unknown source of money, the possible illegal origin, and the financial analysis describing the laundering process. Stand-alone ML cases were presented by various law enforcement officers and third party ML convictions were confirmed by the prosecutors and judges.

18. The terrorism financing offence is criminalised under paragraph 2 of the Art. 108a of the CC. The Bulgarian CC does not include a number of the conducts prescribed in the nine Conventions and Protocols listed in the Annex to the TF Convention. Hence, their support could not be qualified as terrorist financing. The CC does not define the scope of application for the TF offence, but Art.108a does not differentiate as to whether the persons committing the offence are located in Bulgaria or other countries, as to where the terrorists/terrorist organisations are located or the terrorist act will occur. However, a difficulty arises in relation to the additional mental element, *(…for the purpose of causing disturbance…)*, required by the Bulgarian CC in relation to all the acts that can be qualified as terrorism. This is not in line with Article 2 (1)(a) of the TF Convention.

19. Article 44 of the CC defines the confiscation as the compulsory appropriation without compensation in favour of the state, of property belonging to the convict or of part thereof, of specified pieces of property of the culprit, or of parts of such pieces of property. Forfeiture provisions for the ML offence are stipulated in Art. 253, Part 6 of the Special part of the CC, which reads that the object of crime or the property into which it has been transformed shall be forfeited to the benefit of the state, and where absent or alienated, its equivalent shall be adjudged. In the context of terrorist financing, Art. 108a, Part 4 prescribes that the object of terrorist financing offence shall be expropriated to the benefit of the State, and where absent or alienated, its equivalent shall be adjudged.

20. The aforementioned provisions are completed by the Law of Divestment in Favour of the State of Property Acquired from Criminal Activity (LDFSIAP), which in Art. 1 (2) states that property, acquired directly or indirectly from criminal activity, which has not been restored to the aggrieved or has not been divested in favour of the State, or confiscated under other laws, shall be subject to divestment. A newly adopted Act on Forfeiture in Favour of the State of Unlawfully Acquired Assets (AFFCUAA) (in force since 19.11.2012) replaced LDFSIAP, shortly after the on-site visit.

21. The new AFFCUAA prescribes that any assets for the acquisition of which a legitimate source has not been identified shall be treated as unlawfully acquired assets. The prosecutors met on-site explained that in practice, a *"financial profile"* of the defendant is made and any unjustified property is susceptible to forfeiture, which would include profits and any other benefits derived from the proceeds of crime. Due to the fact that the AFFCUAA was adopted after the on-site visit, the evaluation team could not assess the effective application of this provision.

22. The statistics on confiscated assets are evidence to the rising effectiveness of the confiscation regime, especially for years 2009 and 2010. However, the data shows that if compared with the number of instigated ML cases and convictions, the provisional measures are applied only in limited number of instances. If compared with the approximate economic loss of criminal offences of economic nature, the total value of confiscated assets (not only in ML cases), remains low.

23. Formal implementation of requirements under UNSCRs 1267 and 1373 appears to be largely in place in Bulgaria. However, the mechanism provided for adopting, supplementing and modifying the lists of designated persons, both under the EU and internal procedures seem complicated and may result in delays in publication of relevant lists published under UNSCRs. The legal framework should be amended to clarify to what extent the freezing mechanism will include funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. Additional efforts are necessary in order to raise awareness of all the national authorities about the freezing of terrorist fund obligations.

24. The FIU has completely changed its position in the Bulgarian AML/CFT system since the last evaluation (from the supervision of the Ministry of Finance to the State Agency for National Security). According to the Bulgarian authorities, the main reasons for this change were to increase the FIU's capability of liaising and sharing information with other law enforcement agencies, as well as better coordinating the whole AML/CFT national structure. In addition, SANS has among its functions the protection of the economic and financial security of the State, including money laundering threats and the prevention and fight against international terrorism and extremism, as well as their financing.

25. According to the LMML and LMFT the SANS may request information from state and municipal authorities, which information cannot be denied. The information requested shall be provided within the time period set by the Directorate. The evaluators were informed on-site that the FID-SANS has direct access to a large number of databases providing a wide spectrum of information for the adequate performance of the analytical function.

26. The Rules of Implementation of the Law on SANS (RILSANS) provides that the Director of FID-SANS shall coordinate the interaction of the FIU with the Prosecutors' Office and the respective security and public order agencies for matters under the LMML, thus, the Director of FID-SANS has the final decision on the recipient of the FIU's disseminations. There are no provisions involving other persons in the SANS hierarchy in the decision to disseminate FIU cases to LEA. The only exception is the Chairman of SANS who endorses the decisions to postpone operations, together with the Minister of Finance.

27. FID-SANS has three main departments and one additional administrative unit. The first department (Department for preliminary analysis), is in charge of the preliminary analysis of the suspicious transaction reports (STRs) and employs 8 officials, the majority of which hold university degrees in law or economics. The third department (Department for in-depth analysis and International Cooperation) has a staff of 10 officials with a background in economics, law and international relations (for the analysis of foreign requests, international exchange and exchange with law enforcement agencies). This department is responsible for the further analysis of cases and additional information gathering, as well as for the disclosures of the cases to law enforcement.

28. The financial analysis performed by FID-SANS is based on a two-step procedure, according to specific Methodologies. The evaluation team is of the opinion that this system is effective as it is flexible in combining a semi-automatised risk based scoring criteria with the personal judgment of the financial analyst in charge.

29. The requirements related to the declaration of cash at the frontier, the maintenance of relevant information about the sums transported and the large majority of the essential criteria under SR.IX

are in place in Bulgaria. Some deficiencies have been identified in relation to the ability of the Customs Authority to restrain assets in case of ML or TF suspicions when the respective sum was dully declared or when the amount transported is under the legal threshold. Equally, effectiveness issues have been identified in relation to the application of the international standards on freezing of terrorist funds.

4. Preventive Measures – Financial Institutions

30. Since the 3rd round mutual evaluation Bulgaria 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 is 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 Bulgarian legislation as having AML/CFT obligations.

31. The LMML establishes the obligation to apply customer due diligence measures when establishing business relations and when carrying out occasional transactions above BGN 30,000 (€15,000) or in case of any cash transaction exceeding BGN 10,000 (€5,000) or its equivalent in foreign currency. All obliged persons are always required to identify their clients where a suspicion of money laundering arises.

32. The definition of the beneficial owner is provided by the RILMML but does not specifically refer to the natural person(s) who ultimately owns or controls a natural person –as required in the FATF Glossary- although it refers to the person on whose behalf a transaction is being conducted. This was also revealed during the on-site visit as all representatives stated that in their understanding the concept of beneficial owner can be applied only to legal entities.

33. The ongoing monitoring of all established commercial or professional relations as well as the verification of all transactions, including clarification of the funds' origin is provided by the LMML. The financial institutions shall maintain up-to-date information on their clients and on the operations and transactions carried out by them, while periodically checking and updating the existing databases. In the case of higher-risk customers, databases must be checked and updated at shorter intervals.

34. Turning to effectiveness, the on-site interviews demonstrated that all financial institutions appeared to be generally conscious of the identification obligations. They were well aware of their obligation to retain the relevant documentation and the importance of their role in the preventive ML/FT regime. In some cases (related to foreign customers), difficulties in accessing sources of verification of data were detected.

35. The FATF standard related to PEPs is largely in place in Bulgaria. The financial institutions are obliged to elaborate effective internal systems to determine if a client (potential customer, existing customer or the beneficial owner of a customer-legal person) is a PEP or a related person to a PEP. Such systems can be based on different sources of information: information gathered through the application of enhanced due diligence measures; written declaration required from the customer with the purpose of determining whether the person falls within the categories of PEPs and information received through the use of internal and external databases. The Bulgarian legislation obliges the financial institutions to obtain the approval of an official at managerial position when starting or continuing a relationship with a PEP, but does not specify *senior managerial position*, as required in the FATF Standard.

36. The conditions for reliance on a third party to conduct *"identification"* of a customer are set out in the LMML. The Law allows the BNB, credit institutions and certain other financial institutions to rely on the *"previous identification of a client"* in subject to certain defined conditions. Although the provisions refer to *"identification"* they do require that all the information stipulated under the LMML must be available. This requires both identification and verification of the client and the identification and verification of the client's ultimate beneficial owner. It would therefore appear that the full range of data for identification and verification is in place.

37. The LMML regulates the FID-SANS' access to information subject to banking and secrecy laws. Also, it clearly provides that reporting entities, even advocates, may not refuse or restrict information requested by FID-SANS due to considerations of official, banking or commercial secrecy. The evaluation team was not informed about any practical impediments to obtaining information from financial institutions or any other reporting entity. Similarly, no issues were detected for the exchange of information between competent authorities.

38. On record keeping requirements, the financial institutions are only specifically obliged to keep the documents related to the identification data and business correspondence. The components of transaction records that are specified through Regulation of the BNB only covers bank transfers and money remittance payments and does not apply to other financial institutions.

39. Through amendments brought to the LMML a requirement was introduced for the obliged persons to place under special monitoring the commercial or professional relations, and transactions involving persons from countries, which do not apply or do not fully apply the international standards against money laundering. In addition, when the transaction has no economic explanation or readily visible logical grounds, the obliged persons are also required to collect additional information, where possible, on any circumstances related to the transaction, as well as its purpose. The on-site interviews indicated that the financial institutions are aware of the requirements and are regularly advised of concerns about the weakness in the AML/CFT systems of other countries and have procedures in place to apply the enhanced CDD measures. However, not all of them seemed fully aware of the counter-measures they need to apply in case of countries that do not apply or insufficiently apply the FATF Recommendations.

40. At the time of the 3rd round report, the reporting obligations continued to be provided by the same Art. 11 of the LMML. This article requires reporting entities, where money laundering has been suspected, to notify the FID-SANS immediately prior to the completion of the transaction or deal, while delaying its execution within the allowable time as per the regulations dealing with the respective type of activity. Thus the requirement is limited to suspicion of money laundering, not funds that are proceeds from criminal activity, as required by criterion 13.1 of the FATF Methodology.

41. In cases when the delay of a transaction or deal is objectively impossible, the reporting entity shall notify the FID-SANS immediately after its execution. In practice, the majority of reports come after the execution of the transaction. This is logical bearing in mind that compliance officers should monitor and analyse their clients' business more broadly than on a single transaction or deal, in order to identify STRs as a consequence. The Bulgarian FIU, which holds a supervisory function as well, uses the fact that STRs are reported a long time after the execution of transaction, as a trigger element for an on-site inspection.

42. The obligation to report suspicious transactions extends to transactions that are linked to terrorism financing. According to the LMFT, should suspicion arise about the financing of terrorism, the reporting entities listed in LMML, shall: identify the relevant customers and verify their evidence of identity used in the suspicious operation or transaction; gather information on the transaction or operation and immediately notify the FID-SANS before the operation or transaction is performed, while delaying its implementation within the admissible period laid down by the legislative regulations on the relevant type of activity. The reporting entities are obliged to notify, SANS immediately after execution, when there is some objective impossibility of delaying the operation or transaction.

43. During the on-site interviews the evaluation team noted that the knowledge of the reporting obligation among banks was satisfactory, while other reporting entities showed varying degrees of knowledge, given that most of the reports seem to be submitted by a limited number of entities which are more aware of their AML/CFT obligations.

44. The supervisory regime is organised in accordance with the requirements of the LMML, LMFT, Law on Credit Institutions, the Law on Payment Services and Payment Systems, the Insurance

Code as well as the relevant bylaws. The FID-SANS has primary responsibility for the supervision of AML/CFT measures in all obliged persons. The LMML does require other supervisory authorities to cooperate with FID-SANS and, where necessary, to exchange classified information for the purpose of their legally established functions.

45. The LMML provides that the supervisory bodies within FID-SANS may inspect on-site the obligated persons on the application of measures for the prevention of the use of the financial system for the purpose of money laundering. The obligated persons, the state authorities, the local government bodies and their employees shall be obliged to cooperate with FID-SANS in performing their supervisory functions. When performing on-site inspections, bodies of supervision shall have the right to free access in the office premises of the obligated persons, as well as the right to require documents and gather evidence.

46. The regulation and supervision over the reporting entities is also ensured by the authorities for supervision of the obligated persons, which, when carrying out examinations, shall include a check for the compliance with the AML/CFT requirements. Where a violation is established, the supervision authorities shall inform the FID-SANS, by sending it an abstract from the relevant part of the memorandum of findings. Similarly, the powers to supervise for CFT purposes are provided by the LMTF.

47. The practical collaboration and cooperation between the FID-SANS and the general supervisors is regulated through *Instructions for cooperation and information exchange* which are agreements between institutions. The evaluation team welcomes the creation of the Special Supervision Directorate (SSD) within the BNB. During the on-site interviews, the National Revenue Agency (NRA), in its capacity of supervisory authority for exchange offices, demonstrated a marginal awareness and involvement for AML/CFT issues. The FSC has integrated its AML/CFT responsibilities into its overall supervisory framework. As such, there is no dedicated resource or pool of expertise available.

48. The range of sanctions for infringements of provisions of the LMML that are available to FID-SANS include: fines applicable for Administrative breaches for non-compliance up to a maximum fine of 50,000 BGN (€25,000); the power to compel the undertaking of concrete steps by the obligated persons in case of infringements; the power to issue written warnings and recommendations; the power (part of off-site inspections) to refuse endorsement of the internal rules of the reporting entities. Although the maximum level of fine does not appear sufficiently dissuasive, the Bulgarian authorities informed the evaluators that in practice every violation of the LMML or LMFT carries a separate sanction and that the total level of fines might be much higher in case of multiple breaches, which would ensure both effectiveness and proportionality.

49. The licensing and registration process employed by the BNB and FSC are based on EU Directives and on best practices that takes into consideration the FATF Recommendations. Fitness and properness of both senior staff and capital providers is considered. There have been a number of instances whereby licences have been refused due to concerns over fitness and propriety and/or lack of transparency of capital.

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

50. In Bulgaria, all the DNFBP specified by the FATF Recommendations are covered by the AML/CFT Law and all the obligations applicable to the FI are relevant for the DNFBP too.

51. All representatives met from the DNFBP sector showed a good awareness of the customer due diligence obligations, especially those concerning identification of customer, keeping of documents for a period of five years and high risk operations. Concerns remain about effectiveness in some instances, such as the verification of the incorporation documents. Although the requirement of enhanced due diligence measures was understood, the effective implementation of this obligation could not be demonstrated.

52. The number of STRs received from DNFBP is low and therefore more emphasis is needed to increase their awareness of AML/CFT matters.

53. Casinos are subject to the AML/CFT measures pursuant to the LMML. At the time of the on-site visit, 26 casinos were operating in Bulgaria. It should be noted that the opening of accounts is not permitted in Bulgarian casinos and the financial activities (exchange or remittance) would require the licensing (or registration depending on the nature of activities) in accordance with the Law on Credit Institutions or the Law on Payment Services and Payment Systems.

54. The interviews with the private sector lead to the conclusion that more training and awareness regarding PEPs is required, especially for casinos and real estate agents. Some sectors had no cognisance about the enhanced due diligence obligations, while in other cases, approval from the management was not required.

55. Casinos are licensed and supervised under the Gambling Law (GL). In terms of market entry, the GL has several criteria to prevent the infiltration of criminals and their associates in shareholding or management of a casino, which are similar to those provided for the financial institutions. According to the Law, a license for organising a gambling game, shall not be issued if the owner, partner, shareholder with qualified interest, manager, member of a management or controlling body of a company or non-profit legal entity, who has been found guilty in intentional crime of general nature, has been declared bankrupt and any creditor has remained unsatisfied etc..

56. The DNFBP are subject to FID-SANS' supervision and inspection, which has a wide range of powers under the LMML and LMFT. The staff of the FID-SANS is well-trained and dedicated.

57. In order to determine the entities to be inspected, risk analyses are carried out by the FID-SANS, which are based on checks performed on the whole sector (e.g. changes in the number of the entities and the volumes of transactions). The adequacy of the internal AML/CFT rules that have been filed with the FIU, according to the LMML, is one aspect that is also taken into consideration when determining the entities to be visited on-site. By adopting a risk-based approach, the authorities focus on acknowledged risks and an effective allocation of resources.

58. However, due to the extension of the entities supervised by the FID-SANS, a full and sole outreach by it is virtually impossible, and the FIU may not have sufficient resources to fully supervise all subject entities. Therefore, the active support of the general supervisors appears to be necessary in the process.

6. Legal Persons and Arrangements & Non-Profit Organisations

59. NPOs in Bulgaria can be established as associations or foundations. The Law on NPOs governs the establishment, registration, structure, activities and dissolution of non-profit legal persons. The Law defines that the legal personality of the NPO shall originate as from its registration in the register of non-profit legal persons within the jurisdiction of the district court at the seat of the legal person. All NPOs are registered in the local register. In addition, the NPOs for public benefit are registered in a consolidated, national database.

60. In 2012 a Working group was established at the Ministry of Justice with the task of considering the necessity for amendment of the Law on NPOs, as well as elaborating concrete proposals for draft provisions in order to address the relevant recommendations of the 3rd round MONEYVAL report. The risk analysis concerning the NPOs was conducted by FID-SANS and the identification of threats for TF abuse is a part of that assessment.

61. A number of indicators have been primarily considered as risky according to the Methodological Guidelines for Conducting Risk Analysis of Non-profit legal entities in Bulgaria (in connection with the geopolitical indicators and bearing in mind the international practice in the field). The so-called radical religious sects and movements are perceived as potentially risky when coupled with socio-economic factors.

62. NPOs conducting activities to the private benefit are obliged to draw up annual activity reports and annual financial reports under the Law on Statistics and the Law on Accountancy. By 31 March each year both NPOs for public and for private benefit, regardless of whether they carry out economic activity or not, are obliged to present to the National Statistical Institute an annual activity report containing statistical summaries and accounting documents. Information on persons who own, control or direct the activities, is not fully maintained and made publicly available for any of the types of the NPOs.

63. The FIU supervises off-site and on-site the NPOs' compliance in AML/CFT area, even if the supervisory powers are provided only in the LMML and not in LMFT. According to data provided by the authorities, there were 1,023 off-site evaluations of NPOs between 2008 and 2012 and 8 on-site visits in the same interval. Fines and written warnings were the main sanctions imposed upon the NPOs following the supervisory activity.

7. National and International Co-operation

64. Cooperation and coordination between the FIU, law enforcement authorities and supervision authorities are carried out pursuant to the LMML and LMFT as well as through the various permanent and ad hoc groups pursuant to the instructions for cooperation between the institutions involved in the prevention and fight against money laundering and terrorist financing.

65. Instructions for cooperation have been signed by almost all stakeholders with their respective counterparts, thus creating a very dense network of mutual relationships which are strictly legally defined. According to the documents provided to the evaluation team SANS, organisation part of which is the FIU has issued seven signed instructions and the Ministry of Interior has issued 11 eleven signed instructions. Following the interviews held on-site, the evaluators considered that these rules or instructions were widely used by competent authorities. Every interlocutor met on-site had a copy of Instructions signed by his/her institution to refer to when asked about national cooperation.

66. The newly established specialised prosecutor's office for organised crime has established cooperation with FID-SANS. It has started with three cases in 2012 that helped to discover predicate offences of organised criminals which were the basis for money laundering offences.

67. The LMML empowers FID-SANS to exchange information internationally with its counterparts, as well as with other organisations. The RILSANS further stipulates the competence of FID-SANS to exchange information on cases of suspicion of money laundering and financing of terrorism with the financial intelligence units and with other state bodies with relevant competence, under the terms and order established under the LMML. According to the authorities, the Bulgarian FIU is able to provide the requested assistance in a rapid, constructive and effective manner. This statement has been endorsed by the feedback received from FIUs from other countries.

68. Similar powers of information exchange are valid for the BNB, FSC and the law enforcement authorities. There are no legal provisions in Bulgaria that would prevent or unduly restrict exchange of information by the Supervisory authorities. However, making inquiries on behalf of foreign counterparts is not always specifically provided. The Supervisory authorities shall use the received information only for the purposes for which it has been provided and shall not disclose or provide it to third parties, unless the obligation is provided by the law.

69. There are no provisions enabling FSC and BNB to perform enquiries on behalf of foreign counterparts. In practice, such inquiries are done through the FIU, but there is no provision in law or regulations in this regard. One request was made by a foreign authority for the BNB via FID-SANS. The practical application of such an option could not be demonstrated in the case of the FSC. The Bulgarian authorities are encouraged to take measures to permit BNB and FSC to make direct inquiries on behalf of foreign counterparts, or at a minimum, to provide for such enquiries to be performed through the FIU.

8. Resources and statistics

70. The total number of the staff of FID-SANS is 38 officials as per the internal structure but currently only 29 officials are employed. In 2011 there were 3 new officials appointed and in 2012 there were another 3 newly appointed officials. This shows a steady increase in the workforce of the FID-SANS during past couple of years, which is appreciated by the evaluators. The FIU employees appeared to the evaluation team professional and motivated.

71. Although the premises of the FIU are separated and protected within the whole structure of SANS, the evaluation team is of the opinion that the space allocated to FID-SANS is insufficient, even for the existing number of employees. All employees of the FIU, including heads of departments work in overcrowded offices.

72. The BNB has established the SSD for the supervision of banks for compliance with the LMML and the LMFT. This directorate is separate from the directorate performing on-site prudential supervision, the Directorate performing off-site prudential supervision and the Directorate involved in drafting the methodology for prudential supervision. One additional inspector was recruited to the Special Supervision Directorate in 2011. The SSD staff involved in the AML/CFT supervision has relevant expertise to supervise the banks and relevant financial institutions for compliance with the AML/CFT regulations.

73. The FSC has integrated its AML/CFT responsibilities into its overall supervisory framework. As such, there is no dedicated resource or pool of expertise available. During the on-site interviews, the NRA, in its capacity of supervisory authority for exchange offices, demonstrated a marginal awareness and involvement for AML/CFT issues.

74. FID-SANS 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.

III. MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General Information on Bulgaria

1. This section provides a factual update of the information previously detailed in the third round mutual evaluation report on Bulgaria[2] covering: the general information on the country, its membership of international organisations and key bilateral relations, economy, system of government, legal system and hierarchy of norms, transparency, good governance, ethics and measures against corruption.

2. Bulgaria is a South-Eastern European Country bordering, proceeding clockwise starting from the northern confines: Romania; the Black Sea; Turkey; Greece; Serbia and "the former Yugoslav Republic of Macedonia". With a territorial expanse of 110,993.6km^2 it is the fourteenth largest European Country and has a population, according to the 2011 demographic census, of 7,364,570. The capital, Sofia, has 1,3 million inhabitants. The population is constantly decreasing, due mainly to the emigration mostly of young adults, caused by the economic crisis, and to one of the World's lowest birth rates. The official language is Bulgarian. The national currency is BGN (Bulgarian Leva), which has 100 stotinki. The official exchange rate of the Bulgarian Lev to the Euro is fixed in the Law on BNB to 1.95583 BGN.

3. According to the 2011 census, Bulgaria's population consists mainly of ethnic Bulgarians (84.8%), with two sizable minorities, Turks (8.8%) and Roma (4.9%). Of the remaining 2.0%, 0.9% comprises some 40 smaller minorities, most prominently in numbers are the Russians, Armenians, Vlachs, Jews, Crimean Tatars and Karakachans. 0.8% of the population did not declare their ethnicity in the latest census in 2001.

4. Bulgaria signed the European Union Treaty of Accession on 25th of April 2005 and became a full member of the European Union on the 1st of January 2007. As a Consultative Party to the Antarctic Treaty, Bulgaria takes part in the governing of the territories situated south of 60° south latitude. Bulgaria is not part of the Euro zone nor of the Schengen Area.

Economy

5. The international credit ratings are Baa2 (Moody's), BBB (S&P) and BBB- (Fitch). The main economic sectors are: Services (54.5% of GDP in 2011), industry (26.8% of GDP in 2011), mining, manufacturing, electricity, gas and water supply (21.2% of GDP in 2011), wholesale and retail trade, transportation, accommodation and food services (17.0% of GDP in 2011). In 2012, the GDP per capita was EUR 5,400 and the nominal GDP, EUR 39.7 billion.

Table 1: Macroeconomic indicators

		2008	2009	2010	2011	2012
GDP						
Current prices	**BGN million**	**69,295**	**68,322**	**70,511**	**75,265**	**78,553**
Investment	BGN million	26,015	20,063	16,138	17,364	18,593
Consumption	BGN million	57,496	54,293	55,709	57,392	59,142
Net exports	BGN million	-14,216	-6,035	-1,336	509	818
Current prices, shares						

[2] The reader is referred to the information set out under this section in the Third round detailed assessment report on Bulgaria, which was based on the legislation and other relevant materials supplied by Bulgaria and information gathered by the evaluation team during its on-site visit to Bulgaria from 22-28 April 2007. The report was adopted by MONEYVAL at its 26th Plenary meeting (Strasbourg, 31 March-4 April 2008).

Investment	percent	37.5%	29.4%	22.9%	23.1%	23.7%
Consumption	percent	83.0%	79.5%	79.0%	76.3%	75.3%
Net exports	percent	-20.5%	-8.8%	-1.9%	0.7%	1.0%
Real growth rates						
Investment	percent	16.3%	-24.9%	-19.2%	-1.6%	3.5%
Consumption	percent	2.6%	-7.3%	0.5%	-0.3%	0.7%
Exports GNFS	percent	3.0%	-11.2%	14.7%	12.8%	3.7%
Imports GNFS	percent	4.2%	-21.0%	2.4%	8.5%	3.6%
HCPI						
e.o.p.	percent	7.2%	1.6%	4.4%	2.0%	2.6%
average	percent	12.0%	2.5%	3.0%	3.4%	2.1%
GDP deflator	percent	8.4%	4.3%	2.8%	5.0%	2.9%
GDP growth	percent	6.2%	-5.5%	0.4%	1.7%	1.4%
Labour market						
Unemployment rate	percent	5.6	6.8	10.2	11.2	11.3
Employment growth (LFS)	percent	3.3	-3.2	-6.2	-3.4	-0.2
Government budget						
Cash balance	% GDP	2.9%	-0.9%	-4.0%	-2.0%	-1.4%
Balance on accrual base	% GDP	1.7%	-4.3%	-3.1%	-2.1%	1.6%
Exchange rate (BGN/USD)						
e.o.p.		1.44	1.34	1.48	1.48	1.53
average		1.33	1.40	1.47	1.41	1.48
BALANCE OF PAYMENTS						
Current and Capital Account	*EUR million*	***-7,905.1***	***-2,639.1***	***-84.9***	***855.3***	***1,062.4***
(% of GDP)		***-22.3%***	***-7.6%***	***-0.2%***	***2.2%***	***2.6%***
Current Account	*EUR million*	***-8,182.5***	***-3,116.2***	***-375.8***	***361.4***	***583.8***
(% of GDP)		***-23.1%***	***-8.9%***	***-1.0%***	***0.9%***	***1.5%***
Goods: credit	EUR million	15,204	11,699.2	15,561.2	20,226.7	22,214.6
Goods: debit	EUR million	-23,801.7	-15,873.1	-18,324.8	-22,201.3	-24,189.7
Balance on Goods	*EUR million*	*-8,597.7*	*-4,173.9*	*-2,763.7*	*-1,974.6*	*-1,975.1*
Services: credit	EUR million	5,355.4	4,916.3	5,163.7	5,408.2	5,591.0
Transportation	EUR million	1,210.6	1,007.6	986.5	1,094.5	1,212.9
Travel	EUR million	2,873.8	2,681.2	2,747.1	2,852.4	2,938.0
Other services	EUR million	1,338.2	1,227.5	1,430.1	1,461.3	1,404.5
Services: debit	EUR million	-4,045.7	-3,616.5	-3,147.0	-3,121.0	-3,148.0
Transportation	EUR million	-987.2	-801.5	-699.0	-910.2	-977.6
Travel	EUR million	-1,566.6	-1,258.7	-931.2	-958.7	-987.5
Other services	EUR million	-1,524.2	-1,556.2	-1,516.8	-1,252.1	-1,196.9
Balance on Services	*EUR million*	*1,309.6*	*1,299.9*	*2,016.7*	*2,287.2*	*2,443.0*

Income: credit	EUR million	985.7	804.3	615.4	644.1	584.9
Income: debit	EUR million	-2,741.3	-2,002.5	-1,749.8	-2,288.1	-2,298.8
Balance on Income	*EUR million*	*-1,755.7*	*-1,198.3*	*-1,134.3*	*-1,644.0*	*-1,713.9*
Current transfers, net	*EUR million*	*861.3*	*956.1*	*1548.1*	*1,706.5*	*1,829.8*
Financial and capital account	EUR million	**11,740.8**	**1,640.5**	**-407.6**	**-700.3**	**1,665.3**
Direct investment in reporting economy	EUR million	6,727.8	2,436.9	1,208.5	1,341.2	1,147.6
OVERALL BALANCE	EUR million	**674.2**	**-649.8**	**-383.9**	**158.7**	**2,249.1**
Reserves and Related Items	EUR million	**-674.2**	**649.8**	**383.9**	**-158.7**	**-2,249.1**
BNB Forex Reserves	EUR million	-674.2	649.8	383.9	-158.7	-2,409.1
Use of Fund credit, net	EUR million	0,0	0,0	0,0	0,0	0,0
Exceptional financing, net	EUR million	0,0	0,0	0,0	0,0	160,0

6. In 2009 and 2010 the Bulgarian economy faced many challenges due to the global financial and economic crisis. After a decline in real GDP of 5.5% in 2009, economic recovery began in mid-2010 and continued in 2011. The output growth reached 0.4% and 1.7% in the two years respectively. In 2012, the economic growth slowed down and reached 0.8%. While the annual growth in 2010-2011 was export-driven, in 2012 the main contributor was the domestic demand.

7. Due to lower demand from the main trading partners of Bulgaria, the exports declined by 0.4% in 2012. Imports of goods were 4.8 % higher in real terms, while services imports continued to contract at a decelerating pace of 3.5% year on year.

8. Bulgaria has a key strategic location for the importation of fossil fuels to Europe, being the first European station of the South Stream pipeline. 34% of its energy comes from nuclear implant. There is a rapid expansion of the use of renewable energy sources, making the country one of the fastest-growing wind energy producers in the world.

9. Domestic demand in the country is still weak. Low consumer confidence led to an increase in savings, which, combined with the decline in employment, resulted in a decrease in household spending in the last three years. The uncertain economic environment contributed to a contraction of investment activity in the country in 2011, and it remains suppressed. According to the Bulgarian authorities, domestic demand in the country made some recovery in 2012. Higher consumer confidence resulted in an increase in household spending in the first half of the year but lower wage growth suppressed the consumption in the second half. As a result, the consumption growth reached 1.8% in 2012. The uncertain economic environment still suppresses investment activity and the GFCF (Gross fixed capital formation) recorded a slight growth of 0.8%.

10. As Bulgaria is an open economy, inflation depends largely on the interplay of external factors: crude oil and other raw material price dynamics and import price inflation. The fall in international prices in the second half of 2008, due to the global financial and economic crisis, affected domestic prices as well. Annual inflation decelerated to 7.2% at the end of the year, followed by a clear trend of deflation during 2009. Easing domestic demand pressures, due to weakened economic activity in the aftermath of the economic crisis, resulted in lower inflation, as measured by the HICP (Harmonised Indices of Consumer Prices), of 3% in 2010.

11. The Bulgarian labour market has followed a varying pattern of development over the last five years. Prior to the crisis, average unemployment growth reached 3% per year, along with historically low unemployment of 5% in the second half of 2008 and increased labour force participation. Following a certain delayed reaction to the crisis, partly sustained by the short time

working schemes introduced, employment started decreasing mid-2009, maintaining the negative trend through the last three years.

12. Bulgaria's financial sector remained stable throughout the whole crisis period and the currency board was among the main factors for preserving the financial stability in the country. International reserves grew by 2.9% year-a-year at the end of 2011 and stood at EUR 13.3 bn.

13. The global financial crisis and the following sovereign debt crisis did not affect directly the Bulgarian banking system due to no exposure to toxic financial instruments and minimal exposure to sovereign debt from the Euro zone countries. Local banks suffered second round effects from the declining economic growth, resulting in assets quality deterioration.

System of Government

14. No major changes are reported, thus the reader is referred to the section of the third round mutual evaluation report (paragraph 12-14).

Legal system and hierarchy of laws

15. As described in the 3rd round MER, the Constitution of the Republic of Bulgaria states the general structure of the judicial system, its management by the Supreme Judicial Council and the rules for election of the members of the Council.

16. The Judicial power is administered by district courts, regional courts, military courts, appeal courts, Supreme Administrative Court and Supreme Court of Cassation. Civil, penal and administrative cases are within the jurisdiction of the courts.

17. Since EU accession in 2007, Bulgaria has put in place a series of important legal and Constitutional reforms. Though incomplete, these have set up important and sometimes innovative structures, in particular to encourage specialisation in tackling the problems faced.

18. Key institutions like the independent Judicial Inspectorate was created and a new Supreme Judicial Council (SJC) took office, with wide-ranging responsibilities for the management of the judicial system. These responsibilities included human resource management of the judiciary, including appointments, promotions, appraisals and staff allocation. The Council was also given disciplinary responsibility and therefore the task to safeguard the accountability and integrity of the judiciary and to ensure that judicial practice meets high professional standards. With these attributions, the Council became the main actor in implementing judicial reform.

19. A new Ordinance for the assessment of the magistrates was adopted in 2009 to provide additional and detailed criteria for assessing the performance of the magistrates' functions.

20. In 2009 the Ministry of Justice, together with the non-profit organisations, elaborated a complete Strategy for the Continuation of the Justice Reform under the Bulgarian membership in the European Union. As a result, amendments to the Criminal Code were introduced (in force since May 2010) aimed at diminishing the formal requirements and speeding up the penal proceedings. These include: appointing a "backup" lawyer in cases where the defendant aims to delay the proceedings, increased sanctions for certain serious offences, guaranteed protection of the investigators and the police officers while carrying out their duties.

21. Bulgaria has achieved results in implementing this new legal and institutional framework. For the first time, independent controls of courts and prosecutors' offices have been carried out, recommendations regarding court management and judicial practice have been issued and a more robust approach has been taken to disciplinary activity.

22. However, these efforts have not yet led to significant improvements in judicial accountability and efficiency. Legal proceedings are often of an excessive duration. Disciplinary practice shows inconsistencies, and in many important cases has either not been able to conclude, or has not reached dissuasive results. Judicial appraisals, promotions and appointments are not yet transparent and do not follow objective and merit-based criteria. There is as yet no comprehensive

human resources policy which can balance staff needs and workload. Measures to improve judicial practice often appear superficial and have not yet had a concrete effect on results in important cases. Questions remain about judicial independence[3].

Transparency, good governance, ethics and measures against corruption

23. In October 2012, the Council of Europe's Group of States against Corruption (GRECO) adopted the Third Round Evaluation Report on Bulgaria, in which it expresses the urgent need to increase consistency and effective implementation of the rules on party financing and identifies some desirable legal improvements in the criminalisation of corruption[4].

24. The report focuses on two distinct themes: criminalisation of corruption and transparency of party funding. Regarding the criminalisation of corruption, Bulgaria has ratified the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). In so far as incriminations are concerned, the GRECO Report notes that Bulgaria has invested considerable resources into the training and awareness raising of a large number of judges, prosecutors and law enforcement officers on issues pertaining to active bribery in the public sector and trading in influence. However, no tangible steps have been made to ensure that the Penal Code covers in explicit and unambiguous terms instances where the advantage is intended for the third party.

25. As regards the transparency of political financing, the new Electoral Code (EC) was adopted in 2011, replacing several previously existing legal acts. To provide for conformity and coherence with the Code, the 2005 Political Party Act (PPA) was amended the same year. The two legal acts have created a clearer and more robust legal framework as far as transparency and supervision of political financing is concerned. As concerns the weaknesses of the two legal acts, the GRECO report emphasise that their provisions on sanctions have remained virtually unchanged and are still lacking the requisite effective, proportionate and dissuasive effect.

26. Bulgaria reports a general increase in the number of final convictions in corruption and EU fraud cases in the past years. At the same time, the number of final convictions in high-level corruption cases remains low. Since July 2010, two suspended sentences were pronounced in cases of high-level fraud and corruption. Two cases against former ministers led to acquittals. Two other cases involving a former minister and a high public official experienced delays in court proceedings. A number of cases involving EU funds were terminated by the prosecution despite indications for fraud provided by OLAF and judicial authorities of another Member State[5].

27. The EU Commission's analysis of high-level corruption cases revealed persisting shortcomings in judicial practice. The Commission identified lack of a pro-active investigation methodology in complex cases, shortcomings as regards defining the scope of investigations and quality of financial investigations. There is a limited availability of magistrates and insufficient quality of independent expertise. Related cases are not joined and there is no systematic coordination between different prosecution offices in charge of such cases. The formulation of certain indictments appears at times too restrictive and unfocused and not adequately reflecting the scope of investigation. The interpretation of some provisions by courts appears overcautious. While Bulgarian practitioners consider that the effectiveness of judicial action against corruption is hindered by the outdated provisions of the *Penal Code*, no steps have been taken to identify provisions, which could require amendments[6].

[3] Report from the Commission to the European Parliament and the Council the On Progress in Bulgaria under the Cooperation and Verification Mechanism, http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf
[4] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)14_Bulgaria_EN.pdf
[5] Supporting document accompanying the Report From The EU Commission To The European Parliament and the Council On Progress in Bulgaria under the Co-operation and Verification Mechanism, http://ec.europa.eu/cvm/docs/sec_2011_967_en.pdf
[6] Idem

28. According to 2012 Transparency International corruption perception index, Bulgaria was ranked 75th out of 174 countries and territories around the world. This contrasts with the ranking of the time of the previous MER, when it was 64th out of 179 countries.

1.2 General Situation of Money Laundering and Financing of Terrorism

29. In November 2009 an Integrated Governmental Strategy to Prevent and Counter Corruption and Organised Crime was adopted. The document states that all forms of corruption, particularly the abuse of power for personal or corporate gain, harm the normal operation of the State, damage the efficiency of the redistribution functions of the State, worsen the quality of public services, violate the principles of social justice and curtail the rights of citizens.

30. It also states that activities related to economic crimes, production of and trafficking in narcotic drugs, trafficking in and exploitation of human beings, counterfeiting and distribution of counterfeit banknotes and documents, cybercrimes, money laundering and terrorism are among the major threats to the security of citizens and to the democratic foundation of the society.

31. The Bulgarian Government admits in the Strategy that there are weaknesses in the law-enforcement system and gaps in the legislation, which has not been promptly harmonised with the new social relations and has not been consistently and efficiently enforced, allowing certain individuals and groups to take advantage and illicitly accumulate wealth[7].

32. In 2010 a risk analysis was made by the Bulgarian FIU on the major sectors of the economy. The main vulnerabilities to money laundering were examined in the financial sector (including banks, stock market, non-banking financial institutions and money remitters), public sector, construction sector, gambling sector, trade sector (including real estate trade), tourism and sport, as well as incoming and outgoing money flows in the economy. The findings of the assessments were used to adjust and improve the internal risk monitoring system of the FIU and to serve as bases for the provision of training and the conduct of the on-site inspections.

33. In 2011, information on some sector vulnerabilities was provided to a national think-tank and used for an independent overview of the system that also contributed to the development of the strategy for combating money laundering.

Table 2: Criminal offences against property

	2008	2009	2010	2011	2012
Theft art.194 - 197; Art.194-196a, Art.198-199 and Art.206 of the Criminal Code	57,913	63,490	74,484	67,595	29,833
Burglary art. 195 - 197	19,980	23,682	24,005	20,272	8,706
Fraud art.209 – 211, 213	1,943	2,618	2,090	1,470	728
Robbery art. 198 - 200	2,868	3,596	3,737	3,110	1,361
Theft of vehicles art. 346-346b	4,667	4,523	3,995	3,272	1,436
Concealment	6	8	10	8	4

Table 3: Criminal offences of economic nature

	2008	2009	2010	2011	2012
Business fraud art. 209 - 213	2,135	1,944	1,772	1,029	450
Fraud					
Issuing of an uncovered cheque, misuse of a credit card					
Tax evasion art.255-260	509	438	414	325	113
Forgery art. 243 – 249, 250 Para.1-252, Crimes against the	699	736	1,988	1, 453	878

[7]Council of European Union – Report on Bulgaria, June 2010
http://register.consilium.europa.eu/pdf/en/10/st08/st08586-re02.en10.pdf

Financial System,					
Abuse of authority or rights Art. 172a - 174 of CC (against intellectual property)	314	282	349	310	91
Embezzlement art. 201-206	818	1033	1,010	670	353
Usury art. 252 CC	0	3	4	7	4
Abuse of Insider Information					
Unauthorised Use of Another's Mark or Model art. 172b CC	164	108	139	187	117
Other criminal offences of economic nature art. 219-251 CC	3,763	4,291	7,371	6,226	3,964

Table 4: Other criminal offences

	2008	2009	2010	2011	2012
Production and trafficking with drugs art.242, para.2-4; 253, para.4; 270, par.2; 282, par.5; 354a-354c	2,857	3,662	3,765	2,859	1,250
Illegal migration					
Production and trafficking with arms	0	0	0	0	0
Falsification of money art. 243-249 CC	654	684	1,827	1,339	1,022
Corruption and Bribery art. 201-205, 219 - 224,225b, 225b, 282-283a, 301-307a	1,009	1,363	1,132	661	294
Extortion art. 213a, 214, 214a	164	198	208	126	39
Smuggling art.242 (without par. 2,3)	128	22	60	52	5
Murder, Grievous bodily harm Art.115-116,118, Art. 120-121, Art.128,131-131a	246	199	200	167	76
Prohibited Crossing of State Border or Territory, Trafficking in Human Beings art. 159a – 159d	56	90	76	46	14
Violation of Material Copyright					
Kidnapping, False Imprisonment art.142, 142a	127	142	118	77	39
Burdening and Destruction of Environment art.239, 278c, 349, 352, 352a, 353, 353a-g, 356a, b	13	10	22	6	2
TOTAL					
OTHER CRIMINAL OFFENCES (NOT INCLUDED ABOVE) against life and limb, human rights, honour, sexual integrity, public health, etc.					
NUMBER OF ALL CRIMINAL OFFENCES	**126,673**	**138,105**	**147,025**	**128,602**	**57,438**
Approximate economic loss or damage of all criminal offences of economic nature[8]	930.2 million BGN	580.2 million BGN	504.1 million BGN	152.4 million BGN	136.4 million BGN

34. The organised criminal groups operating in Bulgaria are genuinely multinational and pose a serious threat to the financial stability of the country and of the global economy. It appears that the Bulgarian financial system is preferred mostly for placement and layering of criminal assets acquired abroad. At later stages, the integration of the criminal money is made abroad. The most significant part of the money passes through the Bulgarian financial system in a very short period of time in order to leave only a minor trace in the system, so the risk for money launderers should be as low as possible. Frequent destinations for incoming and out-going funds are: Russian Federation, USA, UK, Cyprus, Baltic republics, China, Romania, "the former Yugoslav Republic of Macedonia", Serbia, Turkey, Greece, Germany, France, Spain, Italy, British Virgin Islands, Panama, Seychelles.

[8] Information provided by the Ministry of Interior

35. Also, significant amounts of cash have been detected transiting the country, presumably originating from tax fraud committed in other EU counties (carrousel frauds, missing trader intercommunity fraud).

36. An analysis of money laundering vulnerabilities at the regional level based on data gathered by the FIU, has complemented the understanding of the AML/CTF risks in Bulgaria. This has contributed to a clearer picture of some major trends and predicate crime related to certain regions such as tax crimes and VAT fraud which are specific to the northern regions.

37. The most common identified predicate offences are trafficking and distribution of drugs, human trafficking for sexual exploitation, smuggling, tax and customs offences and usury. In most of the cases, the criminal assets generated are laundered through legal activities that also generate large turnovers.

38. According to the Bulgarian authorities, another trend is the use of financial instruments (mainly shares) and internet banking systems for money laundering purposes. The financial instruments have a number of advantages in their transferring, trade and administration while Internet banking gives the opportunity of ordering transactions in real time from different geographical points which limits the authority's capacity to react.

39. The modern technologies and the internet are not used only to launder illegal assets but also to generate them. In 2011 and 2012 cyber-crimes schemes (for example *"phishing"* frauds) were identified, mainly against accounts of clients or against the IT systems of foreign banks. The criminal systems are complex and involve local natural persons *("money mules"*), usage of multiple bank accounts, money remitter systems, and cash withdrawals. In certain cases batch transfers and cover payments can also be abused.

40. The current (2011 and 2012) analysis concerning money laundering show that large amounts of money laundered originate from committed domestic VAT fraud. This predicate offence generates significant amounts of cash. This is mostly transferred out of the country to foreign accounts held by offshore companies and then returned to Bulgaria, declared as loans from these offshore entities, thus providing a legal origin for future use. Offshore companies' guarantees for deposits and loans for subsequent financing can be found in some of the major public projects, such as construction of shopping centres. Between 1996 and 2010 more than 16 billion BGN was invested in Bulgaria from offshore jurisdictions. The data for 2008 indicates that about 500 large Bulgarian companies had operated through offshore companies and 150 companies registered in offshore financial centres are important investors in the Bulgarian economy. According to expert opinions[9], in 85-90% of cases of money laundering offshore companies had been used.

41. When integrated in the Bulgarian economy, the following sectors of the market are the most vulnerable (2010): trade sector - 31%; construction sector - 27%; gambling sector - 18% and in tourism - 10%.

42. Although no organised criminal groups have been recorded in Bulgaria specialised only in money laundering, this activity often accompanies the main criminal activity.

43. According to the authorities, no information on terrorism and terrorism financing threats has been identified in Bulgaria. Nevertheless, on 18 July 2012, a bomb ripped through a bus in the coastal resort city of Burgas that was carrying Israeli tourists from the airport to their hotel. The Bulgarian institutions (including the FID-SANS) authorised with competences in this area, continue to perform monitoring and observation of the on-going situation.

[9] Information provided by Bulgarian authorities

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

Financial Sector

Banking system

44. The banking sector is the predominant part of the financial system in Bulgaria. There are 31 credit institutions, out of which 7 are foreign bank branches. Foreign-owned banks, mainly subsidiaries of EU cross-border banking groups, constitute a substantial part of the total banking system.

45. As of the third trimester of 2012, 8 out of 24 banks are domestic and 16 are foreign-owned (12 of which have a parent from the Euro area). Accordingly, European subsidiaries account for 67.6% of the system's assets, while domestic banks have a share of 26.1%.

46. Although the foreign presence is significant, the concentration is moderate. The Herfindal index[10] for credit institutions is 748 and top five banks control 51% of the total assets. Despite the negative impact of the international financial crisis the banking system remains stable, with a slightly enhanced level of financial intermediation since 2008 to 106% of GDP at September 2012 (see Table 1).

47. The ratio of bank deposits to GDP was 60.7% in 2011 according to a World Bank survey[11].

48. The business model is traditional and is mainly focused on channelling attracted deposits and borrowed funds into credits. Banks do not rely on sophisticated financial products or wholesale exposures. Loans constitute 70% of total assets. Two thirds of the credit portfolios are loans granted to non-financial companies – corporate and SMEs. The remaining are for household borrowing.

49. The funding structure is dominated by residents' deposits. Accordingly, the Loan-to-Deposit ratio is low and as of Q3 2012 loans to the private sector are fully covered by customer deposits. According to information provided by BNB, the banking system registers consistent positive credit growth (higher than the GDP growth), although it is lower than pre-crisis levels. The main driver for the absence of a credit crunch is the continuous increase of deposits base, combined with low but existing demand, predominantly from the corporate sector. The build-up of savings illustrates the confidence in the banking system.

Table 5: Banking sector indicators

	2008	2009	2010	2011	September 2012
Banking system assets to GDP	100.37	103.67	104.54	101.92	106.00
Capital adequacy ratio (CAR)	14.93	17.04	17.39	17.55	16.59
Tier I capital adequacy	11.16	14.03	15.16	15.73	15.12
Return on assets (ROA)	2.12	1.08	0.84	0.63	0.85
Return on equity (ROE)	20.26	8.95	6.55	4.93	6.78
Loans growth (Y-O-Y)	32.2	4.50	2.68	4.09	3.99
Loan-To-Deposit (LTD)	117.91	118.71	112.02	103.19	99.27

Source: BNB

50. The Bulgarian National Bank (BNB), as the institution in charge of banking supervision, has applied a conservative approach to banking supervision. In the booming years before the crisis, the BNB insisted on a build-up of capital and liquidity buffers, discouraging banks from excessive asset growth and risk-taking. The scope of the measures within BNB approach included keeping the minimum regulatory requirements for capital adequacy ratio at 12% (50% higher than the

[10] measures the size of firms in relation to the industry and is an indicator of the competition among them
[11] http://data.worldbank.org/indicator/GFDD.OI.02

existing Basel II rule) even after the EU accession, higher risk-weight and conservative LTV (loan/to/value) ratios for mortgages, heightened liquidity requirements etc.

51. No bank in Bulgaria experienced financial distress due to the financial crisis none was involved in bail-in or bail-out interventions.

Non-banking financial sector

52. The non-banking financial sector in Bulgaria stabilised in 2011 and its performance is improving, representing 24.8% of the GDP at the end of the year. Given the fact that the global financial crisis and the depressed economic activity had a negative impact at different times and to different degrees on the non-banking financial market in Bulgaria, their recovery was not uniform.

53. The capital market suffered in 2008 from the direct effects of the global crisis but has recovered slowly in the succeeding years. The stock market capitalisation entered a positive territory in 2011 increasing by 15.6% on an annual basis.

54. The insurance market in Bulgaria was worst hit in 2009, recording a decrease of -6.3% of the gross premium income, reflecting negative second-round effects of the global financial and economic crisis and depressed economic activity at home. In spite of this, the funds of the insurance companies were maintained above the solvency margin throughout the years.

55. As a direct result of the global financial crisis the assets of the Pension Insurance Companies (PICs) decreased by 9% in 2008 and the net assets of the Supplementary Pension Insurance Funds (SPIFs) decreased by -0.8% respectively, after which they have increased. In 2011 the assets of PICs increased by 10% year on year and the net assets of SPIFs increased by 14.7%. As a result of these developments, the role of the non-banking financial sector in financial intermediation in Bulgaria has stabilised at a share of around 15% in the structure of institutional investors in 2011.

56. The improvement of the market capitalisation of the Bulgarian Stock Exchange since 2011 is reflected in the positive assets development of the investment intermediaries (IIs) which are increasing by 21.0% on an annual basis.

57. There are 77 Bulgarian investment intermediaries, 26 of which are banks. There are also 33 Management companies (MCs) which manage 101 Collective investment schemes (CISs), out of which 8 are investment companies and 93 contractual funds.

58. The individual segments of the insurance sector are at different stages of the development. General (non-life) insurance (18 entities), which represents the largest share (80%) of the insurance market in Bulgaria, is experiencing diminishing negative growth rates reaching to -0.9% year on year at the end of 2011 though expected to recover.

59. Life insurance (16 entities) has stabilised since 2010 providing also an alternative for long-term saving investment. Voluntary health insurance companies, which are the youngest entities on the insurance market (19 companies), after three years of high growth rates, have shown a slight decrease of -4.0% in 2011. The overall recovery of the insurance sector is expected to take place together with the recovery of domestic demand.

60. The assets of the Pension Insurance Companies (PICs) continue to grow in 2011, reflecting the increase in the number of insured people. The net assets of the Supplementary Pension Insurance Funds (29 SPIFs) are also increasing due to the increase of contributions and the results of their investment decisions.

61. The world economic crisis resulted in negative rates of return of the SPIFs in 2008, which was compensated in the succeeding two years. In 2011 the rate of return showed no significant change compared to 2010. The supplementary pension insurance system in Bulgaria represents the Second (Universal and Occupational pension funds) and the Third Pillars (Voluntary and Voluntary pension funds with occupational schemes) of the national pension insurance system and is of the Defined Contribution type. It will continue to be in a phase of accumulation of resources in the medium term, which makes it an important institutional investor. The

development of net assets of the SPIFs, reaching 6.1% of GDP in 2011, will depend on the stabilisation of income perspectives in the medium term and investment alternatives on the financial markets.

Table 6: Number of non-banking investment services providers

Year	2008	2009	2010	2011
Bulgarian Stock Exchange- Sofia	1	1	1	1
Central Depository	1	1	1	1
Investment Intermediaries	88	86	79	77
- Brokerage house	63	61	53	51
- Banks	25	25	26	26
Issuers and Public Companies	391	385	367	371
Management Companies;	38	40	34	33
Investment Companies	11	10	10	10
Contractual Funds	83	92	95	93
Special purpose vehicles	69	68	72	72
Investment advisors	299	322	348	368
Investment brokers	345	362	375	389
Insurance companies	37	37	35	34
General (non-life) insurance	20	20	19	18
Life insurance	17	17	16	16
Reinsurance companies	1	1	1	1
Voluntary health insurance companies	20	21	20	19
Pension companies	10	10	9	9

62. In the Republic of Bulgaria currency deals in cash may be made by any legal person registered under the Commerce Law where such a person is registered in a public register of persons conducting business pursuant to the legislation of a member country of the European Union or another country which is party to the Agreement on the European Economic Area, and where the person is registered in the public register as a currency exchange bureau.

63. In April 2008 the registration authority for bureaux de change was changed and the FIU is no longer maintains the register of the exchange offices. The registration of these persons is made at the National Revenue Agency, by entering them in a public register. As of 29.06.2012 there are 710 exchange offices registered in the public register.

Designated Non-Financial Businesses and Professions (DNFBPS)

Casinos

64. In the Republic of Bulgaria the following gambling licenses have been issued by the Bulgarian State Commission of Gambling :

- 722 licenses for gaming halls with 16,468 slot machines;
- 26 casinos with 311 gaming tables and 2,320 slot machines;
- 6 bingo halls;
- 2 licenses for games with betting on results from sport competitions and horse and dog races;
- 3 licenses for Games with betting on chance events;
- 9 licenses for lottery games;
- 28 licenses for manufacturing, distribution and maintenance of gaming equipment;
- 26 licenses for import, distribution and maintenance of gaming equipment;
- 10 licenses for maintenance of gaming equipment.

65. On 1 July 2012, the new Bulgarian Gambling Law (GL) came into force. The Regulations under the new GL will be finally adopted not later than 31.10.2012. Section VII of Chapter Three of the new GL settles the conditions and the order of organising remote gambling games. The Law settles which companies or entities may organise gambling ("land-based" or "remote") in the Republic of Bulgaria. Applicants for license must prove before the state commission not only the availability of resources for organising gambling games and investment but in long-term material assets and economic property in respective amounts according to the type of the gambling game.

Lawyers

66. As of June 2012, the general number of lawyers includes (all subject to registration pursuant to the Law on the Bar): 13,821 lawyers, 560 law firms, 156 joint practices, 641 junior lawyers and 1,000 lawyer's assistants.

67. The Supreme Bar Council is the highest authority of self-governance and self-regulation of the Bulgarian Bar. It is composed of 15 main and 10 replacement members elected by the General Assembly of Attorneys in the Country for a mandate of 4 years. The main legal framework which regulates lawyers' activity consists of: the Law on the Bar; the Law on the Judiciary and the Attorney-at-Law Ethics Code.

Notaries

68. The Notary Chamber of Bulgaria is the notaries' regulatory body which was established in accordance to the Law on Notaries and on the Notarial Practice. All notaries are members of the Notary Chamber and are listed in chambers` register. The Notary Chamber organises and supports the activity of the Bulgarian notaries.

69. The Notary Chamber is composed of the following committees: the General Assembly, the Council of Notaries, the Supervisory Board and the Disciplinary Commission. The number of notaries is limited by law and is dependent on the number of population. In May 2012 there were 630 notaries registered in Bulgaria.

70. The main legal framework regulating the notarial activity consists of the Law on Notaries and Notarial Practice and Statute of the Notary Chamber.

71. Notarial activities are mainly related to certifying deals (e.g. deals in real estate), but also include the provision of legal advice to the clients, execution of a will or management of property.

72. According to the Law on Notaries and Notarial Practice, all notaries have access to the register of population and the Ministry of Interior's database of identification documents, which has significantly reduced fraud related to real estate. In addition, a register of all certified powers of attorney and proxies is maintained by the Notary Chamber.

Accountants and auditors

73. The external accountants were included as a category of obliged persons under the LMML by the amendments of the Law of July 2011 as *"persons who/which by profession perform accounting services"*. According to the Law on Accountancy, the external accountants include all accounting firms, all commercial entities or sole traders which provide financial and accounting services as per the commercial registration, any accountant undertaking accounting services on the basis of two or more contracts, the freelance accountants registered as self-insured persons[12].

74. According to preliminary data of May 2011 there were 8,036 legal entities and natural persons engaged in such services (including persons providing tax advice). For 2010 the number was 9,065 based on information from the National Statistical Institute. Apart from the commercial registration, no further registration of these entities is required. There are several professional organisations of the sector.

75. The auditors are covered as a separate category of reporting entity under the LMML. The Institute of Certified Accountants is the professional organisation of certified accountants in Bulgaria (including and largely coinciding with auditors). The organisation has a General Assembly, a Board of Management, a Control Board, a Council of Professional Ethic, a Council of Control over the Quality of Audit Services, a Disciplinary Council and a Chairman of Board of Management.

76. At the time of the on-site visit, according to the list maintained and published by the Institute of Certified Accountants, there were 153 registered specialised auditing companies and 744 registered auditors.

77. The Institute is responsible for the examination of the auditors, the maintenance of the register, training, internal control over the members, control over the quality of the auditing and the observation of the ethical standards by the members.

78. The legal framework includes the Law on Accountancy, the Commercial Law, the Law on Independent Financial Audit, the Law on Cooperative Societies, the Law on Non-Profit Organisations and the Audit Standards.

Real estate agents

79. According to 2010 Bulgarian National Statistical Institute data, there were 4,946 real estate intermediaries operating in the country.

80. The National Association of Real Estate is the main professional organisation of the real estate intermediaries. The association has regional structures. According to the Bulgarian authorities, all major intermediaries are members of the association. The purpose of the association is to ensure the quality of the services, the application of the code of ethics, to provide training, to facilitate international contacts and to impose common standards and best practices. A Commission of Professional Ethics is functioning with the Association.

81. The trend towards the increase of the real estate intermediaries' involvement in deals with foreign naturals remains although the financial crisis affected the sector and led to a substantial decrease in the overall level of trade.

[12] This definition is explained in the guidance provided to the reporting entities by the FIU to include the categories of persons mentioned in the LMML, excluding the persons that perform accounting as employees of a state institution or only one enterprise (i.e. under one labour contract).

Dealers in precious metals and stones

82. The registration of entities operating in the extraction, processing and trading in precious metals and gemstones and products thereof is performed by the Ministry of Finance, International Financial Institutions and Cooperation Directorate (IFICD). The registration regime has been introduced by the adoption of the Ordinance by Council of Ministers No. 250 of 29.12.1999, promulgated SG, No. 2 of 07.01.2000, in force as from 01.01.2000. There are 5,277 operators involved in extraction, processing and trading with precious metals and gem stones and products thereof registered in the public Register with the Ministry of Finance[13].

Trust and Company Service Providers

83. According to the Bulgarian authorities, trusts are not known and not used under Bulgarian legislation. There is no formal prohibition in the legislation, but the Bulgarian authorities explained that trusts are not provided for by any legal act.

84. Certain company services could be provided by certain law firms, individual lawyers, or accountants (accountancy firms), which would be covered by the respective categories listed in the LMML. These services do not include nominee directors and management and transparency is guaranteed by the requirements of commercial registration in Bulgaria. Persons registered as company service providers have been established only in extremely limited number (around 5 in the whole country) and only as representative offices of foreign company service providers. The activities of those company service providers are monitored closely by both the FIU and the law enforcement.

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

85. The Law on the Commercial Register entered into force on 1 January 2008 and a reform of the registration process of the commercial entities was undertaken pursuant to the Law. The reform of the commercial registration ended the judiciary competence in this regard and transfers it to an administrative authority, i.e. the Registry Agency within the Ministry of Justice. The new commercial register is uniform for the whole country.

86. All registers maintained in paper form in the regional courts were transferred in a centralised electronic database, containing the circumstances and documents required to be filled in, as well as the electronic forms of all documents filed by the commercial entities. According to the Bulgarian authorities, the new mechanism of the commercial registration contributed to the increase in the speed and efficiency of registration including through the broadening of the registration of acts officially (e.g. all acts imposed by state authorities, including also restrictive measures).

87. The new registration process increased transparency of the commercial register and more information is available on the persons conducting any commercial activity. The access to the commercial register is free of charge, including the access to the electronic copies of all documents (scanned documents). The access is granted to all kind of documents relating to the companies and their associates and managers, including the refusals for registration.

88. When registering into the Commercial Register, the application shall contain: data about the applicant; data about the trader or foreign trader branch or European economic interest grouping; the circumstance subject to entry and the signature of the applicant. With the application, a declaration shall be attached, signed by the applicant, attesting the truthfulness of the announced circumstances or to the adoption of the acts submitted for disclosure.

89. The registration shall be check to establish whether: the application for the requested entry, has been submitted in compliance with the required form and procedure; the application originated from an authorised person; all documents are attached to the application; the existence of the

[13] as of end of March 2013

circumstance declared for entry and its compliance with the law can be established from the documents submitted, or whether the act subject to disclosure, based on its appearance features, is compliant with the legal requirements.

90. The registration of all entities which do not fall under the category of persons conducting commercial activity is performed pursuant to the Law on the BULSTAT Register which is maintained by the Registry Agency of the Ministry of Justice. The non-profit organisations are also subject to registration in the BULSTAT Register.

91. In 2010 a Law amending and supplementing the Commercial law was adopted (promulgated, SG. 101 of 28.12.2010). The amendments were made in two main directions: one was aimed to ensure transparency of information for the establishment of the ownership of shares in companies and the second regards reporting and documentation in case of mergers and divisions.

92. An obligation was introduced for the person or persons representing the company to enter in the Book of shareholders any change in ownership of registered shares or interim certificates, arising under the Commercial law or other laws, within 7 days of such a change or its notification by the transferee.

93. The second major change regarding the Commercial law was made to address the requirements of Directive 2009/109/EC of the European Parliament and the Council of 16 September 2009 as regards reporting and documentation in case of mergers and divisions. The amendments provide that if all shareholders and partners in the companies, involved in merger or division, have so agreed, a written report on the reorganisation shall not be required. In this case the agreement for not elaborating a report, as well as the agreement not to perform an examination of the reconstruction, if any, shall be submitted to the Commercial Register.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

94. Since the adoption of the MONEYVAL third round report, the Bulgarian authorities continued their effort to improve both the preventive system and the prosecution of ML and related offenses.

95. In 2009 a working group was created with the participation of the relevant public authorities (Supreme Prosecutor's Office of Cassation, SANS, MoI, FID-SANS and CEPACA) and the non-governmental sector (Centre for the Study of Democracy). The project aimed to analyse the weaknesses in the investigation of money laundering and contribute to the understanding and development of a clear procedure for money laundering investigations. The working group developed and adopted a Handbook for the Investigation of Money Laundering to assist the Bulgarian law enforcement authorities.

96. The National Security Strategy was adopted by the Bulgarian Parliament in February 2011. The Strategy provides the following priorities relating to financial security: maintaining financial sector integrity through AML/CTF measures; effective cooperation with the private sector for limiting the grey economy and further elaborating mechanisms to prevent money laundering.

97. As a result of this strategy and the general AML/CTF priorities, a Strategy for the Prevention of Money Laundering 2011-2015 was discussed and adopted by the Council of Ministers in August 2011. This is the first national strategy in the field of the prevention and fight against money laundering and aims to implement the decisions of the National Security Strategy (in respect of financial and economic security) taking into account the existing threats and deficiencies in the implementation of the AML/CTF measures.

98. The main aim of the strategy is to ensure the identification, tracing and forfeiture of criminal assets through both penal and civil confiscation. The National Strategy for the Prevention of Money Laundering provides for the following additional measures to be undertaken:

- Creation of a major mechanism to fight serious organised crime and corruption. The flow of criminal money into the legal financial system is to be prevented;
- Review of the institutional and legislative framework and proposals for a general policy framework;
- Upgrading of institutional capacity and interagency cooperation. To this end, the strategy envisages the establishment of a new multiagency coordination council which would be responsible for monitoring and implementation of the decisions made in the field. It would also assume responsibilities for the appraisal of the whole situation of money laundering and terrorist financing and the assessment of the risks;
- The establishment of a forfeited assets fund. The funds would be used to support the victims of trafficking, contribute to the investigation of the related crimes, the development of the preventive system and the institutional capacity building;
- Increase the effectiveness of the preventive system, as well as the law enforcement authorities and the counteraction of money laundering.

99. To implement the National Strategy for the Prevention of Money Laundering an Action Plan for 2012 – 2015 was coordinated by the interagency working group established for the implementation of the National Strategy. The working group consists of representatives of the Bulgarian National Bank, the National Revenue Agency, the Customs Agency, the Ministry of Interior (Chief Directorate Combating Organised Crime), SANS (Financial Security Directorate and Financial Intelligence Directorate), CEPACA, the Supreme Prosecutor's Office of Cassation and the National Investigation Service as well as a non-profit organisation.

100. The Action Plan was developed with the inputs of all institutions involved based on their risk assessment of the situation related to money laundering, *e.g.* the regular risk assessments performed by the Bulgarian FIU regarding the obliged entities under the LMML, as well as other particular risk assessments carried out by the FIU concerning different aspects of the preventive system, using domestic and international practice.

101. One of the aims of the Action Plan is to develop a new national mechanism for monitoring and coordination of the anti-money laundering efforts with a view to institutional changes and amendments to the legal framework, targeting reforms to the judiciary and the law enforcement sector.

102. Another aim includes the development of a comprehensive mechanism for the collection, maintenance and management of the forfeited property. On the basis of previously implemented mechanisms and procedures, the Strategy provides for further unification of the electronic registers in order to ensure that the necessary information is available for all financial investigations and checks carried out by the respective institutions.

103. The Strategy underscores the crucial importance of raising public awareness and intolerance of money laundering and predicate crimes and aims to provide a set of measures for improving the preventive side through the effort of the reporting entities.

104. In 2012 Bulgaria joined a project for the Preliminary National Risk Assessment of the country conducted by the International Monetary Fund. This analysis complemented the one performed at the national level. The elements of the analysis include: the situation and potential risks associated with the various sectors of the obliged entities under the AML/CTF legislation, the activities of the supervisory bodies, the situation with law enforcement and interagency cooperation. The overview spans the period 2007-2011.

105. In 2008-2009 the project "*Improving the End-to-End Capacity of the Bulgarian Government to Fight Money Laundering*" was carried-out by the FIU together in cooperation with the British Embassy in Bulgaria. The project focused on the high-level action necessary to improve the AML/CFT system as well as on the interagency cooperation and involved all the institutions

responsible for the prevention and counteraction of money laundering and related crime (the Financial Intelligence Directorate of SANS, Financial Security Directorate of SANS, General Directorate "Criminal Police" of the Ministry of Interior, the National Investigation Service, the National Revenue Agency, the Customs Agency, the Commission for Establishment of Property Acquired by Criminal Activity (CEPACA), the Supreme Prosecutor's Office of Cassation (SPOC) and representatives of the: Sofia city Court and Sofia District Court).

106. Most of the recommendations of the project have been taken into consideration and implemented in a way consistent with the Bulgarian institutional setup. This includes the adoption of the National Strategy for the Prevention of Money Laundering and the related Action Plan 2011-2015, where the issues of a high-level overview and steering of the system have been discussed and implemented.

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

The Bulgarian National Bank

107. There are no substantial changes in respect of the BNB since the last evaluation report.

108. The BNB is the central bank of the Republic of Bulgaria having as its primary objective the maintenance of price stability through ensuring the stability of the national currency and implementing monetary policy.

109. The BNB is empowered by the Law on Credit Institutions (LCI) to supervise the banks in order to establish safe and sound systems that will prevent them from being used for ML/FT purposes.

110. In order to strengthen the role of the BNB in the prevention process, the LCI was amended to oblige the banks to create systems that shall be reviewed and updated on an ongoing basis in accordance with the best practices. BNB is obliged to supervise their implementation and may issue guidance to assist the banks for establishing appropriate systems. The most recent guidance was issued at the beginning of 2012 aiming at creating uniform practices tailored to the size and type of the bank's services.

111. All the banks are subject to annual AML/CFT off-site inspections done through questionnaires accompanied by required additional information and through interviews with the designated bank staff. The same approach is implemented for Payment Institutions and Electronic Money Institutions.

112. Based on risk assessments, the BNB drafts and approves annual AML/CFT inspection plans for examining on-site the supervised entities. If necessary and on the ground of an official request sent by a competent authority, the BNB performs targeted inspections.

Financial Supervision Commission

113. There are no significant changes in Financial Supervision Commission's (FSC) activity since the last evaluation.

114. The FSC supervises for AML/CFT purposes the following: insurers, re-insurers, and insurance agents; mutual investment schemes, investment intermediaries and management companies; pension funds and health insurance companies; market operators and/or regulated market and the central securities depository.

115. Inspections performed by FSC also include compliance with LMML provisions by the entities subject to supervision. If any violations are identified, FSC should inform FID-SANS, and it should forward to them an excerpt of the respective part of the statement of findings.

Ministry of Justice

116. There are no substantive changes in the organisation and responsibilities of the Ministry of Justice since the last mutual evaluation report.

Ministry of Interior

117. The 2009 amendments to the Law on the Ministry of Interior (MoI) aimed the optimisation and clarification of the powers of MoI officials working on crime prevention and detection in general, and money laundering in particular.

118. The General Directorate for Pre-trial Proceedings ceased its activities and the staff was reappointed to the General Directorate Combating Organised Crime and to the General Directorate of Criminal Police, in order to achieve more efficient results through team work.

119. A new amendment to the Law on MoI entered into force on 1 July 2012, aimed at simplifying the hierarchy. The former General Directorate of Criminal Police and General Directorate of Public Order and Security Police were united into a new General Directorate of National Police. There is a separate unit within the Economic Crimes Department of the General Directorate of National Police, which checks the cases of suspicious transactions and money laundering.

120. A specialised unit for counteraction of financial crimes related to money laundering is structured within the General Directorate for Combating Organised Crime (GDCOC), and it is subordinated directly to the Director of GDCOC.

The Public Prosecution Service

121. The situation remains largely the same as described in the 3rd round report. The number of prosecutors remained relatively stable for the period 2008-2011, the number for 2011 being 1704 prosecutors. With the amendments to the structure of the Supreme Prosecutor's Office of Cassation in 2012 the sector ML Counteraction was situated in the department Counteraction of Serious and Organised Crime and the sector consists of 1 prosecutor (the head of sector).

122. The competence of the Specialised Court (and the Specialised Prosecution), includes crimes related to: establishing, leading or participating in organised criminal groups; a series of severe crimes (like murder, human trafficking, drugs related crime, crime in cultural valuables, fiscal crimes, money laundering etc.) when the perpetrator is acting by an order or in fulfilment of a decision of an organised criminal group; crimes committed by a qualified person practicing specific profession (like guarding or insurance activity or a MoI official); other offences which have an element of organised activity (as organised group that aims to carry out offences related to discrimination, violence, hate, based on race, ethnicity, religion or political beliefs); and all aforementioned offences committed abroad.

Ministry of Finance

123. No changes occurred apart from those related to the transition of the FIU from the Ministry of Finance to SANS. The LMML still prescribes obligations for the Minister of Finance with regard to some aspects of the AML/CTF regime (e.g. the postponement of operations by the FIU).

Customs

124. The National Customs Agency (NCA) is a centralized administrative structure within the Ministry of Finance. The NCA is structured into a Central Customs Directorate and Territorial Customs (Bourgas, Varna, Plovdiv, Svilengrad, Rousse, Lom, Svishtov, Sofia Airport, Uogozapadna and Stolichna). The administration of the Central Customs Directorate of the Agency is organised into five directorates of general administration, 8 directorates of specialised administration, a security section and a section for internal audit.

125. One representative of the NCA is appointed to each of the following: the Permanent Representation of the Republic of Bulgaria to the European Union in Brussels, the World

Customs Organisation in Brussels and the Southeast European Law Enforcement Centre in Bucharest.

126. The NCA is an obliged entity under the LMML and thus, the Customs Intelligence and Investigation Directorate within the Central Customs Directorate, functions as an AML/CFT specialised service and submits suspicious transactions reports to the FIU.

127. Since January 2012 the customs authorities are entitled to conduct investigations aiming at strengthening the effectiveness of combating customs, tax and currency crimes. This creates a possibility for better collaboration between pre-trial proceedings' authorities in investigating such criminal offences.

Financial Intelligence Unit (FIU)

128. Since January 2008, the Bulgarian FIU (Financial Intelligence Agency) became the Financial Intelligence Directorate (FID) within State Agency for National Security as provided by the Law on State Agency for National Security (LSANS).

129. The SANS shall perform functions for protection of national security from encroachments against the national interests, independence and sovereignty of the Republic of Bulgaria, the territorial integrity, the fundamental rights and freedoms of citizens, the democratic functioning of the state and the civic institutions and the Constitutional order established in the state, related to *i.a.*: information gathering on behalf of alien forces; corrupt acts of senior public officials; endangerment of the economic and financial security of the State (which includes money laundering risks); international terrorism and extremism, as well as their financing; international trade in weapons and products or technologies of dual use, manufacturing, storage and proliferation of items of a generally hazardous nature etc…

130. The Specialised Administrative Financial Intelligence Directorate of SANS (FID-SANS) continues to function as an administrative type of financial intelligence unit. FID is located in Sofia. The functions are provided for in the Law on Measures against Money Laundering (LMML), the Law on Measures against Financing of Terrorism (LMFT) as well as in the Rules on Implementation of LSANS.

The Commission for establishment of property acquired from criminal activity (CEPACA)

131. The CEPACA is a specialised state authority in charge of inspecting the property of persons, according to the law. Its main purpose is to identify criminal assets in the country and overseas and to seek for its freezing and confiscation.

132. The Commission has of its own administration, divided into one central and 10 Territorial Directorates covering all the country. The inspectors in the Commission are either lawyers or economists.

133. There were no final confiscations by CEPACA in 2007 and 2008 due to the relatively recent establishment of the Commission. For 2009-2011 the amounts confiscated through CEPACA proceedings increased progressively reaching €6,317,337 in 2012.

c. The approach concerning risk

134. The risk based approach is embedded in the Art. 4 para. 16 of the LMML and in related guidance and regulation. According to the legal requirements, the reporting entities are obliged to establish due diligence procedures. These procedures should be further detailed in each reporting entity's internal programs on prevention and combating money laundering and terrorist financing and are subject to FID-SANS approval.

135. In the high risk categories may include customers who do not have permanent residence or place of commercial activity in the country, as well as the offshore companies, the companies of nominal owners or of bearer shares, the companies of trustee management or other similar

structures. The list is provided as an example to the obliged entities, and further instructions could be provided by the Director of the Financial Intelligence Directorate based on the risk assessment.

136. The requirement introduced by the Law of Limiting Payments in Cash, restricting cash payments to less than 15,000 BGN, has reduced the risk of money for cash payments. Following the said Law, the traders in goods exceeding €15,000 are *de facto* no longer included in the LMML through the prohibition of payments in cash above the mentioned threshold.

137. The risk is considered by the FID-SANS both in its supervisory activity and in the analysis of STRs. The Manual on performing on-site inspections on persons obliged to report under the law on measures against money laundering provides that the FIU shall prepare a risk assessment for the obliged persons. Similarly, the Methodological Guidelines for Processing of Suspicious Transactions Reports received under the LMML provides a prioritisation system based on risk criteria. For more details please see the respective sections of the report.

d. Progress since the last mutual evaluation

138. Bulgaria has continued the development and strengthening of its AML/CFT system since the MONEYVAL third round evaluation.

139. In November and December 2007 amendments to the AML/CTF legislation were adopted in order to transpose into Bulgarian legislation the requirements of Directive 2005/60/EC, as well as Directive 2006/70/EC. The number of reporting entities included in the AML Law increased due to the risks identified by the Bulgarian authorities related to the level of corruption, the cash-based nature of the economy and the level of the grey economy.

140. In January 2008 a new state agency was established – the State Agency for National Security (SANS) which merged in its structure 3 former existing state bodies – National Security Service, MoI; Military Counterintelligence to the Minister of Defence and the Bulgarian FIU (the former Financial Intelligence Agency to the Minister of Finance). The Bulgarian FIU was transformed into a unit of SANS, *i.e.* the Specialised Administrative Directorate Financial Intelligence. The FIU remained an administrative type of FIU.

141. In March 2009 the registration regime for financial institutions performing activities under the Law on Credit Institutions introduced requirements for transparent ownership structures and fit and proper requirements for managers. Through additional legislative amendments (March 2009 and December 2010) the obligation to update (on a periodic basis the internal rules and procedures for monitoring the risks (including the risk related to ML/TF) was introduced for the banks.

142. In December 2009 a full set of new criteria and indicators for detecting suspicious or unusual operations based on analysis of risk was elaborated for the obliged entities and published on the web site of the Bulgarian FIU.

143. A Handbook for the Investigation of Money Laundering was elaborated in 2009, as a result of the cooperation among the Supreme Prosecution of Cassation, the National Investigation Service, the Ministry of Interior, State Agency for National Security and the Commission for Establishing Proceeds of Crime (CEPACA). The handbook is aiming to improve the work of LEAs *i.a.* by focusing on the asset tracing and recovery, which should accompany every investigation for profit generating crimes.

144. In October 2009, the Ministry of Interior was restructured to restore the Chief Directorate Combating Organised Crime as a chief directorate that is not subordinated to the Chief Directorate Criminal Police. The aim was to optimise the activities of the Ministry of Interior and enhance the counteraction of organised crime.

145. In February 2011, the Law Limiting Payments in Cash entered into force, limiting payments in cash over 15,000 BGN[14]. As a result, two categories of reporting entities were no longer subjects of the LMML (the traders in goods when payment is in cash and is over 30,000 BGN[15] and the traders in motor vehicles when payment is made in cash over 30,000 BGN). The aim of the law was to limit the grey economy, to mitigate the reliance on cash in the real economy and ultimately to mitigate the risks for money laundering and terrorist financing.

146. In February 2011, the Strategy for National Security was adopted by the Bulgarian Parliament. The Strategy provides for the following priorities in regard to financial security: maintaining financial sector integrity through the AML/CTF measures; effective cooperation with the private sector for limiting the grey economy and further elaborating mechanisms to prevent money laundering.

147. The amendments to the LMFT of July 2011 introduced *i.a.* the explicit requirement to carry out full CDD measures as provided in the LMML and the obligation to report attempted transactions, in cases where terrorist financing suspicions may arise, in accordance with the MONEYVAL third round report recommendations.

148. In May 2012, the National Assembly of Bulgaria adopted a new law based on civil confiscation without criminal conviction which entered into force in November 2012. The new Law (Act on Forfeiture in Favour of the State of Unlawfully Acquired Assets) envisages two stages of non-conviction based confiscation proceedings, namely civil confiscation: 1) Proceedings at the Illegal Assets Forfeiture Commission (which searches the sources of the acquired assets and ensures that precautionary measures are taken; and 2) Forfeiture proceedings before a civil court. The new law foresees that the proceedings for forfeiture in favour of the State are governed by the Civil Procedure Code, following the principles of the so-called *"civil forfeiture"*.

149. In 2011 and 2012 the provisions of the Law on Administrative Liabilities and Sanctions was amended to broaden the scope of its application over the legal entities. The Chief Prosecutor issued Methodological Guidance on the application of liability of legal persons namely Guidance No. 230 of 22.06.2010, amended through ordinance No. 665 of 14.03.2011.

150. The Bulgarian FIU performed risk analyses of various aspects of the use of the NPO sector in 2008 and 2012. FID-SANS updated its risk assessment regarding NPOs in 2008, based on information from the counter-terrorism department of SANS regarding possible involvement or misuse of NGO and foundations for purposes of terrorist financing. It was confirmed that the money flows were used rather for educational purposes than financing of illegal activities. A further assessment in 2012 based on relevant information from SANS departments and other institutions was carried out. In addition risk is analysed on a regular basis by the competent department within SANS.

151. The amendments brought to the Law on the Judicial Power in 2009 provide for a unified information system for counteracting crime based on a core consolidated database and management system developed and maintained by the Prosecutor's Office. The structure is linked to all judicial authorities, Ministry of Interior, Ministry of Justice, State Agency for National Security, Ministry of Defence, and Ministry of Finance.

152. The system for assessing the priority of the cases analysed by FID-SANS was further elaborated in 2010 by introducing a detailed set of criteria as a basis for the decision to open particular types of case – an operational case or a case for information/analytical purposes. The system allows for enhanced selection of the STRs that need further analysis and gathering of additional information in order to increase the effectiveness of the disclosures to LEAs.

[14] ~ €7,500
[15] ~ €15,000

153. A working group, composed of members of academia and practitioners was set up under the Ministry of Justice to elaborate a provisional draft of the General and of the Special Parts of the new Criminal Code. The group was informed of the amendments needed to be undertaken *i.a.* as a result of the MONEYVAL 3rd round MER recommendations. The abovementioned provisional draft of the new Criminal Code, is under *"article-by-article"* discussion within the framework of this Working group.

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 LC in the 3rd round report)

Summary of factors underlying rating in the 2008 MER

154. The third round evaluation report determined deficiencies with regard to designated categories of predicate offences, namely insider trading and market manipulation, and one aspect of terrorist financing.

155. At the time of the 4th round on-site visit the ML offence was criminalised under the same legal provisions as described under the 3rd round mutual evaluation report.

Legal Framework

156. Bulgaria has signed and ratified both the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (the Palermo Convention).

157. The ML offence is criminalised under Article 253 of the Criminal Code (CC)[16].

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

158. The physical and material elements of the offence are broadly in line with the provisions of the Art. 3 (1) (b) and (c) of Vienna Convention and Article 6 (1) of Palermo Convention, although some of the wording of the Bulgarian CC does not ensure full compliance with the relevant international requirements.

159. Art. 253 of the CC refers to *financial operation* or *property transaction* when defining the physical element of the offence, while the terms *conversion* or *transfer* are used under the Vienna convention. Although not using the wording of the Convention, the on-site interviews confirmed

[16] **Article 253** The one who concludes a financial operation or property transaction or conceals the origin, location, movement or the actual rights in the property, which is known or assumed to be acquired through crime or another act that is dangerous for the public, shall be punished for money laundering by deprivation of liberty from one to six years and a fine of BGN three thousand to five thousand.

(2) The punishment under paragraph 1 shall also be imposed on the one who acquires, receives, holds, uses, transforms or assists, in any way whatsoever, the transformation of property, which is known or assumed, as of its receipt, to have been acquired through crime or another act that is dangerous for the public.

(3) The punishment shall be deprivation of liberty for one to eight years and a fine of BGN five thousand to twenty thousand, if the act under paras 1 and 2 has been committed:

1. by two or more individuals, who have reached preliminary agreement, or by an individual who acts on the orders of or executes a decision of an organised criminal group;

2. two or more times;

3. by an official within the sphere of his office;

4. through opening or maintaining an account with a financial institution, under a false name or the name of an individual who has given consent to this effect.

(4) The punishment shall be deprivation of liberty from three to twelve years and a fine from BGN 20,000 to BGN 200,000 where the act under Paragraphs (1) and (2) has been committed by the use of funds or property which the perpetrator knew or supposed to have been acquired through a serious crime of intent.

(5) Where the funds or property are in extremely large amounts and the case is extremely grave, the punishment shall be deprivation of liberty for five to fifteen years and a fine of BGN 10,000 to BGN 30,000, and the court shall suspend the rights of the guilty person under Items 6 and 7 of Article 37 (1).

(6) The object of crime or the property into which it has been transformed shall be forfeited to the benefit of the state, and where absent or alienated, its equivalent shall be awarded.

(7) Provisions of paras 1 through 6 shall also apply where the crime through which property has been acquired falls outside the criminal jurisdiction of the Republic of Bulgaria.

that the Bulgarian CC covers the scope of ML offence in all the material elements required by the international standard.

160. Art. 253 of the CC does not mention the *"disguise"* as one of the elements of the physical component of the ML offence as required by the Vienna Convention (*The disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property)*. The Bulgarian authorities have explained that the word "prikrivam" (прикривам), employed in Bulgarian original, can be translated both as *"conceal"* and *"disguise"* and the core meaning of the word covers both terms. However, the evaluation team is of the opinion that there are semantic differences between the words "prikrivam" (прикривам) and "ukrivam" (укривам), because when translating the Vienna Convention into Bulgarian, two terms were employed: "prikrivam" (прикривам) for *"concealment"* and "ukrivam" (укривам) for *"disguise"*.

161. Turning to effectiveness, it appears that in the court practice[17], the Bulgarian authorities used both words for describing the physical element of the ML offence, thus, it can be concluded that *"the purpose of concealing or disguising"* is broadly covered under Bulgarian legislation.

162. Art. 253 of the CC does not define any purpose for concluding a financial operation or property transaction or concealing the origin, location, movement or the actual rights in the property. Therefore, although the Bulgarian CC does not expressly cover the element of conversion or transfer of property for the purpose of helping any person who is involved in committing the predicate offence to evade the legal consequences of his or her action, this element of the offence is covered under Art. 253.

163. The criminal liability is provided for the one who acquires, receives, holds, uses, transforms or assists, in any way whatsoever, the transformation of property, which is known or assumed, as of its receipt, to have been acquired through crime or another act that is dangerous for the public.

164. As far as the mental element of the offence is concerned, the CC provides that there must be knowledge or suspicion of the criminal or socially dangerous origin of the proceeds, as required by the Conventions.

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

165. Turning to the object of the ML offence, that is the definition of property which represents proceeds and so can be subject of money laundering, the legislation raises some questions, as the Bulgarian CC does not provide the definition for the term "*property*".

166. During the on-site interviews, the evaluation team was advised by the prosecutors that there is no definition of *"property"* in the Bulgarian legislation and referred to the Strasbourg and Warsaw Conventions as providing such definition. Also, it was confirmed that in practice, the lack of definition was never an impediment to achieve convictions[18].

167. On the matter, the law enforcement authorities advised that the definition of the term is provided under the Law on Recognition, Enforcement and Issuance of Writs for Securing of Property or Evidence of 2006 (REIWSPE), according to which *"property"* shall be any rights of a corporeal or incorporeal nature, any movables or immoveable, as well as any legal acts or documents that may serve as evidence of rights or interests over such movables or immovable. Although the definition provided above is mainly compliant with the international standards, it was not clear if the term covers also indirect proceeds.

[17] In the Decision № 553 dated 07.10.2005 of the Supreme Court of Cassation on penal case № 1064/2004, first penal chamber, when describing the intent of the crime, the word "concealment" (ukrivane) is mentioned, while in the other parts of the decision the word "disguise" (prikrivane) is used for interpretation of the Article 253.

[18] There was a conviction for the use of a document of untrue contents through which a share of a sole trader LLC was sold and subsequently the crime under Art. 253 of the CC was committed through a deal with the property (share of the company). Another conviction was adjudicated in regard to a person who carried out a deal with property – transfer to an LLC of the claim for 100 000 BGN towards a natural person, for which claim he assumed that it had been acquired through a serious deliberate crime (extortion under Art. 213a of the CC).

168. On the applicability of the definition provided by REIWSPE, the Bulgarian authorities explained that according to the rules and general principles of the national legal system, a definition of a certain legal term contained in a law is applicable to all other normative acts. The legal basis of this is provided for in the Law on Normative Acts and the Decree № 883 dated 24.04.1974 on the Application of the Law on Normative Acts. Under Art. 37, para. 1 of the said Decree – *"Words and phrases with an established legal meaning shall be used in one and the same meaning in all normative acts."*

169. As for the property that directly or indirectly represents the proceeds of crime, there is no reference under CC whether the property extends to the indirect proceeds, as required under FATF methodology.

170. The Bulgarian legislation does not require a prior conviction for a predicate offence to prove that the property is the proceeds of crime. Moreover, the expression *"property, which is known or assumed to be acquired through crime or another act that is dangerous for the public"* used in the Art. 253, makes it clear that the prior conviction for the predicate offence is not required as a pre-condition to prove that the property is the proceeds of crime.

171. Both the representatives of the Prosecutor's Office and Judiciary authorities confirmed that prior conviction for a predicate offence is not required for achieving a conviction for a ML offence. Moreover, this is a decision of the Bulgarian Supreme Court of Cassation of March 2009[19] (which though only binding on the parties to specific case) is indicative.

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

172. All the criminal offences penalised under the Bulgarian legislation constitute predicate offence for ML. As emphasised in the third round report, almost all the designated offences are criminalised under the Bulgarian legislation.

Table 7: Designated categories of offences

Country	
Designated categories of offences based on the FATF Methodology	**Offence in domestic legislation**
Participation in an organised criminal group and racketeering	Article 321 of Criminal code (CC)
Terrorism, including terrorist financing	Articles 108a, 109
Trafficking in human beings and migrant smuggling; Sexual exploitation, including sexual exploitation of children	Articles 159a, 159b, 159c, 159d, 280 of CC Articles 149, 150, 151, 152, 153, 154, 154a, 155, 155a, 155b, 156, 157, 158a, 159 of CC
Illicit trafficking in narcotic drugs and	Articles 354a, 354b, 354c of CC

[19] *For the fulfilment of the corpus delicti of ML, it is irrelevant whether there were at all penal proceedings for the predicate crime and what the outcome of such proceedings (if any) was. The settling of the penal proceedings for the predicate crime does not objectively hinder the possibility for ML and therefore cannot preclude responsibility for the latter. There is no requirement that the crime from which the proceeds came should be a crime of certain kind…*

Considering this, the corpus delicti of Art. 253, Para. 1, as far as the object of the crime is concerned, requires proving, without any doubt and in a categorical way, only the link between the object and the predicate crime. This link can also be established by the grounded conclusion of the deciding court that there is no other possible legal source of the property. During the proceedings under Art. 253, Para. 1 of the Penal Code, the circumstances about place, time, way of receiving, amount of the "blemished" property resulting from the predicate crime, the specific type of the same property, the place of storing (if this form of deed is not claimed against the defendant) do not require clarifying, let alone the establishing of coincidence of the property (acquired as a result of the predicate crime) with the property used under Art. 253, Para. 1 of the Penal Code…The property can be acquired not only from crime but also from other act dangerous to the public such as administrative/disciplinary violation, civil delict.

psychotropic substances	
Illicit arms trafficking	Articles 233, 337, 339, 339a, 339b of CC
Illicit trafficking in stolen and other goods	Articles 242, 242a of CC
Corruption and bribery	Articles 225c, 301, 302, 302a, 303, 304, 304a, 304b, 305, 305a, 306, 307, 307a of CC
Fraud	Articles 209-212, 212a, 212b, 213, 248a, 249-252, 254b, 308-313, 313a, 313b, 314-319, 319a-319f of CC
Counterfeiting currency	Articles 243, 244, 244a, 245, 246, 248 of CC
Counterfeiting and piracy of products	Articles 172a, 172b, 173, 174 of CC
Environmental crime	Articles 352, 352a, 353, 353a-353h, 354 of CC
Murder, grievous bodily injury	Articles 115-125, 127, 128-131, 131a, 132-134 of CC
Kidnapping, illegal restraint and hostage-taking	Articles 142, 142a, 143a of CC
Robbery or theft	Articles 194-196, 196a, 197, 198-200 of CC
Smuggling	Articles 242, 242a of CC
Extortion	Articles 213a, 214, 214a of CC
Forgery	Articles 243, 244, 244a, 245, 246, 248-252, 308-313, 313a, 313b, 314-319 of CC
Piracy	Art. 341b limited to aircrafts
Insider trading and market manipulation	-

173. The CC does not specifically include the "*piracy*" offence as defined in the international convention, but according to the Bulgarian authorities, the conduct constituting piracy is covered by a series of CC provisions which can be applied independently or in conjunction – depending on the concrete piracy act committed. The following articles of the CC were indicated to the evaluation team: (Articles: 142, 142a, 143, 143a, 144, 340, 341, 341a, 341b, 342, 343, 343a, 343b, 343c, 343d, 344, 345, 345a, 346, 346a, 346b, 194, 195, 196, 198, 199 and 321. Also, it was mentioned that Bulgaria has ratified and fully implemented the UN Convention on the Law of the Sea on 24.04.1996 (State Gazette, issue 38 of 03.05.1996) and the Convention on the High Seas on 07.07.1962 (State Gazette, issue 79 of 02.10.1962, in force since 30.09.1962).

174. However, the evaluation team notes that Art. 341b of the CC reads "*A person who unlawfully seizes an aircraft, on the ground or in flight, or establishes control over such an aircraft, shall be punished by imprisonment for up to ten years. (2) If the act under the preceding paragraph has been perpetrated by violence or threat, the punishment shall be imprisonment for three to twelve years*". This article provides a clear definition of "*piracy*" but applies only for aircrafts. From this perspective, questions arise as to why a specific provision was necessary in case of aircrafts if the above mentioned articles would cover all deeds of the piracy (ships and aircrafts).

175. Therefore, the evaluation team is on the opinion that criminalisation of acts of piracy committed on ships are not covered by legislation which does not fully address the offence of piracy as defined under the relevant international conventions.

176. Insider trading and market manipulation are regulated in the Measures against Market Abuse with the Financial Instrument Act, which contains clear definitions of the two and prohibits the use of such behaviour under administrative liability, as opposed criminal liability. Therefore the two are still not susceptible to money laundering prosecution[20].

[20] According to the Bulgarian authorities, at present, a new Concept for Criminal Policy of the Republic of Bulgaria was adopted in July 2010. The abovementioned Concept envisages the elaboration and adoption of a new Penal Code. One of the main purposes of the new Penal Code is to address the necessity to criminalise modern types of criminal activity, including those provided for under the international agreements undertaken by the Republic of Bulgaria. The timescale for the drafting and adoption of the new Penal Code is estimated to be 2014.

177. The deficiencies identified under the offence of the TF, affect this type of designated offence to be considered as predicate for ML.

Extraterritorially committed predicate offences (c.1.5)

178. As described under the 3rd MER, Art. 253 (7) explicitly provides that the money laundering offences apply also where the predicate crime is committed outside the jurisdiction of Bulgaria.

179. The interviewed officials stated that there is a case under investigation where the predicate offence was not considered as a crime in the country where it was committed, but it constitutes a predicate offence in Bulgaria which does not impede the penal procedure in Bulgaria.

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

180. Art. 253 of the CC criminalises money laundering regardless of whether the predicate offence has been committed by the money launderer or a third party, as no exceptions are provided for the self-laundering cases. Thus, the ML offence is also applicable to persons who commit the predicate offence (self-laundering). This was confirmed by practitioners during the on-site interviews.

Ancillary offences (c.1.7)

181. The CC provides criminal liability for attempt and a number of types of ancillary offences.

182. *Association or conspiracy:* The preparations towards money laundering or association to commit ML is criminalised under Article 253a, Part 1, of the CC which provides that imprisonment of up to two years, or a fine from BGN five thousand to ten thousand shall be applied for preparation or any association to commit ML. Under Art. 17 of the Bulgarian CC, preparation to commit a crime includes preparing of the means, the finding of accomplices and the creating of conditions in general for the perpetration of an intended crime, before the commencement of its perpetration. The preparation shall be punishable only in the cases expressly provided by the law.

183. The criminal liability for persons who organise or direct an organised criminal group or take part in such groups, is defined under Article 321, Part 1 of the Criminal Code.

184. *Attempt*: According to Art. 18 of the CC, criminal liability is also applied with regard to attempted crimes. Attempt is defined as the commenced perpetration of intentional crime, whereas the act has not been completed or, although completed, the consequences dangerous to society provided by the law and desired by the perpetrator have not occurred.

185. *Aiding and abetting, facilitating and counselling*: Art. 20 of the CC, provides that accomplices in the perpetration of an intentional crime shall be: perpetrators, abettors and accessories. A perpetrator shall be a person who took part in the crime perpetration itself. An abettor shall be a person who intentionally incited another to commit a crime. An accessory shall be a person who intentionally facilitated the perpetration of a crime through advice, explanations, promises to render assistance after the act, removal of obstacles, supply of means or in any other way.

186. Thus, the evaluation team confirms that all the ancillary offences required by the FATF standard are defined under the Bulgarian CC.

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)

187. Art.s 3, 4, 5 of the CC specify the scope of its application which extends to: to all crimes committed on the territory of the Republic of Bulgaria; crimes committed by Bulgarian citizens abroad; to foreign citizens who have committed crimes of general nature abroad, whereby the interests of the Republic of Bulgaria or of Bulgarian citizens have been affected. In addition, Art. 6 (2) envisages that the CC also applies to other crimes committed by foreign citizens abroad, where this is stipulated in an international agreement, to which the Republic of Bulgaria is a party.

188. The interviewed officials stated that there is a case under investigation where a predicate offence was not considered as a crime in the country where it was committed, but it constitutes a predicate offence in Bulgaria. As under the Art. 253 (7) the term *"crime"* is used it gives a basis to conclude that extraterritorial crimes are also subject to dual criminality, though this has not being tested in practice.

Recommendation 32 (money laundering investigation/prosecution data)

189. The examination of statistical figures provided in respect of the number of criminal investigations, prosecutions and convictions for ML shows noticeable increase in all of these aspects:

Table 8: Number of criminal investigations, prosecutions and convictions for ML

Year	Investigations		Prosecutions		Convictions (final)		Proceeds frozen[21]		Proceeds seized		Proceeds confiscated[22]	
	Cases	Persons	Cases	persons	cases	persons	Cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
2008	142	n.a	20	40	13	25	4	12 million	n.a.	n.a.	n.a.	0.35 million
2009	190	n.a	26	62	18	37	9	15 million	n.a.	n.a.	n.a.	5.9 million
2010	228	n.a	22	37	17	37	5	12 million	n.a.	n.a.	n.a.	7.5 million
2011	263	n.a.	30	43	22	33	5	0.6 million	n.a.	n.a.	n.a.	1.35 Million
30.06.2012	228	n.a.	10	15	7	8	5	1.5million	n.a.	n.a.	n.a.	n.a.

Table 9: Number of stand-alone ML cases

Year	Number of stand-alone ML cases	Number of convicted persons
2008	2	2
2009	3	4
2010	2	4
2011	1	1
2012	4	4

190. According to the information provided by the Bulgarian authorities, since 2008, 171 cases of third party ML cases were investigated by the MoI.

Table 10: Money laundering convictions (cases) and the most frequent predicate crimes for 2008-2011

Predicate Offence	2008	2009	2010	2011
Organised criminal group (establishing, leading or participating in)	9	6	6	3
Human trafficking	6	8	5	3
Prostitution procurement	1	1	2	0
Drugs related	7	2	4	5
Fraud	0	2	2	1
Theft or burglary	1	0	1	0
Smuggling	0	0	0	1
Extortion	1	2	2	0
Document counterfeiting	0	1	0	1
Tax Crime	0	1	1	1

Source: SPOC

[21] Only the provisional measures imposed under the Forfeiture Law (by CEPACA). The provisional measures under the CC are not reflected here.

[22] Proceeds confiscated include only the forfeitures under the CC (not forfeiture by CEPACA)

191. With regard to the cases referred by the FID-SANS, which resulted in convictions the data is as follows: 2008 – 5 convictions; 2009 – 10 convictions; 2010 – 9 convictions, 2011 – 10 convictions, 2012 – 4 convictions.

192. The Bulgarian authorities informed the evaluators that the above-mentioned statistics include convictions where either the case was initiated by FID-SANS, or the FIU significantly contributed to the case by prior or simultaneous analysis of STRs. The information from the FIU is frequently mixed with information from other sources or investigations during the checks/investigations by LEAs, therefore an investigation started independently from an STR analysis might be further supported or directed by the presence of an STR.

193. Data on ML convictions is collected in the Sector for Money Laundering Counteraction in the Supreme Prosecutor's Office of Cassation.

Table 11: Sentences[23] on ML cases

Year	Total number of convicted persons	Effective convictions (deprivation of liberty)	Suspended sentences
2010	**37**	**19** (10 up to 3 years, 3 between 3 and 5 years, 6 were sentenced between 5 and 10 years)	**18**
2011	**33**	**14** (11 were sentenced to up to 3 years, 3 were sentenced to between 3 and 5 years)	**19**
2012[24]	**8**	**8** (3 up to 3 years, pecuniary sanctions were imposed to 4 persons out of the total number of 8)	**5**

Effectiveness and efficiency

194. The evaluators welcome the progress achieved by the Bulgarian authorities in the number of investigations, prosecutions and convictions in ML cases as demonstrated by the statistics.

195. The evaluation team was advised that in practice, the ML investigations and prosecutions involve three key elements: the unknown source of money, the possible illegal origin, and the financial analysis describing the laundering process. Stand-alone ML cases were presented by various law enforcement officers and third party ML convictions were confirmed by the prosecutors and judges.

196. The judiciary and law enforcement authorities met on-site showed a high level of knowledge and awareness on ML features and did not mention any legal obstacles to proper investigations or prosecutions of ML cases. It was pointed out that once a final decision (conviction) is taken in courts, the judgements are published on intranet and all courts have the possibility to explore the judicial practice in ML. In case of contradictory judgements, the Supreme Court shall issue an interpretative decision but it was never the case for the ML crime.

197. The interview held with representatives of the judiciary made it quite evident that in cases related solely to autonomous (third party) ML offence, a prior conviction for the predicate crime would not be required by the court in order to convict a person for the respective ML offence. Moreover, the judges met on-site confirmed that if enough information is provided to the court (in that the respective property comes from criminal activity), the exact nomination of the predicate crime is not required.

198. However, the overall number of cases under investigation, versus cases resulted in convictions or involving an agreement between the prosecution and the defendant does not seem proportionate. According to the information provided by the authorities this is caused by the fact that many of the instigated investigations relate to extraterritorially crimes and additional information from the foreign counterparts is required for further investigation. The disparity between the numbers of investigations and prosecutions is also generated by the necessity to

[23] Including non-final
[24] June 2012

conduct a thorough financial analysis for continuing the investigation which is time consuming. If compared with the overall number of investigations instigated for predicate offenses (outlined in the table above), the number of ML cases, still appears to be rather low.

199. There are statistics in respect of the predicate offences and the law enforcement representatives underlined that the drug trafficking, cybercrimes and VAT carousel frauds are the most frequent criminal proceeds generating offences. Only two ML convictions were achieved with tax evasion as the predicate. The evaluation team was advised that this is due to difficult and long procedures and not to any formal restriction.

200. STR based or STRs related convictions were reported by the Bulgarian authorities.

2.1.2. Recommendations and comments

Recommendation 1

201. The examiners note the developments in the AML practice achieved by the Bulgarian authorities in the past years. However, the technical issues raised in the 3rd MER remain valid. The Bulgarian legislation still needs to extend the list of predicate offences, to include all categories of piracy, market manipulation and insider trading, as well as to cover all the aspects of terrorism financing.

202. Although the evaluation team accepted that the Bulgarian word "prikrivam" might cover both *"concealment"* and *"disguise"*, the opinion that the ML offence would benefit from clear mentioning of both term used in the translation in Bulgarian of the Vienna Convention remains.

203. The CC does not provide for a definition of *"property"* and although it was indicated that in practice this is not an impediment in prosecuting and convicting for ML, an uneven comprehension by various authorities was identified on-site. While the prosecutors made reference to the Strasbourg and Warsaw Conventions as the reference documents for the term, the law enforcement indicated the 2006 Law on Recognition, Enforcement and Issuance of Writs for Securing of Property or Evidence. Therefore, the evaluation team recommends that a clear definition of *"property"* (including the referral to both direct and indirect proceeds) should be adopted in the legislation, or, at least, a clear indication should be provided as to what legal document is to be taken into consideration when defining *"property"* for ML purposes.

204. The authorities should continue the training programs to ensure that the prosecutors involved in ML cases are aware that prior conviction for the predicate offence is not required in order to bring a ML case to court. This should reduce the discrepancy between the number of investigations and convictions on ML cases enhance the overall effectiveness of money laundering system in the country.

Recommendation 32

205. Statistics on the predicate offence should be routinely kept by the Bulgarian authorities in respect of ML investigations, prosecutions and convictions.

2.1.3. Compliance with Recommendation 1

	Rating	Summary of factors underlying rating
R.1	**LC**	• The definition of *"property"* does not include indirect proceeds; • Not all the designated categories of predicate offences are covered by the CC (piracy, insider trading and market manipulation) and some aspects of terrorist financing; **Effectiveness:** • The results with regard to number of investigations, versus cases

		resulted in convictions does not seem proportionate; low number of ML investigations compared with the number of investigations instigated for the predicate offences; • Uneven understanding of *"property"* among the various authorities.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

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

Summary of factors underlying rating in the 2008 MER

206. Special Recommendation II was rated LC in the 3rd round mutual evaluation report. The deficiencies identified were related to the lack of clear if the offence, as provided in the Bulgarian CC, also includes the contributions for any purpose (including legitimate activity) and the liability of legal persons limited to administrative accountability.

Legal framework

207. Bulgaria has signed and ratified the 1999 Convention for the Suppression of Financing of Terrorism. Since the last evaluation report, the terrorist and terrorist financing offences were amended. The amendments supplemented the list of crimes qualified as terrorism and provided the replacement of the word *"means"* with the words *"financial or other means"* with regard the collection or provision of funds, and the word *"act"* with the word *"crime"* in relation to the commission of an offence.

208. The terrorism offence is criminalised in Art. 108a (1) of the CC which reads as follow: *"Anyone who commits a crime under Articles 115, 128, 142, 143, 143a, 216(1) and (5), 326, 330, 333, 334, 337, 339, 340, 341a, 341b, 344, 347(1), 348, 349, 350, 352(1), (2) and (3), 354, 356f or 356h for the purpose of causing disturbance/fear among the population or threatening/forcing a competent authority, a member of the public or a representative of a foreign state or international organisation to perform or omit whatsoever in the circle of his/her functions, shall be punishable for terrorism by imprisonment from five to fifteen years; and where death has been caused, the punishment shall be imprisonment from fifteen to thirty years, life imprisonment or life imprisonment without a chance of commuting."*

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

209. Terrorism financing is criminalised under paragraph 2 of the same Art. 108a: *Anyone who, regardless of the specific mode of operation, directly or indirectly collects or provides financial or other means for committing a crime under Paragraph 1 in full knowledge or based on the assumption that the means will be used for criminal purposes shall be punishable by imprisonment from three to fifteen years and a fine of up to BGN 30,000.*

210. As described in the 3rd round evaluation report, a series of technical shortcomings arise from the wording of the aforementioned article. Article 2 paragraph 1 letter a) of the TF Convention requires that any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex.

211. The analysis of the Bulgarian CC reveals that a number of conducts prescribed in the nine Conventions and Protocols listed in the Annex to the TF Convention are not covered, hence, their support could not be qualified as terrorist financing.

212. Namely, the conducts prescribed under the following documents are not included or not fully included in the list of crimes defined in the Article 108a: Crimes against Internationally Protected

Persons, including Diplomatic Agents; Physical Protection of Nuclear Material; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf and the International Convention for the Suppression of Terrorist Bombings[25].

Table 12: Acts of terrorism listed in the Bulgarian CC

Treaties listed in the Annex to the TF Convention	**Criminalisation in the Bulgarian legislation**
Unlawful Seizure of Aircraft	Article 341b (Occupying or controlling aircraft)
Unlawful Acts against the Safety of Civil Aviation	Article 341a (3) (Violence against a person on the board of an aircraft) Article 341a (2) (Endangering the safety of an aircraft in flight) Article 341a (1) (Placing into an aircraft a device or substance)
Crimes against Internationally Protected Persons, including Diplomatic Agents	Article 142 (3) (4) (Kidnapping of a person under international protection) **Not covered** Murder, other attack upon the person or liberty, violent attack upon the premises, a private accommodation, or the means of transport, a threat to commit any such attack
Taking of Hostages	Article 143a, (Taking someone a hostage)
Physical Protection of Nuclear Material	Article 337, Article 339 **Not covered** Dispersal, theft, robbery, embezzlement or fraudulent obtaining of nuclear material, demand for nuclear material by threat or use of force or by any other form of intimidation, threat (i) To use nuclear material to cause death or serious injury to any person or substantial property damage, or (ii) To commit an offence described in order to compel a natural or legal person, international organisation or State to do or to refrain from doing any act;
Unlawful Acts of Violence at Airports Serving International Civil Aviation	**Not covered**
Unlawful Acts against the Safety of Maritime Navigation	Article 340 (1) (Damaging a ship) Other parts of the offences prescribed under the Convention are not covered
Unlawful Acts against the Safety of Fixed Platforms	**Not covered**
Terrorist Bombings	**Not covered**

213. In addition, the definition of terrorist offence as provided under Art. 108a of the CC, defines that acts referred to in the Article could be qualified as terrorism in case is committed "*for the purpose of causing disturbance/fear among the population or threatening/forcing a competent authority, a member of the public or a representative of a foreign state or international organisation to perform or omit part of his/her duties*", while the acts listed in the nine

[25] The Bulgarian authorities do not agree with evaluators' opinion and commented that although some of the provisions pointed out (articles from the CC) are not explicitly mentioned in the list of offences under Art. 108a, para. 1 (terrorism), they are related to the provisions in the list in a way that if the concrete act that has been done fulfils their requirements, criminal proceedings shall be instituted for them as well. That is why these provisions are also relevant (for example under Art. 115 (murder) – if the murder represents a qualified case under Art. 116, and represents as well terrorism, criminal proceedings shall be instituted for Art. 108a, para.1 in relation with Art. 115 in relation with Art. 116 of CC).

Conventions and Protocols to the TF Convention should not contain a reference to such intentional element.

214. Furthermore, as specified under Article 108a, the purpose of the acts defined under the Criminal Code should be "*threatening/forcing a competent authority, a member of the public or a representative of a foreign state or international organisation to perform or omit whatsoever in the circle of his/her functions*".

215. *"Competent authorities"* as provided under Article 93 of the CC, are the bodies of state power, the bodies of state government, the authorities of the judiciary, as well as the officials therein, who are entrusted to exercise ruling functions. As specified under the same Art., *"member of the public"* is a person appointed by a public organisation to exercise a specified function, on the basis of the law or another normative act.

216. Thus, the terminology used in the Bulgarian CC is more restrictive than the one used in the TF Convention and therefore, not fully in line with the international standards set by SR II, as it covers only the *circle of his/her functions* and not *any act*.

217. Under the *corpus delicti* of the TF offence there is no reference to the use of funds *"in full or in part"*, thus the respective article does not contain explicit wording used under TF convention.

218. The *corpus delicti* of the TF offence provides criminal liability only for the provision or collection of financial or other means for committing terrorism, thus the criminal liability cannot be applied to a person who provides or collects funds with the unlawful intention that those funds should be used or in the knowledge that they are to be used *in full or in part* by a terrorist organisation or by an individual terrorist for legal purposes.

219. The Criminal Code does not use the wording provided under TF convention for defining the object of TF. The term *"financial or other means"* is used under the respective article and no definition for this term is provided and no reference on the legitimate or illegitimate source of funds is in place. Thus, no full compliance with the term *"funds"* as defined under the TF Convention can be demonstrated.

220. The language of terrorist financing offence does not require that the funds are actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act.

221. According to the Bulgarian CC, Art. 18, criminal liability is also applied with regard to attempted crimes. Attempt is defined as the commenced perpetration of intentional crime, whereas the act has not been completed or, although completed, the consequences dangerous to society provided by the law and desired by the perpetrator have not occurred.

222. As described under Recommendation 1, all the types of ancillary offences are defined under the Criminal Code.

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

223. All crimes approach is applied in Bulgaria and since Article 108a defines the criminal liability for TF this is a predicate offence for ML.

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

224. The CC does not define the scope of application, but the Article 108a does not differentiate whether the persons committing the offence are located in Bulgaria or other countries, where the terrorists (terrorist organisations) are located or the terrorist act will occur.

225. Furthermore, the representatives of the Prosecutors Office stated that criminal liability for terrorist financing can be applied also in cases when the collection or provision of funds takes place in Bulgaria irrespective of the fact whether the terrorist (organisation) is located or the terrorist act will occur in another country.

226. In addition, Art. 3 of the Bulgarian CC provides that the code shall apply to all crimes committed in the territory of the Republic of Bulgaria.

227. According to Art. 4 (1) of the CC, the latter applies to Bulgarian citizens for crimes committed by them abroad. Under Art. 5, the CC applies also to foreign citizens who have committed crimes of general nature abroad, whereby the interests of the Republic of Bulgaria or of Bulgarian citizens have been affected. In addition, Art. 6 (2) envisages that the Criminal code also applies to other crimes committed by foreign citizens abroad, where this is stipulated in an international agreement, to which the Republic of Bulgaria is a party.

The mental element of the FT (applying c.2.2 in R.2)

228. According to Art. 104 of the Criminal Procedure Code (CPC), the proof in criminal proceedings can constitute factual data, which are related to circumstances connected to the case, contribute to their clarification and are established according to the order, envisaged in the Code, thus the intentional element of the TF offence can be inferred from objective factual circumstances.

229. A difficulty arises in relation to the additional mental element, the purpose *(…for the purpose of causing disturbance…)*, required by the Bulgarian CC in relation to all the acts that can be qualified as terrorism. This is not in line with Article 2 (1)(a) of the TF Convention which states that financing of the particular offences covered by the Annex to the TF Convention shall not require any specific reference to a mental element.

Liability of legal persons (applying c.2.3 & c.2.4 in R.2)

230. The Bulgarian legislation does not envisage criminal liability for legal persons.

231. According to the information provided by the authorities, the principle for the personal character of the criminal liability is a fundamental principle of the national criminal law and exists since the adoption of the Bulgarian Criminal Code in 1968.

232. The liability of legal persons is regulated under the Law on administrative violations and sanctions adopted in 1969. According to this Law, a legal person, who has enriched itself or would enrich itself from a crime under Art. 108a of the CC, as well as from all crimes[26], shall be punishable by an administrative liability.

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

233. According to the Art. 108a of the CC, terrorism financing is punishable by imprisonment from three to fifteen years and a fine up to BGN 30,000. The object of TF, that has been the focus of crime, shall be expropriated to the benefit of the State, and where this object may not be found or has been disposed of, payment of the equivalent sum in cash shall be ruled.

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

Recommendation 32 (terrorist financing investigation/prosecution data)

235. At the time of the on-site visit, there were 5 notifications sent by the FIU to law enforcement agencies related to TF suspicions. There were no indictments for TF in Bulgaria (STR related or not).

[26] committed under orders of or for implementation of a decision of an organised criminal group, when they have been committed by:
1. an individual, authorised to formulate the will of the legal person;
2. an individual, representing the legal person;
3. an individual, elected to a control or supervisory body of the legal person, or
4. an employee, to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of this task shall be punishable by a administrative liability.

Effectiveness and efficiency

236. Due to the absence of cases before the prosecutors or the courts, it is not possible to assess the effectiveness of the procedures. However, apart from the points made below, the legislative base is largely in place. Law enforcement and prosecutors seemed aware of the context and features of the criminalisation of the offence.

2.2.2. Recommendations and comments

Special Recommendation II

237. The authorities are invited to adopt legislation in order to criminalise all the offences listed in the Annex to the TF Convention.

238. Bulgarian authorities are recommended to amend Art. 108a to ensure that all the offences under the nine Conventions and Protocols listed in the Annex to the TF Convention are covered, without any additional mental element required.

239. The purposive element of the TF offence should cover the threatening/forcing a competent authority, a foreign state or international organisation, to perform or omit from doing *any act* as defined under the TF Convention, in contrary to the present wording of the CC which is limited to acts in the *circle of his/her functions*.

240. The legislation should be amended to cover situations in which the property or funds are provided or collected generally for the use of an individual terrorist or a terrorist organisation without intention or knowledge that the funds or property will be used in the commission of a terrorist act. Under the present provisions the criminal liability cannot be applied to a person who provides or collects funds in the knowledge that they are to be used in full or in part by a terrorist organisation or by an individual terrorist for legal purposes.

241. Clearly define that TF offence extends to funds, which are to be used in full or in part.

242. Ensure full compliance with the term *"funds"* defined under the TF Convention.

243. Apply criminal liability to legal persons.

Recommendation 32

244. N/A

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• Not all Acts defined in the treaties listed in the Annex to the Convention are criminalised; • Art. 108a para 1 of the CC prescribes the purposive element for the TF offence, for all the offences, including the ones specified under the Conventions and Protocols listed in the Annex to the TF Convention; • TF offence does not cover threatening/forcing a competent authority, a member of the public or a foreign state or international organisation to perform or omit from doing *any act*; • The term "fund" is not defined under the criminal legislation and here is still no explicit coverage of funds, which are to be used in full or in part; • No criminalisation of the act of providing or collecting funds for

		any purpose; • Criminal liability is not applied with regard to legal persons.

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

2.3.1. Description and analysis

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

Summary of factors underlying rating in the 2008 MER

245. Bulgaria was rated partially compliant with regard to Recommendation 3 in 3rd round evaluation report. The issues identified included differences of view between the Bulgarian authorities on the application of third party confiscation, lack of guidance on confiscation of indirect proceeds and value confiscation and of effectiveness of the general confiscation regime.

Legal framework

246. The forfeiture of assets in the benefit of the State is provided by Article 53 of the Criminal Code reads as follows:

(1) Notwithstanding the penal responsibility, forfeited in favour of the state shall be:
- a) *things which belong to the culprit and were intended for or have served for the commission of an intentional crime;*
- b) *things which belong to the culprit and were object of an intentional crime - in the cases explicitly provided in the Special Part of the present Code.*

(2) (Forfeited in favour of the state shall also be:
- *a) things, object or instrument of the crime, the possession of which is prohibited, and*
- *b) the acquired through the crime, if it does not have to be returned or restored. Where the acquired is not available or has been disposed of, an equivalent amount shall be adjudged.*

247. The authorities stated that the term *"things"* used in Bulgarian language is *"вещ" ("vesht")* which is translated as things (belongings) and can include both movable and immovable.

248. The confiscation as punishment is prescribed under Article 37 of the Criminal Code.

249. Article 44 of the CC defines the confiscation as the compulsory appropriation without compensation in favour of the state, of property belonging to the convict or of part thereof, of specified pieces of property of the culprit, or of parts of such pieces of property.

250. Forfeiture provisions for ML offence, are stipulated in Art. 253, Part 6 of the Special part of the CC, which reads that the object of crime or the property into which it has been transformed shall be forfeited to the benefit of the state, and where absent or alienated, its equivalent shall be adjudged.

251. In the context of terrorist financing, Art. 108a, Part 4 prescribes that the object of terrorist financing offence shall be expropriated to the benefit of the State, and where absent or alienated, its equivalent shall be adjudged.

252. The aforementioned provisions are completed by the Law of divestment in favour of the state of property acquired from criminal activity (LDFSPACA), which in its Art. 1 (2) states that property, acquired directly or indirectly from criminal activity, which has not been restored to the aggrieved or has not been divested in favour of the State, or confiscated under other laws, shall be subject to divestment.

253. A newly adopted Act on Forfeiture in Favour of the State of Unlawfully Acquired Assets (AFFSUAA), in force since 19.11.2012 replaces LDFSPACA, in force at the time of the evaluation visit. Therefore, the evaluators therefore could not assess the effectiveness of the newly adopted law.

254. It has to be said that any examinations and proceedings for the forfeiture of assets acquired from criminal activity, which are not completed until the entry into force of AFFSUAA, shall be completed under the terms and according to the procedure established by the LDFSPACA.

Confiscation of property (c.3.1)

255. Art. 53 of the CC is applicable to all crimes set in the Criminal Code providing grounds for forfeiture of: instrumentalities and instrumentalities intended for (Para (1), a); *"corpus"* of crime (Para (1) b), and proceeds acquired through crime (Para (2), b).

256. The provisions related to the forfeiture of instrumentalities used in and instrumentalities intended for use in the commission of any ML, FT or other predicate offences seems to be restrictive, as applies only to the *"things"* belonging to culprit and therefore, only those can be subject to forfeiture.

257. The relevant articles of the CC do not refer to legitimate property intermingled with the illegally obtained property.

258. Another avenue which enables to impose preventive measures and divesting in the favour of the state of property acquired through a series of crimes (including ML, TF and terrorism) is provided under Art. 3. (1) of the LDFSPACA.

259. The procedures under LDFSPACA shall be conducted when it is established that a given person has acquired property of significant value about which grounded supposition may be made that it has been acquired from criminal activity, and against him punitive prosecution has started for designated crimes under the Criminal Code.

260. The procedures under LDFSPACA shall also be conducted when there are sufficient data about property of significant value about which grounded supposition may be made that it has been acquired from criminal activity, but:

- the penal procedure has not started or the started one has been terminated because the acting person has deceased, or
- the penal procedure has not started or the started one has been terminated because after committing the crime the acting person has fallen into durable mental disorder excluding sanity or an amnesty has followed, or
- the penal procedure has been terminated pursuant to art. 25 of the CPC.

261. Under the newly endorsed AFFCUAA it is provided that proceedings can be initiated when a person has been constituted as accused for a criminal offence (including ML, TF and terrorism) as specified under Articles 21 and 22 of the Act.

262. As specified under Art. 22, the examination shall furthermore commence where a person has not been constituted as an accused of a criminal offence by reason of a refusal to institute a criminal proceeding or a termination of a criminal proceeding in progress because:

- an amnesty has ensued;
- the period of prescription, provided for in the law, has lapsed;
- after commission of the offence the actor has lapsed in a sustained mental derangement which precludes sanity;
- the actor has died;
- in respect of the person, a transfer of a criminal proceeding to another State has been admitted.

263. The examination shall furthermore commence where the criminal proceeding in connection with any criminal offence has been suspended and the person cannot be constituted as an accused because:

- after commission of the offence the said person has lapsed in a short-term mental derangement which precludes sanity or suffers from another grave disease;
- the said person enjoys immunity;
- the address of the said person is unknown and he or she cannot be found.

264. Neither the LDFSPACA nor the AFFCUAA provide for forfeiture of instrumentalities.

Assets concerned (C.3.1.1)

265. The definition of *"property"* is provided by the Law on Recognition, Enforcement and Issuance of Writs for Securing of Assets or Evidence Act (see analysis under Recommendation 1).

266. The scope of the forfeiture provided under Article 53 of the CC is applied to *"acquired through crime"*, however it does not include specific reference to the property acquired directly or indirectly.

267. The LDFSPACA prescribes that property, acquired directly or indirectly from criminal activity is subject to divestment. There is no direct reference to the income, profits or other benefits from the proceeds of crime as required by criterion 3.1.1 (a). The Bulgarian authorities explained that this aspect is covered by Art. 4 of the LDFSPACA, which provides that the divested property shall be the one acquired during the checked period, by persons about whom has been established that grounds of Art. 3 exist. Art. 3 prescribes that "*the procedures under this law shall be conducted when it is established that given person has acquired property of significant value about which grounded supposition may be made that it has been acquired from criminal activity, and against him punitive prosecution has started for crime under the Penal Code".* While it could be accepted that *"acquired from criminal activity"* might include profits or other benefits from the proceeds of crime, a restriction arises from the value limitation included in the same article which is applicable only for *"property of a significant value"*.

268. However, this shortcoming seems to be overcome by Art. 1 Para.2 of the in the new AFFCUAA which prescribes that any assets for the acquisition of which a legitimate source has not been identified shall be treated as unlawfully acquired assets, which obviously comprises the benefits and profits from the proceeds of crime.

269. Turning to the requirements of EC 3.1.1 (b), Art. 44 of the CC defines the confiscation as a penalty and it can be extended only to the property of the convict. When Article 53 of the CC is applied, the forfeiture of the proceeds can be imposed to assets *acquired through crime* regardless of who is owning or holding them, based on Para (2) b). In case of *instrumentalities used and instrumentalities intended for use* in ML, TF or other predicate offences, as well as in case of the *object of an intentional crime*, the forfeiture is limited to the assets held and belonging to the culprit.

270. This provision raises concerns related to the possibility to forfeit the assets in a classic third-person ML (where the laundered property is the *object* of the crime and cannot be confiscated as *acquired through crime* as it was not gained through the laundering activities), if the defendant is only charged with money laundering and nobody is prosecuted for the predicate offence, and when the ML offence was committed with assets belonging to someone else.

271. The authorities explained that this issue is addressed by Art.s 253 and 108a of the CC which provide the forfeiture of the object of ML (TF) crime or the property into which it has been transformed and where absent or alienated, its equivalent shall be awarded. Although there are no specific provisions on confiscation of property held or owned by a third party, the Bulgarian authorities informed the evaluators that the provisions of the above-mentioned articles are interpreted broadly and the laundered assets can be forfeited even if they are held or belong to another person than the launderer.

272. However, the evaluators are of the opinion that when speaking of forfeiture, Art.s 253 and 108a should be read in conjunction with Art. 53 of the CC. Concerns remain as to whether and to

what extent the property that has been laundered by one perpetrator but constitutes proceeds from an offence committed by a third person could be seized and confiscated, by any legal means, from the money launderer, in case the assets do not belong to him.

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

273. The Article 72 of the CPC provides the competent court of first instance the possibility to apply measures to secure the confiscation and forfeiture of objects to the benefit of the state.

274. There is no reference under relevant article of the CPC to the property subject to confiscation, thus it can be concluded that it would apply to the assets subject to forfeiture and confiscation pursuant Art. 53 and 44 of the CC.

275. The interpretive decision no. 2 of 11.10.2012 of the Criminal Chamber of the Supreme Court of Cassation provides clarifications on the procedures applied for the seizure of the property, according to which, it is necessary in all cases that the owner of the property, over which the prosecutor has made the request for imposition of security measures, to be constituted in the capacity of accused party for an offence, punishable by a fine and / or confiscation, thus it makes impossible to apply provisional measures with regard to the property held or owned by a third party.

276. During the on-site interviews the authorities mentioned that in practice, the LEA have the possibility to freeze property in urgent cases when the freezing order can be obtained in a matter of hours.

277. Under Art. 22 of the LDFSPACA, on the basis of a report, CEPACA shall make motivated request, supported with evidence, for imposing of securing measures (injunction orders) before the respective court. LDFSPACA does not specify which property is subject to provisional measures.

278. As specified under Article 37 of the new AFFSUAA, the Commission shall adopt a decision on submission to the court of a motion for an injunction securing a future action for forfeiture of assets on the basis of a report made by the director of the territorial directorate concerned, where sufficient data have been collected, raising a reasonable presumption that the said assets have been acquired unlawfully. The AFFSUAA defines that the precautionary measures shall extend to the interest, as well as to other civil fruits derived from the assets whereupon the said measures have been imposed. However, it does not contain explicit definition of property subject to provisional measures.

279. Powers for the competent authorities to postpone the transaction are provided for under Article 12 of the LMML. In case of suspicion on ML, the Minister of Finance may, upon a proposal made by the Chairperson of the SANS, put a stay, by an order in writing, on a certain transaction or deal for a period of up to 3 business days as of the day following the issuance of the order.

280. The FID shall notify the Prosecutor's Office immediately of the stay put on the transaction or deal. After receiving the notification, the prosecutor may impose a preventive measure or file a request with the relevant court to impose an impoundment or injunction. The court ought to adjudicate on the request within 24 hours of it submission.

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

281. Measures to secure the property subject to confiscation, as well as confiscation measures are mainly provided by the CPC, the LDFSPACA and the AFFSUAA.

282. Under Art. 72 of the CPC, it was determined that the competent court can apply provisional measures to secure confiscation and forfeiture of assets to the benefit of the state *in camera* in pursuance of the procedure set forth in the CPC. Art. 395 of the CPC reads as follows: *The petition for an injunction shall specify the precautionary measure and the cost of the action. A*

duplicate copy of the said petition shall not be submitted to the opposing party. (2) The petition shall be adjudicated in camera on the day on which the said petition is submitted. (3) On the basis of the ruling whereby the petition is granted, the court shall issue an injunctive order. Where a bond has been set, the court shall issue an injunctive order after the said bond has been deposited.

283. The representatives of the judiciary met on-site confirmed that in practice, the provisional measures under criminal procedures should be applied without prior notice.

284. However, viewing the impact of the LDFSPACA on the overall provisional measures, some concerns still remain on ex-parte application of freezing/confiscation procedure in practice, as no provision are prescribed under LDFSPACA. During the on-site interviews, the evaluation team learned that in case of provisional measures taken by CEPACA, the parties concerned will be informed about the application of provisional measures before taking the decision by the respective court.

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

285. Article 159 of the CPC provides that at the request of the court or the pre-trial authorities, all institutions, legal persons, officials and citizens shall be obligated to preserve and hand over all objects, papers, computerized data, including traffic data, that may be of significance to the case.

286. Article 160 of the CPC prescribes that should there be sufficient reasons to assume that in certain premises or on certain persons objects, papers or computerized information systems containing computerized data may be found, which may be of significance to the ease, searches shall be conducted for their discovery and seizure.

287. In pre-trial proceedings, search and seizure shall be performed with an authorisation by a judge from the respective first instance court or a judge from the first-instance court in the area of which the action is taken, upon request of the prosecutor. According to the Bulgarian authorities, the court decision for search and seizure is usually obtained in the same day of its submission. In addition, Art. 161 (2) of the CPC requires that in urgent cases, where this is only possible way to collect and keep evidence, the pre-trial bodies may perform collection and preservation of assets without the authorisation from the judge, the record of the investigative action being submitted for approval by the supervising prosecutor immediately, but not later than 24 hours thereafter.

288. As provided under Article 15 of the LDFSPACA, the competent bodies of the CEPACA shall perform checks and collect evidence for establishing the origin and the location of the property, about which there are data that it has been directly or indirectly derived from criminal activity. The bodies shall have the right to require cooperation and information from all state and municipal bodies. The conceding of the requested information cannot be refused or restricted due to considerations for official or commercial secret.

289. According to the Article 18 of the LDFSPACA, the relevant bodies are authorised to implement actions for searching and seizure by the order provided in the CPC, when there are sufficient grounds to be supposed that in some premises or person there are belongings, subjects, papers or computer information systems in which are contained computer information data which may be important for legal proceedings.

290. As provided under Article 28 of the AFFSUAA, the competent authorities shall collect information on circumstances relevant to clarifying the origin of the assets, the manner of acquisition and of the transformation thereof.

291. According to Article 29 of the same Act, the CEPACA and the directors of territorial directorate may approach the court with a motion for lifting of bank secrecy, of the trade secret and disclosure of the information covered the Public Offering of Securities Act, where this is necessary for accomplishment of the objective of this Act.

Protection of bona fide third parties (c.3.5)

292. Article 396 of Civil Procedure Code defines that the ruling of the court on an injunction securing the action shall be appealable by an interlocutory appeal. However, neither the CC, nor the CPC provide for mechanisms to protect the rights of bona fide third parties whose interests have been infringed.

293. The LDFSPACA specifies that subject to divestment under the conditions and by the order of the LDFSPACA shall also be the property transferred during the checked period to spouse, relatives of direct line without limitation in the degree, and of lateral line and by marriage – up to second degree, when they have known that it has been acquired from criminal activity, thus the rights of bona fide third parties are not injured under the CEPACA provisions.

294. The AFFSUAA specifies the forfeiture of assets shall furthermore apply to any assets which have been acquired by a third party for the account of the person under examination in order to evade the forfeiture of the said assets or to conceal the origin of, or the actual rights to the said assets. Thus, it is understood that in case of bone fide third party, when the person was not aware of the unlawful origin of the assets, the forfeiture measures shall not apply.

295. Taking into consideration that no mechanism exists for the protection of rights of third parties acting in good faith in the framework of criminal procedures, the rights of bona fide third parties may be injured when applying seizure and confiscation under the criminal procedures.

Power to void actions (c.3.6)

296. The possibility to void the contracts is provided for under LDFSPACA, Article 7, which prescribes that the transactions, implemented with property, acquired from criminal activity, shall be null and shall be subject to divestment when they are *"gratuitous transactions with third persons or corporate bodies or onerous transactions with third persons if they have known that the property has been acquired from criminal activity, or have acquired the property for its concealing or for non-disclosure of its unlawful origin or the actual rights connected with this property"*.

297. Art. 135 of the Law on obligations and contracts stipulates that the creditor (the State in case of confiscation) may require that, with respect to himself, the acts of the debtor which damage the creditor to be declared void, if the debtor was aware of the damage at the time of performance of those acts. Where the act is for consideration, the person with whom the debtor has negotiated should also have been aware of the damage. Voidance shall not affect the rights acquired in good faith by third parties for consideration prior to the registration of the claim for voidance.

298. The awareness shall be presumed until otherwise proved where the third party is a spouse, a descendant or ascendant, brother or sister of the debtor.

299. Where the act had been performed before the claim arose, it shall be void only if the debtor and the person with whom he has negotiated have meant to damage the creditor.

300. The creditors in whose favour the voidance is declared shall be satisfied out of the amount received from the public sale before the third party, when the latter participates in the distribution with a claim arising from the declaration of voidance.

301. The competent authority to declare voidance of an action is the relevant civil court.

Additional elements (c.3.7)

302. The Bulgarian legislation does not allow for the confiscation of assets of criminal organisations other than those directly related to an offense for which a conviction has been obtained. The only exception provided for under Law on Administrative Liabilities and Sanctions (LAVS) concerns cases with regard to legal entities when the criminal proceedings may not be initiated or the proceedings initiated were abandoned on the legal grounds provided under LAVS.

303. According to Art. 83a, a legal person, which has enriched itself or would enrich itself from a crime under a specifically listed in the Law, as well as from all crimes, committed under orders of or for implementation of a decision of an organised criminal group, shall be punishable by a property sanction of up to BGN 1,000,000, but not less than the equivalent of the benefit, where the same is of a property nature; where the benefit is not of a property nature or its amount cannot be established, the sanction shall be from BGN 5,000 to 100,000.

304. Art. 66 of the AFFSUAA prescribes the forfeiture of property of legal persons which shall apply to any assets which the person under examination has transferred or contributed as a cash asset or a non-cash asset to the capital of a legal person if the persons who manage or control the said legal person knew or, judging from the circumstances, could have presumed that the said assets have been acquired unlawfully. Forfeiture shall furthermore apply to any assets unlawfully acquired by a legal person which is controlled by the person under examination or by the persons closely linked therewith, whether independently or jointly. The assets shall furthermore be forfeited upon succession in title of the legal person.

305. In respect of the assets of criminal organisations, the only forfeiture possibility lies with the AFFSUAA which regulates the terms and procedures for forfeiture in favour of the state of unlawfully acquired assets, of which a legitimate source has not been identified.

306. Bulgarian legislation does not provide for reverse burden of proof.

Recommendation 32 (statistics)

307. There have been no cases of seizure and confiscation relating to TF. As for the ML, the following statistics have been provided:

Table 13: Proceeds forfeited in ML cases (EURO):

Year	Proceeds frozen by the CEPACA		Seizures		Proceeds confiscated (as a result of penal proceedings)	
	Cases	Amount of assets	Cases	Amount of assets	Cases	Amount of assets
2008	4	€12 million	-	-	-	€0.35 million
2009	9	€15 million	-	-	-	€5.9 million
2010	5	€12 million	-	-	-	€7.5 million
2011	5	€0.6 million	-	-	-	€1.35 million
30.06. 2012	5	€1.5 million	-	-	-	-

308. If one compares the number of investigations and convictions against the number of cases when provisional measures were applied, it appears that in rather a few cases decisions were made on applying freezing measures.

309. On the total confiscated property (penal confiscation), statistics are kept by Supreme Prosecutor's Office of Cassation.

Table 14: Total amount of forfeited property under the CC (Art. 53) – all predicate offences

Year/Confiscations	Value of confiscation (including equal value confiscations)	Other property
2008	101,176 BGN, €138,779 and $432	8 motor vehicles, Real estate totalling 40, 803 BGN
2009	1,116,936 BGN, $4,750 USD, €7,818	1 apartment totalling 48,016 EUR, 5 motor vehicles, Property amounting to 46,837 BGN

2010	13,328,500 BGN[27], €127,382	2 motor vehicles, real estates totalling 662,932 BGN, Gold products amounting to 57,469 BGN, Property amounting to about 105,000 BGN
2011	581 758 BGN, €351,306	2 apartments and 2 motor vehicles totalling 95,860 BGN, Property amounting to 472,246 BGN, 6 208 gr. of gold (products) and 1 304 gr. of silver (products).
2012[28]	130,546 BGN, €49,633	-

310. Statistics on the number of convicted persons where the sentence included confiscation are also kept by the authorities. The amounts included in the table below take into account only the dispositions of the court decisions on property that has specific monetary value. The statistics do not include the forfeited property that has been stated in the decisions only descriptively (apartments, motor vehicles etc.) without stating its monetary value. For 2008 and 2009 no data was gathered on the amount of the confiscated property.

Table 15: number of convicted persons where the sentence included confiscation as punishment according to the CC

Year	Number of convicted persons	Property confiscation
2008	88	N/A
2009	45	N/A
2010	127	849,381 BGN
2011	25	4,010,366 BGN
2012	35	620,352 BGN

311. CEPACA effectiveness increased in implementing the civil confiscation regime in Bulgaria. There were no final confiscations in 2007 and 2008 due to the relatively recent establishment of the Commission and the three-instance control on the proceedings on confiscation carried out by the CEPACA. Although there have been no cases yet of ML related forfeiture by CEPACA (only provisional measures), in 2011 and 2012 there were 7 motions submitted to court for actual forfeiture of property under the Forfeiture Law for ML cases totalling €2,676,311 EUR:

Table 16: Final confiscations CEPACA

Year	2009	2010	2011	2012
CEPACA confiscation in EUR, approximate amounts	356,420	3,578,123	4,923,875	6,317,337

312. Equal value confiscation statistics are also maintained by the authorities and were provided to the evaluation team.

Table 17: Equal value confiscation (penal)

Year	2008	2009	2010	2011
Value confiscation /penal/ (missing property) in EUR, approximate amounts	128,239	5,750,000	7,022,163 (part of this amount is not final confiscation)	657,494 (part of the convictions are not final)

Source: SPOC

Effectiveness and efficiency

313. While the Bulgarian legal framework for the confiscation regime is convincing in that it provides for a wide range of forfeiture, seizure and provisional measures with regard to property

[27] Not final confiscation
[28] as of 06.2012.

laundered, proceedings from and instrumentalities used in and intended for use in ML and TF or other predicate offences, issues can be raised about its effectiveness.

314. On the positive side, the evaluation team welcomes the improvement achieved by the Bulgarian authorities in the overall confiscation regime, especially in rending the CEPACA effectively working.

315. As stated by the authorities, the Inspectorate of the Supreme Judicial Council as well as the Prosecution are actively engaged in effective implementation of the provisions regarding confiscation.

316. Since the last evaluation, Court practice in regard to confiscation has been established and the new handbook on money laundering investigation issued in 2009 provides additional guidance in relation to the forfeiture of assets and provisional measures.

317. During the on-site interviews, the evaluation team was told that according to the CC confiscation as a type of punishment is used to forfeit property without looking for the link between the property and the crime for which the person is convicted. The forfeiture applied according to Art. 53 of the CC, is a measure that is pronounced in respect of instrumentalities or object of crime, or in respect of property representing proceeding from criminal activities.

318. Concerns remain in respect of the possibility to forfeit the assets in third-party ML cases where the defendant is only charged with money laundering and nobody is prosecuted for the predicate offence, if the laundering was committed with assets belonging to someone else. However, the evaluators accept that in practice, this situation is susceptible to occur in a rather limited number of instances.

319. Art. 1 Para.2 of the in the new AFFCUAA prescribes that any assets for the acquisition of which a legitimate source has not been identified shall be treated as unlawfully acquired assets. The prosecutors met on-site explained that in practice, a *"financial profile"* of the defendant is made and any unjustified property is susceptible to forfeiture, which would include profits and any other benefits derived from the proceeds of crime. Due to the fact that the AFFCUAA was adopted after the on-site visit, the evaluation team could not assess its effective application of this provision.

320. The evaluation team was informed that whenever the object of crime or the property into which it was transformed is missing or is transferred to a third party, the court adjudicates that the equal value shall be paid and that is the regular practice of the courts. The CC and CPC do not provide for the forfeiture of property acquired in good faith by *bona fide* third parties.

321. The statistics on confiscated assets is evidence to the rising effectiveness of the confiscation regime, especially for 2009 and 2010. However, the data show that if compared with the number of instigated ML cases and convictions, the provisional measures are applied only in limited number of instances. If compared with the approximate economic loss of criminal offences of economic nature, the total value of confiscated assets (not only in ML cases), remains low.

2.3.2. Recommendations and comments

322. The seizure and confiscation measures should be extended to the instrumentalities used and intended for use in the commission of ML and FT, and to the object of the ML crime, in cases where the assets do not belong to the culprit charged with the laundering offence.

323. According to the interpretive decision no. 2 of 11.10.2012 of the Criminal Chamber of the Supreme Court of Cassation it is necessary in all cases that the owner of the property, over which the prosecutor has made the request for imposition of security measures, to be constituted in the capacity of accused party for an offence, punishable by a fine and / or confiscation. The provisional measures should be applicable in case of assets are held or owned by third (not accused) party.

324. The authorities are recommended to take legislative measures in order to include a definition of property, which is subject to security measures and confiscation.

325. Distinct provisions and adequate procedures for protection of the rights of bona fide third parties should be included in the legislation.

326. Efforts should be made by the authorities to increase the number of provisional measures applied and the volume of forfeited assets and to make more use of the powers currently vested to them by the existing legislation which offers a relatively broad authority to seize/sequester and to confiscate.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• The deficiencies in criminalisation of ML, predicate offences to ML, as well as TF may limit the ability to seize and to confiscate; • Confiscation of property held or owned by third parties is restrictive (in case of instrumentalities and object of crime); • Property subject to security measures is not explicitly defined under the relevant legislation; • The rights of bona fide third parties are not protected in all circumstances; ***Effectiveness*** • Limited effectiveness of the general confiscation regime.

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

2.4.1. Description and analysis

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

Summary of reasons for the 2008 compliance rating

327. Bulgaria was rated Largely Compliant in the third round report. The report found that not all the reporting entities which are compelled to comply with LMFT provisions were aware of the automatic system of freezing. The report revealed that the legislation does not cover assets controlled by listed persons. No specific procedures were in place for unfreezing the funds or other assets of persons or entities inadvertently affected by the freezing mechanism upon verification that the person or entity is not a designated person. The implementation in the non-banking sector was not fully efficient.

Legal Framework

328. Provisions aimed at implementation of respective UNSCRs are provided in both EU legislation and domestic legislation, namely LMFT and complementary Ordinances issued for the implementation of the UNSCRs.

329. Considering that the EU regulations regarding sanctions and restrictive measures are directly applicable in Bulgaria, the analysis in the current section is based on EU regulation alongside the domestic legislation.

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

330. The EU provides for implementation of the UNSCRs 1267 and 1373 via the Council Regulation No. 881/2002 of 27 May 2002 and Council Regulation No. 2580/2001 of 27

December 2001. The Council Regulations, once they are published in the Official Journal of the EU, are directly applicable and binding upon Bulgaria.

331. The lists established under EU Regulations are amended on the basis of pertinent notification or information by the UN Security Council. Thus the names designated by the UN Security Council are added some time after the adoption of the decision. It therefore appears that there is a delay of time between implementation of UN listings.

332. The national legislation on the freezing of terrorist assets procedure is the LMFT in its Art. 5, according to which, the Council of Ministers shall adopt, supplement and modify a list of the natural persons, legal persons, groups and organisations in respect whereof the measures under the LMFT should be applied.

333. The following shall be included in the mentioned list:

- natural persons, legal persons, groups and organisations identified by the United Nations Security Council as associated with terrorism, or with respect to whom sanctions for terrorism have been imposed by a resolution of the United Nations Security Council;
- persons against whom criminal proceedings have been instituted for terrorism; financing of terrorism; recruitment and training of individuals or groups of people for the purpose of practising terrorism, forming, managing or membership of an organised crime syndicate having as its purpose the practice of terrorism or the financing of terrorism; preparation to practice terrorism; forgery of an official document for the purpose of facilitating the practice of terrorism, manifest incitement to practising terrorism; or a threat to practise terrorism, within the meaning given by the Criminal Code;
- Any other persons, identified by the competent authorities of another country or of the European Union, may also be included in the referred list.

334. The list is subject to amendments on the motion of the Minister of Interior, the Chairperson of the State Agency for National Security or the Prosecutor General. The amendments should be approved by the Council of Ministers and will become effective upon publication in the State Gazette of the decision of the Council of Ministers.

335. Another avenue for applying freezing measures is prescribed under the Ordinances № 39 of the Council of Ministers of 27.03.2000 for the implementation by the Republic of Bulgaria of Resolution 1267 (1999) of the UN Security Council of 15 October 1999 and № 277 of the Council of Ministers of 12.12.2001 for the implementation by the Republic of Bulgaria of Resolution 1373 (2001) of the UN Security Council of 28 September 2001, which do not refer to any timeframes for applying freezing measures.

336. The domestic mechanism provided for adopting, supplementing and modifying the lists of designated persons prescribed under the LMFT seem complicated and may result in delays in publication of relevant lists, which may have a negative impact in overall freezing regime. It appears that freezing measures cannot be deemed to have been taken without delay therefore, EC c.III.1 is not fully met.

EU internals

337. The EU implemented UNSCR 1373 by producing a list of persons and entities known or suspected to be involved in terrorist activities. With respect of non EU internals, the EU regulation 2580/2001 requires the freezing of assets. The EU internals who are only covered by the extended list of Common position 2001/931/CFSP are marked with an asterisk indicating that they are not subject to freezing obligations under EU measures, but only by increased police and judicial co-operation between the member states. EU internals therefore have to be dealt with through domestic measures.

338. For the implementation of Council Common Positions, No. 2001/930/CFSP and No. 2001/931/CFSP on the fight against terrorism, which are also applicable to persons, groups and

entities based or resident within the EU (EU-internals) enactment in national legislation is required. By virtue of Art. 5 of the LMFT there is a legal obligation to freeze the assets of *"any other persons, identified by the competent authorities of another country or of the European Union"* therefore, the EU internal listed in the EU Common Positions are subject to assets freezing. Such designations have been carried out in relation to EU internals pursuant to the LMFT and the aforementioned Council of Ministers' Decree No. 265/2003.

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

339. Any other persons, identified by the competent authorities of another country or of the European Union, may also be included in the designated list adopted by the Council of Ministers, according to Art. 5 (2) (3) of the LMFT.

340. However, no other mechanisms are provided for under the Bulgarian legislation for endorsing freezing actions with regard to freezing actions initiated by jurisdictions other than the EU. The authorities advised that for persons and entities that do not appear on any EU list, but for which Bulgaria receives a direct freezing request from other jurisdictions, the decision will be taken by the Council of Ministers on a case by case basis.

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

341. The EU Regulation 1286/2009, amending EU Regulation 881/2002, define the scope of funds subject to freezing as follows: *"All funds and economic resources belonging to, owned, held or controlled by designated persons".* Although the definition provided under respective Regulation is mostly in line with the FATF definition, there is no specific reference in the provision regarding funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated entities. Such reference is not covered under national legislation.

342. As for the property owned jointly by the designated entities, it can be concluded that it is subject to freezing measures under the EU regulations.

343. The Article 6 of the LMFT states that any funds, financial assets and other property owned by persons included in the list under the LMFT, regardless of the fact of in whose possession they are found, as well as any funds, financial assets and other property found in the possession of, or held by, persons included in the list under the LMFT, shall be blocked or frozen, except for the items and the rights that cannot be subject to execution.

344. The reference to the financial means which shall be blocked, are envisaged under the Ordinance 39 of the Council of Ministers of 27.03.2000 for the implementation by the Republic of Bulgaria of Resolution 1267 (1999) of the UN Security Council of 15 October 1999, which defines that *financial means* subject to blocking should be *property*, owned or controlled directly or indirectly by the Al Qaeda and Taliban or by natural persons, groups, enterprises and organisations related to them; as well as, enterprises or economic activity, owned or controlled by the Taliban or by natural persons, groups, enterprises and organisations related to them.

345. However, the application of the definition provided under this Ordinance is limited only to Al Qaeda and Taliban sanctions and seems to contradict to the LMFT and it is not clear whether this Ordinance or LMFT will be applied.

346. According to Art. 6 (3) of the LMTF, the implementation of the freezing measures shall not prevent the accrual of interest on and the acquisition of other civil benefits from the funds, financial assets and other property blocked/frozen, and anything that is newly acquired shall also be blocked/frozen.

347. The Ordinance 39 of the Council of Ministers of 27.03.2000 specifies that all financial means and other financial assets and economic resources of Osama bin Laden and the members of the Al Qaeda organisation, as well as of natural persons, groups, enterprises and organisations related to them, as well as the financial means acquired through ownership, owned or controlled directly or indirectly by those persons and organisations shall be blocked.

348. The freezing actions over the funds or other assets derived or generated from funds or other assets of persons designated by the Taliban sanctions committee is provided under Art. 2, para. 2 of the same Ordinance[29]. The financial means acquired or proceeding from the property, owned or controlled directly or indirectly by the Taliban or by natural persons, groups, enterprises and organisations related to them shall be blocked.

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

349. As EU Member State, Bulgaria has to comply with the EU lists which are published electronically by the European Commission. Any further internal designations are subject to the LMFT and are published on the web site of the Council of Ministers. The consolidated version and the separate amendments (pursuant to the LMFT) of Decision 265 of 23.04.2003 are available through the electronic system of the Council of Ministers reflecting all acts of the Council of Ministers. There have been no amendments to the Decision 265 of 23.04.2003 for adoption of the list pursuant to LMFT since 2006. In case the Council of Ministers supplements and modifies the lists of designated persons, that information is published under by *State Gazette*, but no communication mechanism to the financial sector and DNFBPs is in place.

350. The information on the designated person's lists is published on the web-site of the FID-SANS, under *"Guidance",* inside a document named *"Model criteria for detecting suspicious customers, deals and transactions, referring to financing of terrorism"*. The first article defines the listed persons as *"suspicious customers"* and provides various links to UN, EU and US Treasury web-pages. Further web navigation is required for the reader to reach the actual lists and the process is rather complicated.

351. An electronic consolidated version of the list adopted by the Council of Ministers is not maintained by the Bulgarian authorities.

352. The evaluation team is of the opinion that the link is not properly emphasised on the FIU webpage, which negatively impacts upon the communication of the listed persons to the private sector. In addition, the inclusion of the terrorist lists under *"Model criteria"* is misleading as the freezing of terrorist funds is compulsory and cannot be part of a *"Model"* document. In addition, the document itself makes reference to *"suspicious customers"* and not to the obligation of assets freezing.

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

353. The Council of Ministers issued Ordinances 39 of 27.03.2000 and 277 of 12.12.2001 on the implementation by the Republic of Bulgaria of UNSCRs under the consideration.

354. The evaluation team was informed that the FID-SANS regularly provides notifications to the obliged entities concerning the financial sanctions.

355. The general requirement for reporting and delaying the execution of the transactions is described in the guidelines and it is the minimum standards to be taken into account in the internal rules of the obliged persons which are subject to checks and approval by the FIU. However, the Guidelines issued in 2012 concern only the reporting requirements on TF suspicions and the obligation to postpone transactions, but make no reference to the mechanism and obligation of freezing the terrorist funds.

De-listing requests and unfreezing funds of de-listed persons (c.III.7)

356. In terms of de-listing and unfreezing of funds, Bulgaria relies on EU Regulation 881/002 which provides that the Commission may amend the list of persons on the basis of a determination by the United Nations Security Council or the Sanctions Committee in relation to UNSCR 1267.

[29] With the amendments of the LMFT adopted in December 2012, Art. 6 of the Law includes the phrase: *"as well as any funds, financial assets and other property found in the possession of, held by, or* ***controlled by*** *persons included in the list under Article 5"*

357. For the unfreezing procedures under UNSCR 1373, EU Regulation 2580/2001 provides that the competent authorities of each member state may grant specific authorisations to unfreeze funds after consultations with other member states and the Commission.

358. The evaluation team was advised that in practice, a person wishing to have funds unfrozen in Bulgaria would have to take the matter up with the Bulgarian competent authorities who, if satisfied, would take the case up with the Commission.

359. Where the designation is made at national level, the de-listing of persons and unfreezing of funds is provided by the LMFT. In complement to the procedures under EU Regulation, this procedure is still applicable with regard to EU internals or where at national level Bulgaria deems additional action necessary.

360. Art. 5 (5) of the LMFT provides for the de-listing mechanism: the persons referred to in Paragraphs (2)[30] and (3)[31] can appeal against the decision of the Council of Ministers by which they are included in the list referred to in Paragraph (1), before the Supreme Administrative Court.

361. Furthermore, the LMFT provides that if the grounds for including a person in the list have ceased to exist, the Minister of Interior, the Chairperson of the SANS or the Prosecutor General shall, acting on his or her own initiative or at the request of the parties concerned, submit a proposal to the Council of Ministers to remove the said person from the list within 14 days after becoming aware of the grounds for removal.

362. A copy of the judgment of the Supreme Administrative Court granting an appeal shall be transmitted to the Council of Ministers, which shall immediately introduce the required modifications. The decision of the Council of Ministers, whereby the list is modified, shall be promulgated according to the established procedures.

363. As defined under Article 12 of the LMFT, the measures applied with regard to the listed persons, shall be lifted within seven days after the promulgation in the *State Gazette* of the decision of the Council of Ministers whereby the natural or legal persons, groups or organisations are removed from the list, unless the Criminal/Illegal Assets Forfeiture Commission presents a court ruling on extension of the said measures within the same time limit.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8)

364. Bulgaria does not have a separate and publicly-known procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person, in a timely manner. However, the de-listing mechanisms described under criterion III.7, could be applied with regard to persons inadvertently affected by freezing mechanisms.

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

365. As provided under Council Regulation 881/2002, with the subsequent modifications, freezing shall not apply to funds or economic resources where the competent authority of the Member State, has determined, upon a request made by an interested natural or legal person, that these funds or economic resources are:

(i) Necessary to cover basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

[30] natural persons, legal persons, groups and organisations identified by the United Nations Security Council as associated with terrorism, or with respect to whom sanctions for terrorism have been imposed by a resolution of the United Nations Security Council
persons against whom criminal proceedings have been instituted for terrorism; financing of terrorism; recruitment and training of individuals or groups of people for the purpose of practising terrorism, forming, managing or membership of an organised crime syndicate having as its purpose the practice of terrorism or the financing of terrorism; preparation to practise terrorism; forgery of an official document for the purpose of facilitating the practice of terrorism, manifest incitement to practising terrorism; or a threat to practise terrorism, within the meaning given by the Penal Code

[31] Any other persons, identified by the competent authorities of another country or of the European Union

(ii) Intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
(iii) Intended exclusively for payment of fees or service charges for the routine holding or maintenance of frozen funds or frozen economic resources; or
(iv) Necessary for extraordinary expenses.

366. Any person wishing to benefit from the provisions referred above shall address its request to the relevant competent authority of Bulgaria (Ministry of Finance). The competent authority shall promptly notify both - the person that made the request, and any other person, body or entity known to be directly concerned, in writing, whether the request has been granted. The competent authority shall also inform other Member States whether the request for such an exception has been granted.

367. In addition to the EU Regulation, Art. 6 of the LMFT provides the national procedure for the implementation of this mechanism. The Minister of Finance may authorise that payments or other acts of disposition be effected with the funds, financial assets and other property blocked/frozen, when necessary for basic expenses (including medical treatment and current needs).

368. The authorisation shall be issued on a case-by-case basis, upon a reasoned application by the person concerned or, regarding the payment of liabilities to the State, on the initiative of the Minister of Finance.

369. The Minister of Finance shall pronounce within 48 hours after receiving any such application. Any refusal of the Minister of Finance to grant an authorisation shall be appealable before the Supreme Administrative Court.

370. In addition Art. 7 of the LMFT states that the freezing of funds shall not apply to ordinary petty transactions intended to meet current needs of the natural person included in the list, or of the members of the family.

Review of freezing decisions (c.III.10)

371. The Bulgarian authorities informed the evaluation team that the right of the person or the entity, whose funds or other assets have been frozen, to challenge the freezing measures imposed is provided for under the same Article 5 (5) of the LMFT. The mechanism same mechanism as described under c.III.7 and c.III.8 apply.

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

372. The freezing/blocking measures are applicable not only with regard the persons designated under the UNSCRs. As indicated above, the persons against whom criminal proceedings have been instituted for terrorism; financing of terrorism; recruitment and training of individuals or groups of people for the purpose of practising terrorism, forming, managing or membership of an organised crime syndicate having as its purpose the practice of terrorism or the financing of terrorism; preparation to practise terrorism; forgery of an official document for the purpose of facilitating the practice of terrorism, manifest incitement to practising terrorism; or a threat to practise terrorism, within the meaning given by the Penal Code, shall be included in the list adopted by the Council of Ministers in respect whereof the measures of blocking and freezing of assets should be applied.

373. Also, the confiscation measures described under section 2.3 with regard to ML offence are applicable in case of TF offence. Therefore, the deficiencies identified under Recommendation 3 concern freezing, seizure and confiscation of funds or other assets relating to terrorism apply.

374. Non-compliance of the term *"funds"* as discussed under the SR II might also limit the application of criterion III.11. Therefore this criterion is not fully met.

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

375. As specified under Art. 8 of the LMFT, third parties acting in good faith, who claim independent rights to blocked/frozen funds, financial assets and other property may bring their claims within six months after the promulgation in the State Gazette of the decision of the Council of Ministers to adopt, supplement or modify the list.

376. However, the evaluation team is on the opinion that the limitation of 6 months for bringing the claims, may injure the rights of bona fide third parties.

377. The same protection of rights of third parties applies under criminal procedures, as described under Recommendation 3.

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

378. Any violations of freezing obligations may be sanctioned pursuant to Article 15 of the LMFT.

379. The written statements ascertaining the commission of violations shall be drawn up by the authorities of the Ministry of Interior, and the penalty decrees shall be issued by the Minister of Interior or by officials authorised by him.

380. The Art. 9a of the LMFT defines that, the bodies in charge to supervise the activities of the reporting entities shall inform the MoI and the SANS if, in the course of performing their supervision activities, they find out the presence of operations or deals wherein suspicion of financing of terrorism is involved. The inspections carried out by the supervisory bodies shall also include verification of whether the inspecting persons satisfy the requirements specified under LMFT. If any infringements are found out, the supervisory bodies shall inform the State Agency for National Security by sending an excerpt from the relevant part of the statement of ascertainment.

381. The fines for such breaches are between BGN 2,000 to BGN 5,000, unless the act committed constitutes a criminal offence. Where the violation under is committed by a sole trader or a legal person, a pecuniary penalty of BGN 20,000 or exceeding this amount but not exceeding BGN 50,000 shall be imposed.

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)

382. The Bulgarian authorities refer to EU policies on this matter.

383. The national implementation of the best practices and appropriate procedures concerning access to funds, in accordance with S/RES/1373 and S/RES/1452, needs further explanation.

384. The authorities need to give the financial institutions, DNFBP and the general public guidance as to the obligations under these provisions. The unfreezing mechanisms relating to the basic living expenses, is the same as described under c.III.9.

Recommendation 32 (terrorist financing freezing data)

385. There were no cases of assets frozen under UNSCRs in Bulgaria.

Effectiveness and efficiency

386. It is difficult to assess the efficiency of the system as no freezing measures were applied under SR. III in Bulgaria.

387. As a member of the EU, Bulgaria should apply freezing mechanisms on the basis of the EU regulations supplemented with the domestic legislation. The evaluation team found an uneven awareness among authorities on applying freezing measures based on the EU regulation procedures. While the FID-SANS and the Ministry of Interior officials proved a clear understanding of the requirement deriving from SRIII, the representatives of the Custom

Authority and Ministry of Foreign Affairs were less aware of the practical aspects of the freezing of terrorist assets requirements.

388. The reporting entities met during the on-site mission, acknowledged that in case of any match with lists of designated persons, they will directly apply freezing mechanisms and inform MoI, SANS and FID-SANS.

389. While the reporting entities and supervisory agencies interviewed during the on-site visit stated that they use the link published on the FID-SANS website to check the terrorist lists, it appeared that they are not informed regularly on the updates of the lists to ensure the use of recent lists. BNB and FID-SANS receive regular up-dates from the Ministry of Foreign affairs.

390. As for the immediate application of freezing mechanisms, the legislation does not contain any clear requirement and not all the reporting entities interviewed during the on-site mission acknowledged that the freezing will be applied immediately without any delay. Thus, concerns remain whether all the reporting entities will apply the freezing without delay. This loophole might affect effective implementation of the freezing mechanisms.

2.4.2. Recommendations and comments

391. Formal implementation of requirements under UNSCRs 1267 and 1373 appears to be largely in place in Bulgaria. However, the mechanism provided for adopting, supplementing and modifying the lists of designated persons, both under the EU and internal procedures, seem complicated and may result in delays in publication of relevant lists published under UNSCRs.

392. Legal framework should be amended to clarify to what extent the freezing mechanism will include funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations.

393. Additional efforts are necessary in order to raise awareness of all the national authorities on the freezing of terrorist fund obligations.

394. Communication of terrorist lists to the private sector is deficient. It should be ensured that reporting entities are immediately informed on the new designations under the relevant lists. The link to the terrorist lists should be easy to spot on the SANS website and should lead directly to the lists not to other institutions' web-sites.

395. Specific guidance should be provided to the private sector either by issuing a separate document or by amending the 2012 Guidance on reporting.

396. While some reporting entities interviewed during the on-site mission explained that they will apply freezing mechanisms at the moment where a match with the designated entities is identified, it is recommended to ensure that all reporting entities bound by the freezing obligation to apply freezing measure immediately, are fully aware of their obligations, by providing guidance on the application of freezing mechanisms.

397. Definition of the term funds should be provided in line with the FATF Recommendations, which should ensure that the application of freezing measures should extend to funds owned or controlled, directly or indirectly by designated persons.

398. The legal provisions specifying the right of third parties acting in good faith to claim applied freezing measure within a deadline specified under the LMFT, thus relevant legislative provisions should be revised to exclude restrictive time limits.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• The procedures for amending the lists of designated entities may

		impede timeliness; • The freezing do not extend to funds controlled, directly or indirectly by designated persons; • Deadlines for claiming the listing by third parties acting in good faith may impact the rights of bona fide third parties; • No specific guidance on freezing requirements available for the private sector; • Deficiencies identified under R3 cascade on c.III.11; ***Effectiveness*** • Communication to the private sector is deficient.

Authorities

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

2.5.1. Description and analysis

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

Legal framework

399. The Bulgarian Financial Intelligence Unit is established by the Law on State Agency for National Security (LSANS). The functions of the FIU are regulated by the Law on Measures against Money Laundering (LMML), the Law on Measures against Financing of Terrorism as well as the Rules on Implementation of LSANS.

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

400. The Bulgarian Financial Intelligence Agency (FIA) had previously been established according to the LMML as an administrative-type FIU with its own budget. It became operational in October 1998 as a division of the Ministry of Finance. In 2001, it became an autonomous, independent administrative body with a legal personality, reporting to the Minister of Finance. These were the structural arrangements in place at the time of the 3rd round report.

401. In January 2008, the Bulgarian government decided to incorporate the Financial Intelligence Agency into the structure of the newly created State Agency for National Security. The FIU was transformed into the Financial Intelligence Directorate (FID) within the State Agency for National Security (SANS) pursuant to the Law on State Agency for National Security (LSANS). The specialised administrative Financial Intelligence Directorate of SANS (FID-SANS) continues to function as an administrative-type financial intelligence unit. FID-SANS is located in Sofia.

402. The FIU has completely changed its position in the Bulgarian AML/CFT system since the last evaluation. According to the Bulgarian authorities, the main reasons for this change were to increase the FIU's capability of liaising and sharing of information with other law enforcement agencies, as well as better coordinating of the whole AML/CFT national structure. In addition, SANS has among its functions the protection of the economic and financial security of the State, including money laundering threats and the prevention and fight against international terrorism and extremism, as well as their financing, which contributed to the decision to include the FIU in its structure.

403. Pursuant to Art 13 of the LSANS, FID-SANS is established as one of the specialised administrative directorates of the SANS. Art 14 of the LSANS provides the legal basis for the activities of the specialised administrative directorates, by way of issuing the Rules and Regulations on the Implementation of Law on SANS (RILSANS).

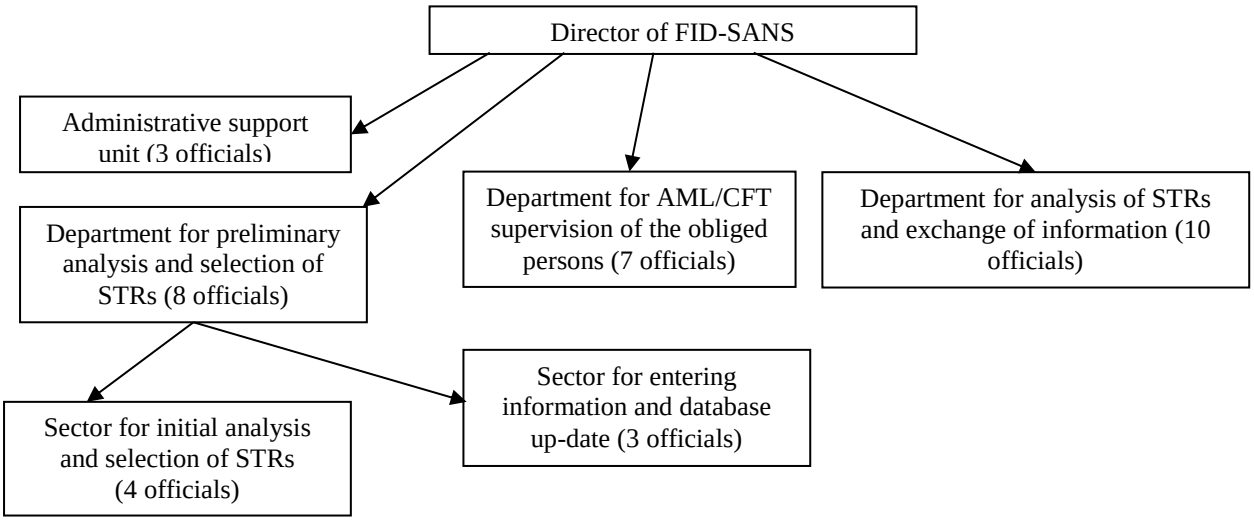
404. Art. 32e of RILSANS provides for competences of the FID-SANS in the following manner:

(1) Specialised Administrative Directorate "Financial Intelligence", hereafter called "the Directorate", shall receive, store, explore, analyse and disclose information gathered pursuant to the terms and order specified in the Law on Measures against Money Laundering (LMML), the Law on Measures against Terrorism Financing (LMTF) and the Law on the State Agency for National Security (LSANS) and observe the implementation of LMML.

(2) The Directorate is the Financial Intelligence Unit (FIU) of the Republic of Bulgaria pursuant to Art. 2, Para 1 and 3 of the Decision of the EU Council from 17.10.2000 concerning arrangements for cooperation and exchange of information between financial intelligence units of the Member States (Official Gazette No. 271/24.10.2000).

405. The Directorate has a separate registrar's office and archive. Its official seal describes it as: *"State Agency for National Security – Financial Intelligence Directorate"*.

406. FID-SANS comprises three main departments and an additional administrative unit. The departments include: 1. department for preliminary analysis of STRs and input of information, 2. department for control activities over the obliged entities, and 3. department for financial intelligence analysis (in-depth analysis) and exchange of information (national and international).



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

407. Art. 13 of the RILMML provides instructions on reporting, stipulating that the disclosure of STRs shall be in writing and use the form adopted by the Director of FID-SANS. Officially certified copies of all gathered documents on the operation or transaction and on the client shall be enclosed with the disclosure. In urgent cases, the disclosure may be carried out orally, while written confirmation shall be filed within 24 hours. Reports which are submitted in a format other than the prescribed form are still considered to be valid.

408. Further guidance on the reporting mechanism has been issued by FID-SANS and published on the website of SANS (the AML section). The Guidelines for Reporting under the LMML and LMFT document, published in 2012, contain guidance on the reporting requirement itself and on the preparation and submission of STR. The filling in and submission of the STRs shall be carried out in a form approved by the director of FID-SANS by post to a specified address. In urgent cases in order to observe the stipulations of art. 11 (1) LMML, the notification could be carried out also by telephone contact with FID (telephone number is provided in the guidance document) and by a written report on a suspicious operation on paper after form sent within 24 hours to the same address. The form is divided into sections and it is compulsory to indicate whether the particular report concerns suspicions of ML or TF.

409. The Guidelines for Reporting comprise also the reporting form which must be used by all obliged entities and which requires the following fields to be filled in: Information on the Reporting entity (name; branch; address; identification numbers); information on the suspicious natural person (name, surname, date of birth, address, professional activity, ID related numbers, relationship with the reporting entity, such as: client, owner of counter-account, proxy, other); information on the suspicious legal persons (name of the legal person, seat and management address, numbers of judicial registration, name and details of the authorised representative, names and details of the proxy); information of the suspicious transaction (date, amount, type of operation etc…); description of the suspicious circumstances.

410. The form bears the header and logo of the SANS and not of the FID-SANS, which might be confusing for the obligors as to which is in fact the FIU in Bulgaria and therefore, the recipient of the STRs. The Bulgarian authorities explained that in fact, the logo of SANS is related only to the translation of the guidance into English, in which FID-SANS was assisted by the general administration of SANS. The Bulgarian version refers to the FID-SANS in the header.

411. Every reporting entity has to elaborate Internal Rules for the Implementation of the AML/CFT legislation and is obliged to send these rules to the FID-SANS for approval. In this way, FID-SANS provides methodological guidance and instructions with regard to the reporting system of each obliged entity or person. Where the procedures provided in the rules are not deemed sufficient or do not include clear provisions for the reporting purposes, further instructions are given in order to improve those procedures.

412. The reporting form is the same for ML or TF suspicions but the two types of reports are easy to tell apart as there are separate boxes indicating the cases of TF. The STR form contains a list of possible suspicious elements which is left open for any other reason to be mentioned by the reporting entity.

413. As advised by the authorities, instructions on the manner of reporting are also provided as part of the trainings organised and conducted by the FIU and as part of the assessment and endorsement of internal rules of the obliged entities.

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

414. According to Art. 13 Para 3 of the LMML, (the LMFT refers to Art. 13 with regard to STRs on TF), the SANS may request information from state and municipal authorities, which information cannot be denied. The information requested shall be provided within the time period set by the Directorate. In setting the time period, the Directorate shall take into consideration the volume and contents of the information requested.

415. The evaluators were informed that the FID-SANS has direct access to a large number of databases providing a wide spectrum of information for the adequate performance of the analytical function. The databases which the FID-SANS has direct access (through secured network) are the following:

- commercial registry;
- Bulstat registry (associations and foundations and other entities pursuant to the Law on the Bulstat Registry);
- legal computerized system (collected information on legislation, including acts of state authorities and interpretation by legal theory and courts and analysis of links between natural persons and commercial entities);
- register of mass media publications;
- register of spouse assets;
- real estate property register;
- register of notifications under EU Regulations (961/2010 and 267/2012) concerning Iran
- MAB system (customs cases and infringements) maintained by OLAF (EU)
- World Check via FIU.Net

- registers of National Revenue Agency (including for health insurance)
- EU internal system of documents (legislative proposals and other acts at EU level)
- on-line registers maintained by state institutions (NPOs to public benefit, licences for trading in dual use goods, registers of BNB and FSC /including ownership of financial institutions above 5%/, etc.)

416. In addition, the FID-SANS analysts have access to the databases managed by the FIU itself:

- the register of the reports on operations with suspicions of money laundering or of financing of terrorism;
- the register of cash payments over 30,000 BGN;
- the register of cross-border import/export of foreign currency in cash;
- the register of information exchange of the FID of SANS (domestic and international).

417. The access to law enforcement information is indirect (conducted through written request). At the time of the 3rd round MER it was noted that there were no legal limitations in approaching different governmental databases, but the time needed for obtaining these data was described as *"satisfactory"*. The 4th round evaluation team was advised that due to the structural changes of the FIU, at present, the requests to LE are made to another structure of SANS[32], which allow for quick and efficient gathering of such information. In urgent cases, this type of cooperation can ensure the receipt of the necessary information within minutes, as the premises of FID are in the same building as other structures of SANS. Thus, colleagues can communicate very quickly between themselves. This oral communication has to be followed by a written request for information.

Additional information from reporting parties (c.26.4)

418. Pursuant to Art. 13 Para 1 of the LMML (the LMFT refers to the same Art. 13 with regard to STRs on TF), FID-SANS may request information about suspicious transactions, deals or clients from the persons under Art 3 Para 2 and 3 (all obliged entities) with the exception of the Bulgarian National Bank and the credit institutions that operate on the territory of the Republic of Bulgaria. The information requested shall be provided within the time period set by the Directorate.

419. Pursuant to Art. 13 Para 2 of the LMML, FID-SANS may request information about suspicious transactions, deals or clients from the Bulgarian National Bank and the credit institutions that operate on the territory of the Republic of Bulgaria. The information requested shall be provided within the time period set by the Directorate.

420. Article 13, paragraph 1 and 2 of the LMML are both addressing the power to obtain additional information from the reporting entities. Article 13, Para 2 concerns Bulgarian National Bank and credit institutions. Article 13, Para 1 concerns all other reporting entities. However, in practice there are no differences concerning the FIU's access to additional information from all reporting entities. The Bulgarian authorities explained (also in the 3rd Round MER), that in order to maintain the structure of the LMML (which was in force before amendments in 2006), it was decided to maintain the former provision in Art. 13 (1), while adding Art. 13 (2).

421. The evaluation team was explained that the only difference between the two paragraphs described above is related to the form of required prior notification received by the FID. In case of BNB and credit institutions, a written prior notification (STR) is necessary while for the rest of the reporting entities, a prior verbal notification is sufficient to justify an additional information request.

[32] The evaluation team was advised that the exact directorate of SANS which would be requested by the FIU in order to obtain law enforcement records is entirely dependent on the competence of the respective directorate. The competence of all the specialised directorates which carry out operative functions in SANS are stipulated in an annex to RILSANS (classified as "Secret", and adopted by the Council of Ministers)

422. In all cases, a notification under Art.s 11 or 18 of the LMML or information under Art. 9 of the LMFT (STR from obliged entity, information on suspicion from another state institution or request for information from international counterpart) is a prerequisite for obtaining additional information from reporting entities.

423. It has to be noted that, as in the case of the guidance on STR reporting, the authority empowered to request such information according to the LMML is the SANS and not the FID-SANS. As explained by the authorities the reason for this is merely related to a legal technique used at the time of the transition of the FIU and the adoption of the legislative basis for the functioning of SANS. The thinking behind this provision was to be in line with the powers of SANS which, according to the LSANS has the authority to require information from other institutions[33].

424. According to Art. 32e (1), (2) and (7) RILSANS the FIU is the only unit within SANS which has competence under the LMML and LMFT (with regard to the STR processing, analysis, collection of information, etc.) therefore, there is no reason to conclude it would be room for possible confusion on the side of reporting entities when deciding to whom are they obliged to provide information. This should be taken in consideration when reading some other parts of the report where the same issue arises.

425. Information can also be gathered from the reporting entities based on a request from law enforcement, if a previous STR had been received by the FIU. This information shall be used only for the FIU's analysis purposes and disseminated only if the conditions of Art. 12 (4) of the LMML are met. The LEA are bound by the confidentiality requirements provided by the Law on protection of classified information.

426. Art 9 of the LMML specifies that the data and documents specified in Art 8 of the same Law (data and documents collected and stored in implementation of the CDD procedures), shall be provided to the FID-SANS upon request, in the original or a transcript certified *ex officio*.

427. In cases when an STR is submitted, the FIU can request information from any reporting entity, not only from the one which has submitted the report. Additional information from reporting entities is required in the course of the second level of analysis, performed by the specialised department of FID-SANS (see ***Effectiveness and efficiency*** below) and the evaluators were advised that this happens in most of the cases analysed by this Department.

Dissemination of information (c.26.5)

428. According to Art. 12 (4) of the LMML, FID-SANS shall disclose information to the prosecutor's office or to the relevant security or public order service, when in the course of an investigation and analysis of information obtained according to the Law, the suspicion of money laundering has not been removed. FID-SANS also has an obligation to preserve the anonymity of the person or entity which submitted the STR, and its employees.

429. Pursuant to Art. 9 (1) of the LMFT, information on financial operations or transactions intended to finance terrorism, is to be submitted immediately to the Minister of Interior and the Chairperson of the SANS. This provides the obligation for any person to report to SANS and to the Ministry of Interior. In the broadest sense, the FID-SANS is obliged to report to the Chairman of SANS not only in its capacity of FIU but as a part of the general public administration, which can be considered as competence for dissemination of information on FT. Sending STR on TF doesn't mean that there is no analysis of the FIU in TF cases. Namely, Art. 32e (7) 5 of the RILSANS requires the FIU to perform analysis on every STR they receive. This, as explained by the authorities, is unrelated to the additional obligations to immediately inform the LEA which will perform their checks using means on their disposal. Authorities confirmed that, in practice,

[33] This situation has been changed to explicitly provide for FID-SANS as the requesting body following the amendments of the LMML of December 2012.

every case is analysed. The reason behind the solution to engage resources of more state bodies when TF STR is reported is the highest level of potential danger in terrorism cases.

430. RILSANS reiterates these competences of the FID-SANS which shall exchange information with the security and public order agencies under the terms and order established by LMML and LMFT. It also provides the obligation to forward information to the Prosecutors' Office or to the security or public order agencies, or close the cases pursuant to the conclusion of financial analysis.

431. Art 32e (9) 1 of the RILSANS provides that the Director of FID-SANS shall coordinate the interaction of the FIU with the Prosecutors' Office and the respective security and public order agencies for matters under Art. 12 of the LMML, thus, the Director of FID-SANS has the final decision on the recipient of the FIU's disseminations. There are no provisions involving other persons in the SANS hierarchy in the decision to disseminate FIU cases to LEA. The only exception is the Chairman of SANS who endorses the decisions to postpone operations, together with the Ministry of Finance.

432. According to the Methodological guidelines for processing of suspicious transactions reports received under Art. 11 and Art. 18 of the LMML, when determining the institution to which the disclosure of the data on the cases will be sent to, the proposal for the Director of FID-SANS should take into consideration the following:

- cases where a ML suspicion is described and information on predicate offence is given, are sent to Chief Directorate "National Police" (CDNP) within the MoI. The information has to refer to activities accomplished by one or two natural persons, as well as/or in case of the performance of suspicious deals/operations for small amounts. The notification is also sent to CDNP in other circumstances which are within the CDNP powers.
- cases where a ML suspicious deals/operations is described and information on predicate offence is given, are sent to Chief Directorate Combating Organised Crime (CDCOC) within the MoI. The information has to refer to activities accomplished by two or more natural persons related to tax frauds and in case of suspicious deals/operations for important amounts. The notification is also sent to CDCOC in other circumstances which are within the CDCOC powers.
- Cases where the ML suspicion on deals/operations affect the financial and economic security of the country, are sent to directorates in SANS that perform law enforcement functions (Financial Security Directorate – SANS). Notifications are also sent to Financial Security Directorate - SANS in other circumstances which are within its powers under the LSANS and RILSANS. These cases involve mostly TF suspicions, and ML cases related to transnational organised crime or serious domestic criminal activity, involving important amounts of assets.
- Postponement cases are disclosed to the Prosecutor's Office of the Republic of Bulgaria.
- Files with established direct relation regarding typologies or other cases opened by FID-SANS and already disclosed, are sent to the institution to which the preceding cases were disseminated. An exception to these situations is when data is for operative necessity thus, the cases are disclosed to another institution.

Operational independence and autonomy (c.26.6)

433. Legal safeguards for independence and autonomy of the FIU are provided in the LSANS and RILSANS.

434. Art. 15 and 16 of the LSANS provide for the powers of heads of directorates within the SANS. According to these provisions, the specialised directorates and the specialised administrative directorates shall be headed by Directors (such as the Director of FID-SANS), who shall be appointed by the SANS Chairperson and shall act as direct supervisors of the staff of said directorates. The Chairperson, of the SANS shall be appointed by force of a decree of the

President of the Republic of Bulgaria, subject to a proposal by the Council of Ministers, for a term of 5 years[34].

435. The Directors shall carry out the general and immediate governance of the directorates by planning, organising, managing, controlling and assuming responsibility for their functions and management of human resources.

436. Art. 53 of the LSANS provides for the professional criteria for each and every employee of SANS (which includes the Director of FID-SANS). Specific requirements for each specific position are added to the general requirements. Those position-specific requirements are listed in the position description (separate official internal document for each position) for the director, which is approved by the Chairperson of SANS, and include:

- specific education requirements, the legal or economic background being an advantage;
- command of a foreign language;
- successfully completed managerial course;
- clearance obtained for access to classified information (Top Secret equivalent);
- managerial skills;
- In-depth knowledge of the relevant international and domestic legislation.

437. Art.s 58-68 of the LSANS stipulate the general conditions and procedure for the appointment of the SANS employees (which includes the FIU Director). Art. 50 of LSANS introduces requirements for the conduct of the civil servants of the SANS and the applicable incompatibilities.

438. The grounds for termination of the service contract are listed comprehensively (exclusively) in Art. 110 of the LSANS which lists *i.a.* the following: upon completion of 60 years of age; retirement; health reasons; his/her own volition; in case of the position being made redundant; failure to report for duty; in case of a court decision has come into effect imposing a prison sentence upon him/her, the civil servant has received the lowest general score in his/her performance assessment; the civil servant's application for access to classified information has been turned down etc.

439. According to the Bulgarian authorities, the latter provisions are subject to judicial control (appeal under the Administrative Procedure Code of the act for termination of the contract pursuant to Art. 115 of LSANS) providing safeguards for the effective performance of the functions of the FID-SANS Director. LSANS provides also for the possibility of dismissal as a disciplinary sanction under strict conditions stipulated by Art. 91 of LSANS, also subject to judicial control.

440. The Bulgarian authorities considered that the safeguards are adequate. The FIU has had only three directors since its establishment (including the current director).

441. The Director of FID has the responsibility for the decisions regarding HR management. All recruitments are undertaken on the initiative and with the approval of the Director who monitors the enquiries related to the job application. The interviews (personal contact and assessment regarding the professional qualities) of candidates are carried out by the FIU's own experts.

442. The powers of FID-SANS and the attributions of the director are further described in Art. 32e, Para. 9 of the RILSANS which provides that the Director of the Specialised Administrative Directorate "Financial Intelligence", hereafter called "the Directorate", shall:

[34] After the on-site visit, the evaluators were made aware that a nomination for the post of the SANS Chairperson in June 2013 provoked street protests in Sofia regarding his qualifications for the position. The evaluators noted this development with concern, bearing in mind the impact of the SANS Chairperson in the appointment of the FIU Director and in the decision of postponement of transactions. The nomination was subsequently withdrawn.

- Coordinate the interaction of the Directorate with the persons under Art. 3, Paras 2 and 3 of the LMML, the supervising bodies under Art. 3a of the LMML, the Prosecutors' Office and the respective public order and security agencies under Art. 12 of the LMML;
- Carry out the interaction between the Directorate and the other structural units of the Agency;
- Represent the Directorate before the international organisation of the financial intelligence units as well as the respective structures of the European Union and the Council of Europe;
- Coordinate the interaction of the Directorate with the financial intelligence units and the exchange information under Art.18 of the LMML and Art.14 of the LMTF;
- Open operative files on the basis of money laundering reports submitted pursuant to the terms and order specified in LMML and entrust the task to an official;
- Open operative files on the basis of terrorism financing reports, submitted pursuant to the terms and order of the Law on Measures against Terrorism Financing (LMTF) and entrust the task to an official;
- Constitute the commission for closure and backup of cases under Items 5 and 6;
- Close the cases under Items 5 and 6 on a conclusion of the commission under Item 7;
- Exercise powers ensuing from the LMML, LMTF and the respective rules on implementation;
- Prepare the Directorate's annual report of activities and submit it to the Chairperson of the SANS.

443. The databases of the FID-SANS are developed, maintained and controlled separately from the other databases of SANS and cannot be accessed by other than FIU officials. FID-SANS operates its own internal network, which is subject to certification for classified information processing separate from the certification of SANS and other internal networks.

444. FID-SANS employees have separate clearance certificate for access to correspondence which is classified information (different from that of SANS). FID-SANS operates its own electronic mail (apart from the ESW which is separated from the networks of the rest of SANS) and has a separate registry and stamp.

445. The FIU has at its disposal its own servers. Separate servers are used for the following: access to ESW; e-mail; the FIU.Net; FIU's own databases; backup of databases; controller of the separate internal network; controller of the analytical software; direct access to the external databases (e.g. the commercial register). The servers are all situated in separate secure premises and are accessed for maintenance only in the presence of an employee of the FIU with an IT profile. The FID-SANS premises are accessible only by its own employees, other SANS employees' badges do not permit access to FIU offices.

446. The exchange of information with the other structures of SANS is regulated by an explicit provision of the RILSANS as well as internal order of the Chairman of SANS (last update by Ordinance of the Chairperson of SANS No. 485/21.03.2012) and is carried out only for the purposes of the ML/TF prevention and subject to the conditions of the LMML for disclosure of information to law enforcement. According to this Ordinance, the access of the other structures to any information (i.e. indirect access through a separate written request in each case) is allowed only in case of necessity of cooperation in order to prevent encroachments on the national security related to financing terrorism or extremism or money laundering. In each request, there shall be an explanation for the necessity to access such information, and the description of the case, as well as the necessary identification data of the persons on which information is sought and the time period concerned.

447. The budget of FID-SANS is in substance separated from the budget of SANS due to the fact that it is maintained and disbursed separately by the accounting office of SANS. The budgeting is done according to an order of the Chairperson of SANS, based on a detailed assessment of the

needs of the FIU, prepared at the end of each year internally and a plan elaborated by the FIU itself serving as a basis for the disbursement of funds from the SANS budget.

448. The evaluators did not found any evidence of breaches of the legal safeguards for operational independence and autonomy, or any undue influence on the FIU.

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

449. Article 15a of the LMML provide that the FID-SANS may use information constituting official, banking or commercial secrecy, and protected private information obtained under the terms and following the procedure set in Art.s 9 (obligation to send data and documentation on CDD measures to FID-SANS), 11 (ST reporting), 11a (CT reporting), 13 (additional info from reporting entities) and 18 (info received from foreign FIU and government authorities), solely for the purposes of the LMML.

450. In addition, Art. 10 of the LMFT provides that the competent authorities, which have received information in the application of the Law, shall not disclose the identity of the persons who have provided such information. According to the same article, the information collected under LMFT may only be used for the purposes of the same law or to counter crime.

451. Officers of the FID-SANS shall not disclose nor use for their own benefit or to the benefit of any persons related to themselves any information or facts constituting official, banking or commercial secrets that they have become aware of in the performance of their duties. The employees of the Directorate shall sign a declaration of confidentiality for that purpose. The confidentiality provision shall apply equally in case of a former employee.

452. For the practical implementation of these provisions, FID-SANS holds its own/separate databases as provided in the RILSANS, its own/separate registration system and stamp, as well as the procedures and technical means described under the previous criterion.

453. One of the major principles of the Law on the Protection of Classified Information (information received, analysed, processed and disclosed by the FIU is classified) is the "*the necessity to know"* which is applied together with the principles stipulated in the AML/CTF legislation. The observance of this principle is subject to the independent control of a separate state commission (State Commission on Information Security), providing for a safeguard that this principle will not be subject to any undue influence or interference.

454. The data collected by the FID is also physically protected by separating its premises from other units of SANS and designing elaborate certification and authorisation system for accessing this data.

455. Any dissemination of the information is done based on the principles enclosed in the LMML (Art. 12 (4) and 18), the LMFT (Art. 9, 10, 13 and 14) and the RILSANS (Art. 32e (6), (7) – 2, 4, 6, (9) – 1, 2, 4).

456. Administrative responsibility is provided for the infringements of the respective articles of the AML/CTF legislation by the employees, as well as penal liability stipulated by Art. 253b of the CC, which states that any official who violates or fails to comply with the provisions of the Law on Measures Against Money Laundering shall be punished, in cases of significant impact, with imprisonment for up to three year and a fine from BGN one thousand to three thousand, unless the deed does not constitute a more serious crime.

Publication of periodic reports (c.26.8)

457. The FIU is required to elaborate an annual report of its activities. Art. 32e (9) – 10 of the RILSANS stipulates that the Director of FID shall prepare the annual report of activities of the Directorate and submit it to the Chairperson of the SANS. Such annual reports were prepared annually by FID-SANS reflecting the activities in 2008 – 2011.

458. Pursuant to Art. 132 of the LSANS (Paras. 3 and 4) every year, not later than January 31st, the Chairperson of the Agency shall submit to the Council of Ministers a report on the activities of the Agency. The Council of Ministers shall submit the mentioned report to the National Assembly for approval by a parliamentary decision. The reports include statistics, information on the trends and typologies established by the FIU as well as the activities of the FIU.

459. Information on FID-SANS' activities for 2010 was published at the web site of SANS as part of the annual report of SANS. The full annual report of FID-SANS for 2011 is published at the web site of SANS and includes all required data as per the criterion and aims to provide necessary assistance to the obliged persons.

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

460. The Bulgarian FIU became a member of the Egmont Group in 1999 following a decision of the Bulgarian Council of Ministers. In 2008, following the institutional restructuring of the Bulgarian FIU as a unit within SANS, the FIU successfully underwent a re-assessment by the Egmont Group of its fitness for membership after a brief suspension following the re-organisation. The re-assessment resulted in the restoration of full membership by the unit in the Egmont Group at the Santiago, Chile meetings of the organisation in March 2008. The Bulgarian FIU also signed the charter of the Egmont Group.

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

461. FID-SANS has three main departments and one additional administrative unit. The first department (Department for preliminary analysis), is in charge of the preliminary analysis of the STRs and employs 8 officials, the majority of which hold university degrees in law or economics. Four of them are directly engaged in the preliminary analysis of the STRs received the other four are assigned administrative and support tasks.

462. The third department (Department for in-depth analysis and International Cooperation) has a staff of 10 officials with background in economics, law and international relations (for the analysis of foreign requests, international exchange and exchange with LEAs). This department is responsible for the further analysis of cases and additional information gathering, as well as for the disclosures of the cases to law enforcement.

463. The second department of FID-SANS (Department for supervision) performs functions related to the AML/CTF supervision of the obliged persons, employing 7 officials with a background in economics and law.

464. The total number of the staff of FID-SANS is 38 officials as per the internal structure but currently only 29 officials are employed. In 2011 there were 3 new officials appointed and in 2012 there were another 3 newly appointed officials. This shows a steady increase in the workforce of the FID-SANS during past couple of years, which is appreciated by the evaluators. The FIU employees appeared to the evaluation team professional and motivated.

465. The FIU premises are placed in the building of SANS but physically separated from the other units of SANS. Entrance to the FID offices is protected by security system, requiring a separate authorisation to allow access. There is also an internal authorisation system permitting only authorised employees of the FIU to enter some offices e.g. where operative files are kept or to archives.

466. Although the premises of the FIU are separated and protected within the whole structure of SANS, the evaluation team is of the opinion that the space allocated for FID-SANS is insufficient, even for the existing number of employees. All employees of the FIU, including heads of departments work in overcrowded offices.

467. The third round MER stated that the former FIU - FIA renovated its IT-resources. It was reported that the FIU holds: Analyst's Notebook Version 5; Version 6 of i2; software rsCASE for case management; in-house developed software systems for registration of information received by the FIU under the LMML/LMFT and statistics; network architecture through two network rings (optics) preventing external access to classified information. It was also reported that the systems are built around a total of 7 servers and network equipment. At the time, the FIU had a total of 50 PCs, facilities for electronic exchange of information with reporting entities.

468. At the time of the 4th round on-site visit, the FID-SANS, in addition to the abovementioned IT infrastructure, has at its disposal the following IT equipment: two internal networks (optical and wire): one used for processing classified information (separated both from the other structures of SANS and public network), the other (that allows access to the public network) securely protected by firewalls and allows anonymous searches. Most of the users performing analysis and supervision thus have two workstations at their disposal in order to perform their functions. FID-SANS uses the analytical software developed in-house as well as the case management and visualisation. Facilities for electronic filing of CTRs are in place and were updated in 2009. Currently, the vast majority of CTRs received under Art. 11a of the LMML are delivered electronically. In relation to international exchange of information, FID is connected to the Egmont Secure Web and participates in the FIU.NET. It has also access to the MAB system (managed by OLAF) which includes customs information. Direct access was introduced to 5 new registers (register of spouse assets; real estate property register; MAB system; World Check via FIU.Net; register of National Revenue Agency). A new server was acquired for security reasons and for ensuring proper access to those databases. At the time of the on-site, visit almost all workstations of the FIU employees were replaced with new PCs

469. The budget of the FIU at present is over €1,000,000.

470. Apart from its core FIU functions, (receiving, analysing and disseminating STR as well as requesting additional data) described previously in the report, the FID-SANS is obliged to perform some other functions such as supervision of obliged entities, training and outreach activities, as well legislative work and coordination of AML/CFT system.

471. The on-site interviews showed that various stakeholders in the AML/CFT system recognise the FID-SANS as the leading authority in this field. This was observed both in case of the private sector and in case if the state authorities, which tend to rely on the FIU for most issues in coordinating and improving the AML/CFT system.

472. The evaluation team believe that additional measures should be taken by the authorities to adequately fund and staff the FID-SANS, particularly in order to reinforce its analytical capacities. Additional material resources would be required. This assessment should be read in conjunction with previous statements which recognise that the FID-SANS has more responsibilities and competences than those described as FIU core activities by international standards.

Integrity of FIU authorities (c.30.2)

473. The staff of FID-SANS maintains high professional standards. All employees (excluding purely administrative staff) are required to have the relevant university degrees in law, economics or international relations. In addition, there are strict rules for the appointment of any new staff of SANS. All personnel of SANS is required to have the highest level of clearance in Bulgaria (top secret) and to abide strictly by the Code of Ethics of SANS, the legislation and the internal orders of the Agency regarding the behaviour of the civil servant and the fulfilment of his/her duties.

474. All the information held by FID-SANS is dealt with utmost confidentiality (pursuant to Art. 15a of the LMML). In case of breach of this duty FID-SANS`s staff could be criminally liable (Art. 253b of the CC) or sanctioned by fine, if the act does not constitute a crime, as stipulated in Art. 23 (1) of the LMML.

475. In addition, the LSANS provides for a number of disciplinary measures pursuant to Art. 88-99, including for violation of the Code of Ethics.

476. The budget for salaries increased significantly and is currently at least double if compared to 2007 (before transition to SANS) in regard to all employees of the FIU despite being restricted to a certain extent due to the financial crisis.

Training of FIU staff (c.30.3)

477. Employees of the FIU participate in training seminars of international organisations dealing with the AML/CFT issues *e.g.* Council of Europe, European Union – Phare or TAIEX projects, IMF, Egmont Group, regional meetings, as well as bilateral training and assistance projects carried out with the British embassy in Bulgaria and MATRA program of the Dutch government.

478. FID-SANS completed in 2009 a project sponsored by the British embassy (undertaken by NI-CO organisation) and a project with experts from the Dutch FIU on financial investigation, financial intelligence analysis and the interagency cooperation in Bulgaria in regard to combating money laundering and terrorist financing. The FID-SANS officials, tax and customs officers, law enforcement, CEPACA, prosecutors, judges, and supervisors took part in various workshops and seminars and received knowledge on EU practice and standards in the AML field.

479. FID-SANS officials took part in training seminars organised by the IMF (Siracuse), in the FIU.Net initiative and all the training sessions organised by the project.

480. In addition to the training in the list provided in the ANNEX II, there is an obligatory 6-month training and re-evaluation (after that period) of each and every new employee of the FIU in regard to the specifics of the FIU activities. This is performed as part of the introduction to the duties of the newly employed person and is done by a specifically designated for that purpose experienced employee of the same department and according to an approved plan.

Recommendation 32 (FIU)

481. FID SANS 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

482. Art. 32 e paragraph 8 of the RILSANS specifies that all STRs should be classified for operative-analytical or for information – analytical purposes. Based on STRs for operative – analytical purposes, operative files are opened. STRs for information – analytical purposes are entered in the database of the FID-SANS and are used for its own activities or for the purposes of the security and public order services.

483. The first step in the analysis of the STR is performed by the Department for preliminary analysis. The preliminary analysis is carried out on the basis of the methodological guidelines specially drawn up for it.

484. According to the Preliminary Analysis Methodology, each STR receives a number of points according to risk criteria. If following the scoring system a STR receives points above a threshold, an Operative File (OF) has to be opened. An OF can be opened in situations where the STR receives less than the threshold, but the analyst, considers (based on his/her experience and personal judgment) that the case is strong enough to constitute a basis for an OF. The final decision to open the case in such situations stays with the Director of FID. It is possible not to open an OF case, even if the STR receives more than the threshold, although this has never been the case in practice. The threshold determines also the degree of priority (low, middle, or high**)** of the OF.

485. The results from the preliminary analysis are described in a proposal submitted to the Director of FID-SANS, which classifies the STR for "information-analytical purposes" (IPF) or

"operative-analytical" purposes. The IPF are those STRs who did not received points above the threshold and there is no other risk identified in order to continue de analysis. The operative files (OF) are opened on the basis of notifications (from all reporting entities) and further analysis is carried out. Any case considered only for information purposes (IPF) can be reopened and transformed into an operative case, provided that additional information becomes available to the FIU.

486. The evaluation team is of the opinion that such system should be effective as it is flexible in combining a semi-automatized risk based scoring criteria with the personal judgment of the financial analyst in charge.

487. Once opened, the case is sent to an analyst from the Department for an in-depth analysis and International Cooperation, with a specification of the deadline for its completion (which is usually a couple of months), depending on the complexity of the case. The second level of analysis (the in-depth analysis), is performed by the Department for in-depth analysis and International Cooperation (Department 3), according to Methodological Guidelines for processing of Suspicious Transactions Reports (MGPSTR). The latest amendments to the MGPSTR were introduced at the beginning of 2010 and 2012. The purpose of the amendments was to optimise (decrease) the number of STRs designated as operative cases (where further financial intelligence analysis is carried by the FIU) and focus more effectively the resources of the FID-SANS on targeting the significant cases.

488. In the second level of analysis, the analysts will check all the databases where the FID-SANS has direct access and will make a proposal to the head of department as to what other databases should be checked and/or what additional information needs to be further required from reporting entities. After the analysis is completed, the analysts draw up a proposal to the Director of FID-SANS for disclosure of the information. The proposal is finalized with a financial-intelligence report, which should be thorough and should summarize the gathered information which is relevant to the initial suspicion. The proposal is agreed by the Head of Department 3 who is also head of the sector for in-depth analysis and is approved by the Director of FID-SANS. The preparation of notification document is further prepared and sent to the competent LEA.

489. If based on the additional information the legal source of the funds is established, the analyst working on the particular case reports it in front of a commission formed by experts from the FIU, constituted by order of the director of FID-SANS. Based on the information presented, the commission may recommend to the director of the FIU to send the operative file into archive. The final decision should be made by the director. In each step before archiving the case can be returned to the analyst for gathering additional information.

490. The FID-SANS still receive most of the STRs on paper (even if electronic reporting increased at about 25% of the reports). No electronic system for receiving information has been introduced yet. However, the Bulgarian authorities explained that in urgent cases swift notification of STs are possible by means of telephone or fax and the effectiveness of the analytical process is not impeded. Although in line with the international standards, the evaluation team is of the opinion that introducing an automated reporting system, at least for the financial institutions, would significantly increase the effectiveness of the FIU.

491. The following table provides for the statistics on the operative cases and the cases for information purposes for the period following the introduction of the system (2010):

Table 18: Number of files operated by FID -

Year	Information Purposes Files (IPF)	Operative Files (OF)
2010	152	224
2011	691	429
2012 (as of 14.07.2012)	754	499

492. The evaluation team was advised that the number of STRs actually processed (2010-2011) significantly exceeds the total number of the designated cases for information purposes and operative cases (see Table 19 below), because a large part of the "cases" contain more than one STR and other STRs are "following" a case previously sent to the LEAs. It also should be noted that the table above represents the work of the FIU in opening new files according to the newly established Methodology and represents the work of the FIU in preliminary phase only. Operative files are subject to in-depth analysis, where other STRs or other files can be joined to create one case.

493. It was the evaluation's team understanding that the OF actually derive from a part of the IP cases and therefore the statistics for 2010, where the number of OF exceeds the number of IP cases, raised further questions. The Bulgarian authorities clarified this situation, explaining that this was the result of a backlog that the FIU had before 2010, which now has been resolved.

494. The relation between the STRs received from the reporting entities and the STRs actually processed and attributed to OP or IP files is emphasised in the table below:

Table 19: STRs received by the FID

Reporting Entity										
	ML	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**
	2008		**2009**		**2010**	**2011**			**2012 (14. July)**	
STRs	591	1	883	0	1,460	2	1,427	1	743	2
STRs processed as new or part of already initiated cases	565	1	791	0	665	2	1,291	1	1,251	2
Cases disseminated	411	1	521	0	478	2	523	1	360	1

495. Analysing the numbers in the table above, it can be said that since 2008, the total number of STRs received by the FIU is 5,104 and the number of STRs processed as new or part of already initiated cases is 4,563 which amounts the ratio of these STRs to 89% of the total number of STRs received.

496. On the other hand, the percentage of the disseminated cases against the processed STRs is of 50% (Total STRs processed 4,569 vs. cases disseminated cases 2,298, see Table 19.), which appears more reasonable and clearly emphasise the added value brought to the original STRs and their preliminary analysis, by the Department for in-depth analysis and International Cooperation.

497. The reporting by the obliged persons for 2009 increased by 35% compared to 2008. The reporting in 2010 increased by 66% compared to 2009 or 125% compared to 2008. The rate of analysis (completion and disclosure) of cases increased by 28% in 2009 compared to 2008 and 10% increase in 2011 compared to 2010.

498. Based on the STRs received and the subsequent analysis, FID-SANS disclosed the following information to the law enforcement authorities:

Table 20: Disseminations to LEA by FID-SANS

Year	Number of cases disclosed to			
	MoI	**Prosecutor's Office**	**SANS**	**Total**
2008	254	11	146	412
2009	180	7	334	521
2010	219	17	244	480
2011	134	6	383	524
2012*	111	6	244	361

*as of 14.07.2012

Table 21: Assets involved in the cases disclosed by FID-SANS to LEA

Year	Amount of the property (EUR), subject to the cases disclosed to			
	MoI	**Prosecution**	**SANS**	**Total**
2008	172,154,171	348,110,459	2,846,780,799	3,027,287,834
2009	169,327,431	6,524,318	313,279,388	489,131,137
2010	121,789,576	15,610,573	993,569,277	1,130,969,426
2011	75 300 533	1,982,140	692,574,023	769,856,696
2012*	295,226,896	3,171,182	151,765,466	450,163,544

*as of 14.07.2012

Table 22: Number of operative cases, under analysis as at 13.11.2012

Total no. of operative case (pending)	No. of analysts	Average no. of cases per analyst
247	6	41

499. During the on-site interviews, the evaluation team was told that statistics on FID-SANS cases resulting in ML convictions are not routinely maintained, but the effectiveness of the disseminations was confirmed by the LEA. According to data provided by LEA, the impact of the FID-SANS cases on investigative work is significant.

Table 23: FID-SANS generated case for General Directorate Combating Organised Crime (GDCOC)

Year	Total cases	Based on FID information	Based on Prosecution information/other sources	Pre-trial proceedings
2008	92	50	42	15
2009	266	68	198	26
2010	452	172	280	45
2011	126	42	84	37

500. The Financial Security Directorate of SANS provided the following data on cases resulting in pre-trial investigations for money laundering:

2008 – 3 investigations (2 of them were initiated by the FIU; in the third investigation information was collected via the FIU)
2009 – 5 investigations (4 of them were initiated by the FIU; in the fifth investigation information was collected via the FIU)
2010 – 9 investigations (2 of them were initiated by the FIU; in 4 investigations information was collected via the FIU)
2011 – 15 investigations (2 of them were initiated by the FIU; in 6 investigations information was collected via the FIU).

501. It has to be mentioned that the statistics provided above should be read in conjunction with statistics provided in R1, bearing in mind that the scope of the above statistics is broader than ones in R1. This is due to the inclusion of other situations such as investigations, requests for information LEA etc. All LE interlocutors met onsite confirmed the involvement of the FIU in almost all cases related to money laundering either initiated by or with its involvement in later stages. The FID-SANS contribution in ML cases relates in providing initial input, expertise and/or collection of relevant data in later stages of the investigation.

502. Except abovementioned statistics, authorities provided the evaluation team with examples of cases that have been initiated by the FIU, which are resulted in convictions or good quality indictments and/or seizures/confiscations.

503. Effective work of the FID-SANS is complemented by the postponement power given to Minister of Finance according to Art. 12 of the LMML. Namely, in cases provided for in Art. 11 and 18 (STR submitted or request form foreign FIU received), the Minister of Finance may, upon

a proposal by the Chairperson of the SANS, stop, by a written order a certain transaction or deal for a period of up to 3 business days as of the day following the issuance of the order. If no further preventive measure, impoundment or injunction is imposed within that period, the reporting entity shall be free to execute the transaction or deal. FID-SANS shall notify the Prosecutor's Office immediately about the postponement of the transaction or deal, providing relevant information thereto.

504. The statistics presented by the Bulgarian authorities emphasise the results of the postponement power. Although this is not an exclusive power of the FID-SANS (the Minister of Finance has the competence to decide on postponement), it should be noted that all of these cases were initiated by the FIU.

Table 24: Postponement cases by FID-SANS

Year	Cases	Amount in EUR	Further Development
2008	2	288,422	1 Suspended; 1 Indictment, Art. 253 and 250
2009	1	410,597	case pending
2010	5	2,161,889	2 Pending; Prosecutions under Art. 253, under Art. 255, pending
2011	4	4,341,704	1 Refusal; Prosecution Art. 250 and 253; Prosecution Art. 253, pending; Pending
2012	3	581,436	Prosecution Art. 253, pending; Prosecution Art. 321, pending
Total:		7,373,451	

2.5.2. Recommendations and comments

Recommendation 26

505. As described in the analytical part, the evaluation team is of the opinion that the technical compliance of the FID-SANS is in place and that the FIU largely functions effectively. The employees left the evaluation team with the impression of a professional and proactive team, capable of taking the leading role in AML/CFT system.

506. However, the FID-SANS still receive most of the reports on paper. Also, analytical work is predominantly done on paper. Although introduction of integrated IT system for receiving and analysing STRs is not obligatory international standard, the Bulgarian FIU would greatly benefit in terms of effectiveness, if such an automatic system is established. This is particularly important bearing in mind that the human resources are generally limited for the public authorities.

507. The role of the FIU in the development of the ML cases remains appreciated by the partners in the system. According to the statistics provided by the Bulgarian authorities, there is a significant improvement in the FIU impact on ML prosecutions and confiscations and in term of assets involved as in the previous MER, only 13 ML convictions and few confiscations were identified. As a direct result of the structural changes, it appears to be greater opportunities for faster law enforcement input into the FIU's analysis.

508. The examiners carefully verified the safeguards in place in respect of the FIU's operational independence and that no improper influence has been brought to bear.

509. The evaluation team invites the authorities to reassess the effectiveness of the preliminary analysis methodology and the human resources allocated to the two analytical departments, taking into consideration the high per cent of OF resulted for in-depth analysis after the completion of the preliminary analysis.

510. The FIU would also benefit from gaining more direct access to various databases, especially those kept by law enforcement agencies.

Recommendation 30

511. Material resources provided to the FIU in terms of premises should be increased especially bearing in mind that the FIU should, according to the current structure, employ additional 9 officials.

512. Authorities should consider providing more human resources to the FIU. All 38 positions available in the FIU official structure, should be occupied with officials.

Recommendation 32

513. Statistics maintained by the FID are in line with the international standards. Although an additional element of Recommendation 32, keeping statistics on STRs based convictions would assist in the review of the effectiveness of the AML/CFT system.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	**C**	

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)[35]

514. Bulgaria was rated partially compliant for Special Recommendation IX as the following shortcomings were identified: no explicit provision to question carriers as to the origins of imported currency or bearer negotiable instruments; no power for Customs to detain pending further investigation by Border Police (effectiveness issue). The sanctions regime was unclear.

c.IX.1

515. The cash control system in Bulgaria is based on the Regulation (EC) 1889/2005 of the European Parliament and of the Council of 26 October 2005 on Controls of Cash Entering or Leaving the Community (hereinafter: Cash Control Regulation), which began to apply on the 15th June 2007. This regulation is directly applicable in Bulgaria as an EU Member to cross-border transportation of currency and bearer negotiable instruments at its borders with non-EU countries.

516. In addition to the Cash Control Regulation, there are several other pieces of legislation in place which are reported by the authorities to be used in Bulgaria in order to implement requirements of SR IX. The Currency Law (Foreign Exchange Law) (adopted 1999, last amendment 2011) and Ordinance H 1, dated 01.02.2012, on carrying across the border of the country of cash, precious metals, gems and items containing them or made of them and keeping the Customs register according to art. 10 of the Currency Law.

517. Article 3 of the Cash Control Regulation establishes an obligation to declare cash in the value of €10,000 or more when entering or leaving the EU space. This obligation meets the prescribed threshold in the essential criteria, which cannot exceed €15,000. The Regulation prescribes that an incorrect or incomplete declaration cannot be taken to mean that the obligation is fulfilled.

518. *Art. 11a*. Para 1 and 5 of the Currency Law prescribe that *carrying of cash in an amount of €10.000 or more or the equivalent in BGL or in another currency to or from a third country shall be subject to declaring before the customs authorities; the obligation to declare shall be deemed non-fulfilled in case of refusal to declare or if the declared information is incorrect or incomplete*, thus reiterating provisions of EU Cash Control Regulation and providing for the competence of Bulgarian Customs Administration in implementing cash controls.

519. As well as cash, natural persons are obliged to declare if they are carrying precious metals, gems and items containing them or made of them not for trade purposes, upon entering or leaving the territory of the EU. For the purposes of this obligation, precious metals, gems and items containing them or made of them, should be declared when exceeding the following limits: 37 grams of gold and platinum, not processed or semi-processed, and coins; 60 grams of jewellery and accessories made of gold and platinum; 300 grams of silver, not processed or semi-processed, coins, jewellery and accessories; gems embedded in the above listed jewellery and accessories.

[35] MONEYVAL discussed the evaluation of SR IX in its EU Member States in the follow-up round during its 35th plenary meeting in April 2011. MONEYVAL noted that under the supranational approach, there is a pre-condition for a prior supranational assessment of relevant SR IX measures. It further noted that there is as yet no process or methodology for conducting such an assessment (although one is planned). Pending the FATF's 4th round, as an interim solution, MONEYVAL agreed that it will continue with full re-assessments of SR.IX in the 6 remaining EU countries to be evaluated (which includes Latvia). These countries will be evaluated using the non-supranational approach. Nevertheless, it noted that, for the purpose of Criterion IX.1, the EU has been recognised by the FATF as a supranational jurisdiction and therefore there is no obligation to comply with this criterion for intra-EU borders. Downgrading solely for the lack of a declaration/disclosure system is thus not appropriate. The other criteria that mention supranational approach (C.IX.4, C.IX.5, C.IX.7, C.IX.13 and C.IX.14) would not be evaluated against the requirements that apply to the supranational approach, and C.IX.15 would not be evaluated. The FATF was advised of this solution as it involves a departure from the language of the AML/CFT Methodology. At its plenary meeting in Mexico in June 2011 the FATF took note of this interim solution for EU Member States in MONEYVAL's follow-up round.

520. The Currency Law (CL) prescribes also a declaration system on EU internal borders (borders between EU member states), but only upon a request made by a competent customs officer. Thresholds, both for cash and precious metals, gems and items containing them or made of them not for trade purposes, are the same as for the obligatory declaration system on EU external borders, as described above.

521. Article 2 of the Cash Control Regulation defines cash as including currency and bearer negotiable instruments including monetary instruments in bearer form (such as travellers cheques), negotiable instruments that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such a form that the title thereto passes upon delivery as well as incomplete instruments (such as promissory notes and money orders), signed but with the payee's name omitted.

522. Transfer of cash through postal consignments is prohibited with the exception of declared value consignments, by virtue of Art. 11 (2) of the CL.

523. However, the evaluators are of the opinion that the signs alerting the travellers on the obligation to declare the cash at the border are not visible enough which negatively impact the effectiveness of the declaration system, especially in cases of negligent non-declaration.

c.IX.2

524. Upon discovery of a false declaration/disclosure of currency or bearer negotiable instruments, the Customs authority may take further measures. The customs officers are able to exercise the control of the declaration obligation and are authorised to require the necessary cooperation from controlled persons.

525. According to Art. 16. Para. 1 of the CL, the Customs authorities shall monitor the observance of its provisions in case of carrying across the border of the country of cash and of precious metals and gems and items containing them and made of them.

526. Furthermore, according to Art. 15 Para 2 Items 1, 4, 5 and 7. of the Customs Act, the Customs bodies shall: carry out customs supervision and control over the commodities, vehicles and persons in the zones of the border control checkpoints and on the whole customs territory of the country; protect the economic interests of the country within the frame of their competence; carry out customs intelligence work for counter-acting the customs and foreign currency offences; carry out foreign exchange control within the frames of the competence prescribed to them by law.

527. Art. 16. Para. 1 Item 5 states that the customs authorities, in fulfilment of their official duties, shall have the right to require written or verbal explanations.

c.IX.3

528. With regard to the authority of competent bodies to stop or restrain currency or bearer negotiable means, Bulgarian authorities rely on provisions of Art 18 and 20 of the CL, which stipulate penal provisions regarding breaches of the cash declaration obligation, providing as penalties fines from 1,000 to 3,000 BGN. The object of the violation in case of carrying across the border of the country of cash, precious metals and gemstones, as well as items containing them or made of them, shall be taken in favour of the state, including in cases where the offender cannot be identified.

529. Also, the authorities invoked Art 251 of the CC which reads as follows: "*Who violates a provision of a law, of an act of the Council of Ministers or of a promulgated act of the Bulgarian National Bank, regarding the regime of transactions, import, export or other activities with currency valuables or the obligations for their declaring and the value of the subject of crime is of a particularly large size shall be punished by imprisonment of up to six years or a fine amounting to the double sum of the subject of crime. The subject of the crime shall be seized in favour of the state, and if it is missing or alienated its equivalence shall be adjudicated.*

530. However, it has to be noted that confiscation of the non-declared amounts is provided by the CC only in cases of *"particularly large amounts"*. From the on-site interviews, it resulted that the term seizure in both provisions means permanent deprivation of property or confiscation. This was confirmed by interlocutors who explicitly stated that non declared cash is confiscated regardless of the reasons for breaching obligation to declare. If, for example, the traveller fails by negligence to declare cash in amount higher than €10,000, the whole amount will be confiscated and in addition to a fine imposed for failure to declare.

531. For temporary deprivation of non-declared cash and other, customs authorities use the provision of Art 16 Para 1 Items 8 and 10, Art 229 Para 1 of the CL and Art 41 of the Administrative Violations and Sanctions Act. Art 16 Para 1 Items 8 and 10 of the CL stipulate that: *"In fulfilment of their official duties the customs authorities shall have the right to: to levy, according to the procedure established by the law, distraint and injunctions for securing due customs duties and other state receivables collectable by them and to conduct searches and seize goods that have been or should have been subject to customs supervision and control and related documentation in offices, official and other premises, as well as personal searches of the persons located therein in compliance with the procedures of the Criminal Procedure Code.".*

532. Art. 229. para 1. of the CL stipulates that *"The customs authorities shall be entitled to seize and retain under their control the goods that are the object of customs violations, including vehicles and other means used for their concealment, importation to or exportation from the country as well as material evidence necessary or related to the investigation proceedings as well as goods and cash for securing possible receivables under the penal ordinance"* and the Art 41 of the Administrative Violations and Sanctions Act stipulates that *"Upon establishment of administrative violations an official authorised to draw up a statement thereof shall have the right to seize and withhold all physical evidence and exhibits related to the establishment of such violation, as well as all personal effects subject to forfeiture in favour of the state ". Authorities explained that the provisions of the Customs Act give power to Customs officers to seize goods while using provisions of the Administrative Violations and Sanctions Act as the general basis for the procedure of seizing goods.*

533. Though, no legal provision refers to the possibility for the Customs Authority to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF might be found in case of the mere suspicion, when the sum involved is dully declared or is below the threshold.

c.IX.4

534. When completing a declaration form, the person providing the declaration should provide details of:

(a) full name, date and place of birth and nationality;
(b) the owner of the cash;
(c) the intended recipient of the cash;
(d) the amount and nature of the cash;
(e) the provenance and intended use of the cash;
(f) the transport route;
(g) the means of transport.

535. Customs officers may require presentation of personal identification document in order to verify the data filled in the declaration form by the traveller.

536. In order to check compliance with the obligation to declare cash, customs authorities carry out controls on natural persons, their baggage and their means of transport. Where an offence is established, customs officers shall detain cash transported and a receipt-note should be issued to the traveller.

537. If suspicion on possible ML or TF arises, the Customs Administration is in the position of a reporting entity according to the LMML. The full range of CDD has to be undertaken in these cases.

c.IX.5

538. As advised by the authorities, the instances that provoke suspicions of ML or TF are immediately made available to the FIU by sending a STR. The reporting obligation is set out in the LMML, by designating the Customs Authority as a reporting entity.

539. According to the statistics provided, the Customs authority reported to FID-SANS 71 STRs from 2008 until July 2012. In implementing this obligation, the head of National Customs Agency issues internal rules of the national customs agency on the control and prevention of money laundering and terrorist financing. This document approved by the head of Customs and adopted by SANS, regulates the criteria for identification by customs authorities of suspicious operations and transactions related to ML and TF. Evaluators are advised that 18 model indicators have been developed in order to assist customs officers in recognising suspicious activities.

540. In their capacity as reporting entity for AML/CFT purposes, the Customs Authority is obliged to conduct full scope of CDD measures when suspicion on ML or TF arises.

541. The collaboration between customs authorities and the FIU is based on internal rules of the National Customs Agency for control and prevention of ML and TF. These Internal rules contain the requirement that customs administration shall provide information about cross-border movement of cash to the FIU every month.

542. In practice, this is regularly done by way of sending MS Excel table with relevant data to the FIU. The information that customs authorities shall make available to the FIU includes:

a) Details from cash declarations recorded and processed in central customs database /every month.
b) Details concerning cash not declared or not declared correctly that provoke suspicions on ML or TF.
c) Facts established during cash controls carried out on natural persons, their baggage and their means of transport that provoke suspicions on ML or TF. This includes cases where as a result of control it is established that the person carried cash lower than the fixed threshold but there were indications of illegal activities or suspicions of ML or TF associated with the movement of cash.
d) Facts related to movement of cash that provoke suspicions on ML or TF, such as frequent carrying of cash of a value subject to declaration, declaring of cash of a value higher than the actual amount, established carrying or forged notes or other payment instruments etc.
e) Details concerning cash detained.

543. Any recorded cases of cash controls at border customs offices, be it an orderly record of a declared amount or a case of false declaration/undeclared cash detected, will remain at the disposal of the customs and the FIU for possible future reference normally for 5 years, according to Art 10a Para 4 of the Currency Act.

c.IX.6

544. On the basis of instructions for cooperation, the customs authorities work in collaboration with FID-SANS), MoI authorities (including border police), prosecutors, National Investigation Service, CEPCA etc.

545. Bulgarian authorities provided to the evaluators with the document providing Instruction on cooperation of the authorities of the Ministry of Interior and the Ministry of Finance, which deals with issues of procedure for interaction between the Customs Agency within the MoF and the National Police Service within the MoI, with the aim to prevent and detect violations against the customs and currency Laws and to enforce the legislation and the border regime. The Instructions

stipulate a number of instruments for cooperation, including establishment of an Operational Coordination Centre (OCC), designation of contact persons on national and regional levels, joint mobile teams for conducting joint checks.

546. In 2012 a total of 987 mobile groups for control and surveillance between Customs and Border Police were formed and they performed checks of 70,912 persons, 52,427 vehicles, 291 trade sites and 40 ships. Sanctions were made for administrative violations as follows: 517 by the customs, 3 by the Ministry of Interior Act, 4 by the Law of Bulgarian Personal Documents and 14 by other laws. Directly, 61 fines were imposed by slip card and receipts. 38 legal proceedings were constituted and 14 application materials were registered. Significant amounts of smuggling excises (cigarettes and alcohol) and prohibited (drugs) goods, as well as undeclared currency were confiscated.

547. Where there is some suspicion on ML or TF, the customs officials shall immediately inform the FIU. Where a criminal offence related to cross-border movement of cash is established, investigative customs officer should inform a prosecutor immediately but no later than 24 hours.

c.IX.7

548. The Bulgarian Customs Agency exchanges information internationally in accordance with particular mechanisms laid down in: the Treaty on the functioning of the EU (art. 33); Regulation (EC) No.1889/2005 (art. 6 and 7); The Convention on mutual assistance and cooperation between customs administrations, so called Naples II Convention; Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters as last amended by Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008; bilateral and multilateral agreements on mutual assistance and cooperation.

549. The Naples II Convention offers the application of the following special forms of co-operation: hot pursuit, cross-border surveillance, controlled deliveries, covert investigations, joint special investigation team.

550. The means used for exchange of information (on request or spontaneously) are: the common databases, 24-hours and central contact points; the agreements on cooperation with third countries or with other authorities like Europol, Interpol, World Customs Organisation (WCO), Southeast European Law Enforcement Centre (SELEC) etc.; the working meetings (working visits, seminars); the joint operations at regional or international level; the use the representatives of Bulgaria in WCO and SELEC; the use of customs representatives of the other Member States in Bulgaria (France, Germany).

551. Customs' cooperation with third countries is based on agreements on cooperation and mutual assistance concluded between Bulgaria and EU and third countries (Turkey, "the former Yugoslav Republic of Macedonia", Serbia, Russia, Ukraine, Switzerland, Georgia, Albania, Montenegro etc.). Recently, the Customs have addressed a request in the framework of the international cooperation to the customs administration of Turkey regarding a case for cash non-declared in Bulgaria.

552. Amongst the most relevant databases used, the Bulgarian authorities mentioned the RIF (Risk Information Form) system, which is accessible to all EU Member States' customs authorities, ensuring the timely and prompt access to all cash control related suspicious cases, trends etc.

553. Another important database is the Customs Information System (CIS) - a system for the exchange of information, accessible via the anti-fraud information system run by OLAF. A specific module in CIS is developed that allows the storing of information on cash detained, seized and confiscated. CIS is successfully used in the field of cash controls may also be in the prevention, investigation and prosecution of operations which do not comply with the Cash Control Regulation. It is to be noted that CIS can be used to monitor persons crossing the internal

frontiers of the Member States with the intention to cross the external frontiers of the EU and suspected not to comply with the obligation to declare cash of a value of EUR 10,000 or more to the competent authorities. Information regarding persons, means of transport or goods in relation to all cases of violations of national or EU regulations may be recorded into the CIS system. The cases are recorded into the system usually during a phase of suspicion of violation of regulations, illicit actions or intended future illicit actions, which may be useful for the following actions, such as informing other Member States, monitoring or control.

554. A third database used is FIDE (Files Identification Database) which supports data on investigations launched by Member States customs (enforcement) authorities.

c.IX.8

555. The EU legislation leaves to the Member States to lay down penalties, which have to be effective, proportionate and dissuasive.

556. Non-compliance with the obligation to declare cash is treated as an administrative offence and as a criminal offence depending on the amount of cash involved. If the amount of cash is equal to or exceeds 140 times the amount of the minimum monthly salary of the country (that is BGN 290 from 01.04.2012), the case is treated as a crime, according to Art 251 of the Penal Code. That means that when customs authorities establish cash not declared of a value of above EUR 21,000 or more, the case is determined as a crime.

557. If the amount of non/false declared cash is less than EUR 21,000, fines prescribed to be imposed are in the range from BGN 1,000 to 3,000 which equals app. EUR 500 to 1,500. Although, it could be debatable whether these sanctions are dissuasive enough, the fact that the whole amount of cash will be confiscated, no matter reasons for not declaring, makes penal provisions for non/false declaration effective and dissuasive. Confiscation of the whole amount of non-declared cash is the sanction that goes beyond international standards, arguably being more severe than required.

558. The sanctions provided for in the CC for not declaring larger amounts of cash and other bearer instruments are fines amounting to the double of the object of the crime or imprisonment for up to six years. Taking into account that the criminal liability is stipulated for this breach of cash control system, it must be concluded that these sanctions are effective and dissuasive.

c.IX.9

559. Physical cross border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering is considered as a crime according to the CC. If it is established that currency or bearer negotiable instruments are proceeds from, instrumentalities used in or instrumentalities intended for use in the commission of any money laundering, terrorist financing or other predicate offences the CC applies. As a result, sufficient evidence should be available for initiating criminal proceedings. It should be noted that questions on confiscation, freezing and seizing of proceeds related to money laundering or terrorist financing discussed under Recommendation 3 apply accordingly to situations involving cases related to SR IX.

c.IX.10

560. According to Art. 15 (2) (7) of the Customs Act, the customs authorities shall exercise foreign exchange control within the limits of their competence assigned by law. However, it is unclear which legal provision would empower the Customs authorities or other authority to seize assets which are related to ML or TF.

c.IX.11

561. The obligations related to the UNSCRs and terrorist lists derives mainly from the LMML as the Customs Authority is listed as reporting entity and therefore all obligations described under SRIII apply.

562. However, it practical terms, the responsibility for the checks against terrorist lists is divided between the Customs authority (who has the responsibility to apply the LMML provisions) and the Border Police (who has access to the names of all passengers crossing the Bulgarian border). The effective implementation of the SRIII requirements relies heavily on the effective cooperation and communication between the two authorities.

563. During the on-site interviews, the Border Police demonstrated a marginal awareness of the terrorist lists. The officials informed the evaluation team that the Border Police has access to a database containing lists of persons unwanted on Bulgarian territory. According to the authorities, those persons are not allowed to enter Bulgaria and therefore the evaluation team has doubts that actually the UNSCR related lists are actually included in the invoked database. When asked about the procedure to be followed in case of a hit, they were hesitant.

564. Latterly, the authorities informed the evaluation team that the access to the following terrorist lists is available via internal Border Police network for the Territorial structures of Border Police - Regional Directorates "Border Police"; border police stations and border crossing points:

- List of certain persons and entities that are subjects to specific restrictive measures with a view to combating terrorism - Council Implementing Regulation (EU) No 1169/2012 of 10 December 2012 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 542;
- List for imposing specific restrictive measures directed against certain persons and entities associated with the Al Qaida network. (Updated on 02.03.2013, amended by Regulation (EC) No 180/2013);
- The List established and maintained by the 1267 Committee with respect to individuals, groups, undertakings and other entities associated with Al-Qaida, last updated on 25 March 2013;
- The Decision of the Council of Ministers No 265 from 23.04.2003 adopted the list of persons, legal entities, groups and organisations, subjects to the measures laying down in LMFT.

565. In addition, the Border guards at Border Crossing Points (BCP) have access via Internet to the on-line list from European External Action Service. In the context of border checks at BCP, border guards use automated system "Border control", which give access to the national data base, Schengen Information System (SIS), and from the beginning of 2013 to the data base of Interpol.

566. The Border Police has no power to freeze, seize or confiscate assets. If the seizure of the assets is necessary, the Custom Authority would be informed in order to take the necessary measures, but it was unclear if the procedure would apply also in case of the terrorist lists.

567. The Customs officials were more aware of the obligations related to SRIII. The evaluation team was told that if a match with the terrorist lists is discovered by the customs officer, he or she will immediately notify the Border Police, according to the instructions for cooperation between these authorities. Further, the STR would be sent to the FIU. So far, no positive matches have been discovered on borders. Concerns and other considerations noted earlier in the report in relation to SR III also apply to SRIX.

568. Customs officers have access to the List of the natural persons, legal persons, groups and organisations against who measures under Measures against TF Act are applied, accepted by the Council of Ministers with Decision No. 265 dated 23 April 2003 (Promulgated State Gazette No.64/18.07.2003, amended SG No. 86/30.09.2003, amended SG No.34/27.04.2004, amended SG No.61/13.07.2004, amended SG No.87/5.10.2004, amended SG No. 16/21.02.2006). This list is public.

569. Concerning combating TF, customs officials have at their disposal different documents and guidelines related to the fight against terrorism that are available on the internal INTRANET page

of the National Customs Agency on the section "Measures of the international community for fight against terrorism", accessible for any customs officer.

c.IX.12

570. Notification of suspicious or unusual cross-border movement of gold, precious metals or precious stones can be provided as spontaneous information in the framework of Naples II Convention or in a framework of a bilateral agreement, or through Europol or Interpol. However, no such a case has been recorded.

571. Where there is suspicion on ML or TF, customs authorities could exchange information with other EU member states on the basis of Council Regulation (EC) No.515/97, Convention Naples II, Regulation (EC) No.1889/2005 with official letter or via RIF, CIS, FIDE (Files identification Database) etc. The Customs have no practice to provide another country with spontaneous information about movement of precious metals or precious stones.

572. According to Art. 10b (2) of the Currency Law, the Customs bodies shall be responsible for mutual assistance and exchange of information with the European Commission, member states of the European Union, other states under international treaties in force to which the Republic of Bulgaria is party and with other state bodies in the framework of their competence, concerning:

- violations of the currency legislation;
- signs that the carried cash is related to money laundering and financing of terrorism within the meaning of the LMML and of the LMFT;
- signs that the carried cash is revenue from fraudulent or other illegal activities and which have a negative impact on the financial interests of the European Union.

c.IX.13

573. There seem to be strict safeguards in place to ensure proper use of the data that is reported and recorded. A document "Policy for IT security" was elaborated by the National Customs Agency, which determines the requirements for computer and communication security and informs all officials and counterparts on their obligations on the protection of the information sources. A unique user account is created, to ensure the control of the rights used and actions taken by each user. Details from the database for cash movements could be provided to the relevant authorities only where it is set by a law, according to the provisions of the Classified Information Protection Law and the Personal Data Protection Law.

c.IX.14

574. The National Training Center of the National Customs Agency is the directorate that implements the politics and tasks responsibility for training the customs officials. The Director of the National Customs Agency approves the annual training program.

575. The newly appointed customs officials are obliged to pass a basic course of training of 7 months with theoretical and practical modules including 76 training subjects. One of the modules included refers to the cash controls and fight against ML and TF. During these modules, officials receive explanations concerning the legal requirements and the purpose for carrying out of cash controls which is prevention of ML and TF. Officials are acquainted with risks on cash controls, indicators for suspicious operations, with new modus operandi, methods to hide cash, new trends in ML etc.

576. Another important element in training of customs officials in EU Member States is the Handbook of Guidelines on Cash Controls elaborated by the European Commission which contains detailed information and answer of any question raised during the cash controls. This Handbook is published on the INTRANET page of the National Customs Agency and can be accessed by all customs officers. This Handbook contains also guidelines concerning combating ML and TF in relation to cash controls. There is information about the legal requirements and

FATF recommendations led to introducing of Regulation (EC) № 1889/2005; the information about FIU and cases that must be reported to FIU for prevention of ML and TF.

577. Training of the officials is done on ad-hoc basis by working visits and experience exchanges with foreign administrations. Authorities explained that experience and best practices are effectively exchanged on the meetings of Cash Controls Working Group of the European Commission. Sometimes, plenary sessions are organised outside Brussels, which give the possibility to the participants to become acquainted in place with the cash controls system of the other Member States.

578. In December 2009, one official from the French Customs Administration visited Bulgaria with the purpose of exchanging information and experiences concerning the work of the customs authorities in the area of cash controls and AML/CTF. Bulgarian Customs Authorities stated that they have a very good cooperation with the customs attaché of France and the customs liaison officers of Germany and UK, located in Bulgaria.

Additional elements

579. According to the Bulgarian authorities, a number of actions are undertaken to raise awareness through information published at the National Customs Agency website, posters and leaflets disseminated in prominent places on customs control points. Evaluators travelling to Sofia for the on-site visit, both by car and aeroplane, agree that posters are available to inform passengers about the declaration obligation. Nevertheless, letters on those posters are too small. Having in mind that cash can be confiscated if it is not declared for any reason, the authorities should do more to raise awareness on this obligation.

580. The risk analysis is used for establishment of failure to declare cash. There is a list of common risk indicators for detection of non-declared cash, available for all customs officials. Some indicators for suspicious transactions are enumerated in the Internal Rules of the National Customs Agency on control and prevention of ML and TF

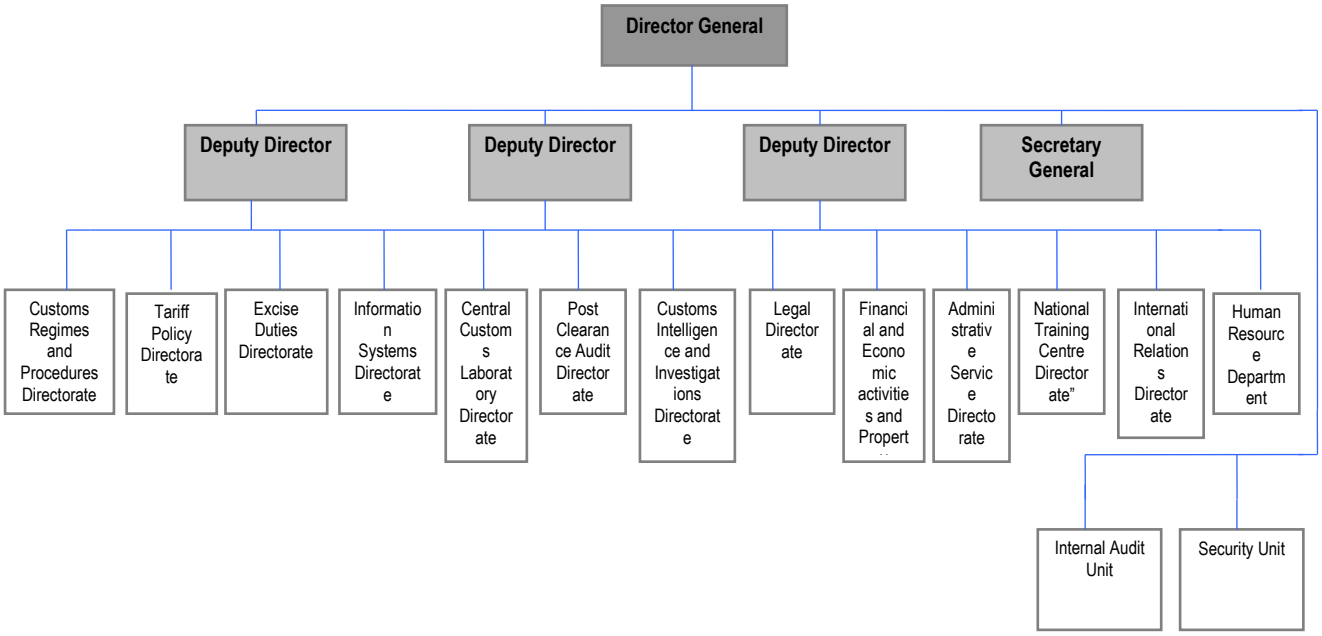
581. The reports on cross border transportation of cash are maintained in a computerised database.

Recommendation 30 (Customs authorities)

582. The National Customs Agency (NCA) is a centralized administrative structure within the Minister of Finance. The Agency is a legal person – a secondary budget allocation institution to the Minister of Finance.

583. The NCA is structured into the Central Customs Directorate and the Territorial Customs: Bourgas, Varna, Plovdiv, Svilengrad, Rousse, Lom, Svishtov, Sofia Airport, Uogozapadna, Stolichna. The total number of the staff of the Customs Agency is 3,337 official posts. The number of the staff of the Central Customs Directorate is 638 official posts. The number of officers dealing *i.a.* with cash controls and combating ML and TF is as follows: Bourgas – 138; Varna – 14; Plovdiv – 32 Svilengrad – 146; Rousse – 58; Lom – 51; Svishtov 10; Sofia Airport – 110; Stolichna – 16; Ugozapadna – 30.

584. The organisational structure of the National Customs Agency is as follows:



Recommendation 32

585. Comprehensive statistics are maintained regarding declarations made by travellers as described above. Both customs authorities and the FIU hold these statistics.

586. These statistics have been provided by the Customs authorities.

Table 25: Movement of cash

	Movement of cash		Declarations		Offences	
Year	**numbers**	**amount**	**numbers**	**amount**	**numbers**	**amount**
2008	2,399	17,6076,294	2,370	173,323,078	29	2,753,216
2009	1,439	127,674,774	1,416	126,755,141	23	919,633
2010	1,296	171,787,378	1,278	170,955,499	18	831,879
2011	1,250	153,154,542	1,228	152,385,009	22	769,533
Q1 2012	216	19,831,738	212	19,766,027	4	65,711

Table 26: Sanctions

YEAR	Established offences /number/	Revoked penal provisions/ terminated cases	Cases still in proceedings	Cases with enacted decisions	Imposed fines BGN	Cash seized EUR	Other sanctions
2008	29	4	15	10	5,000	695,033	3 suspended sentences
2009	23	1	10	12	15,000	387,144	2 suspended sentences
2010	18	6	4	8	5,000	623,108	2 suspended sentences
2011	22	2	9	11	13,000	269,568	
2012[36]	8	1	6	1	1,000	11,500	

587. The authorities informed the evaluators team that out of the above presented cases, there were 2 convictions for ML (apart from the sanctions for breaching the cash control regime) related to cash detected at border. One of the convictions was for cash and precious metals, the other involved only cash.

588. The statistics presented above show a significant number of declarations in the amounts which are bigger than 150 million EUR per year. These numbers, along with the large amounts of money

[36] until 30/09/2012

that has been subject to the declaration system, gives a sound basis for the evaluation team to consider that the system of cash declaration is effective. The number of cases where false declaration or non-declaration has been discovered is an encouraging sign that the Bulgarian authorities pay attention to obligations that stem from declaration system.

589. Nevertheless, some of the statements of representatives interviewed on site sometimes led to a divergent and leading towards the conclusion that there is room for improvement of effectiveness in the implementation of the system, especially by raising awareness of all stakeholders involved (Customs and Border Police) on ML/TF suspicions at the frontier. The most significant gaps refer to the implementation of SRIII requirements at the frontier. Efforts in awareness raising for the Border Police officers on the UNSCR, the terrorist lists and the subsequent requirements of the LMML, are recommended.

2.6.2. Recommendations and comments

590. The requirements related to the declaration of cash at the frontier, the maintenance of relevant information about the sums transported and the large majority of the essential criterions under SRIX are in place in Bulgaria.

591. The sanction regime for failure to declare cash at the borders is dissuasive and effective. The Bulgarian authorities might want to satisfy themselves that all their sanctions under SRIX are fully aligned with European Court of Human Rights standards on proportionality.

592. In a view of the evaluators, the fact that the signs informing the travellers about the declaration obligation on borders are not visible enough (placed too high and written by small black letters on blue paper), negatively impact the effectiveness of the declaration system. The authorities are recommended to improve the visibility of those signs. This recommendation is highlighted by the fact that the sanctioning regime is very strict, bearing in mind that all non-declared funds are confiscated.

593. Some deficiencies have been identified in relation to the ability of the Customs Authority to restrain assets in case of ML or TF suspicions when the respective sum was dully declared or when the amount transported is under the legal threshold. The authorities are invited to take appropriate legislative measures to ensure that the competent authority has the power to freeze the currency or bearer instruments to ascertain whether evidence of ML or TF may be found.

594. Effectiveness issues have been identified in relation to the application of the international standards on freezing of terrorist funds. While the Custom authorities are aware of their obligation in this matter deriving from the LMML, the Border Police appeared not to be fully cognisant of the manner in which the SRIII obligations should be fulfilled. This severely impacts effectiveness as in practice the Border Police is the authority verifying all the names of the passengers and thus, they are the only ones able to identify a possible terrorist. The terrorist lists are difficult to access by various authorities (including Border Police). Therefore, the possibility for automatic verification is highly questionable.

2.6.3. Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**LC**	• No power to restrain assets in case of ML or TF suspicions; **Effectiveness** • Issues on the effective application of SRIII requirements; • Signs alerting travellers on obligation to declare cash on borders not visible enough negatively impact effectiveness of the declaration system.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

595. The concept of the risk-based approach was introduced by Art. 4 para. 16 of the LMML which stipulates that obliged persons may apply, depending on the potential risk assessment, simplified or extended CDD.

596. Further to this, Art. 8 of the Rules on the implementation of the law on measures against money laundering (RILMML), which under Bulgarian legislation qualify as "laws and regulations") provides a detailed mechanism to implement the risk analysis and the application of enhanced CDD, requiring that the information obtained in the process of identification shall be used by the obliged persons for an initial assessment of the risk profile of the customer.

597. On the basis of the risk analysis, the obliged persons have to define categories of customers or business relations of a higher risk which should be put under special supervision and in relation to whom they shall apply extended CD measures.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

598. The LMML does not provide a specific definition of financial institutions. Parties under obligation are, however, defined under Art. 3 (2) of the LMML, which establishes that the measures for prevention against using the financial system for money laundering purposes shall be mandatory for all the listed entities. The listed entities include: the Bulgarian National Bank, credit institutions carrying on activities within the territory of the Republic of Bulgaria, financial institutions, exchange bureaus and the other payment service providers; re-insurers, and insurance agents, mutual investment schemes, investment intermediaries and management companies; pension insurance companies and insurers.

599. According to Art. 2 of the LCI, a bank (credit institution) is a legal entity which is engaged in the business of publicly accepting deposits or other repayable funds and extending loans and other financing for its own account and at its own risk. A bank may conduct other activities (listed in the LCI) if they are covered by its license.

600. The definition of *"financial institutions"* is provided by Art. 3 of the LCI as being *a person other than a credit institution whose principal activity is conducting one or more activities: acquiring holdings in a credit institution or another financial institution; extending loans with funds other than accepted deposits or other repayable funds.*

601. The Bulgarian authorities informed the evaluation team that the definitions provided by the EU Regulation 648/2012 also apply.

3.2.1 Description and analysis

Recommendation 5 (rated PC in the 3rd round report)

602. Recommendation 5 was rated PC in the 3rd MER on the following basis:

- the definition of beneficial owner was not fully understood by all financial institutions;
- the obligation to perform full CDD measures for terrorist financing should be required in the law;
- lack of guidance on applying simplified due diligence;
- the requirement to verify source of funds was not fully demonstrated throughout the financial sector; and
- the evaluators found that some financial institutions needed more training on risk assessment and, with the exception of banks, financial institutions need to work harder to raise awareness and be effective in CDD due diligence.

Anonymous accounts and accounts in fictitious names (c.5.1)

603. Art. 4 (1) of the LMML prohibits the opening of anonymous accounts or accounts under a fictitious name. Financial institutions are obliged to identify the customers when business or professional relations are established. Furthermore, Art. 5 of the BNB Regulation No.3, states that legal or natural persons willing to open a payment account should provide all data related to the identification.

604. The representatives of financial institutions met during the on-site visit assured the assessors that such accounts are not allowed and have never been allowed in Bulgaria.

Customer due diligence

When CDD is required (c.5.2)*

605. Arts. 4 (1) & (2) of the LMML establishes the obligation to apply customer due diligence measures when establishing business relations and when carrying out occasional transactions above BGN 30,000 (€15,000), including cases where the transactions are carried out in several operations that appear to be linked. The same obligation applies in case of any cash transaction exceeding BGN 10,000 (€5,000) or its equivalent in foreign currency.

606. The wire transfers are not explicitly covered in the LMML, but the requirements are implemented by the Law on Payment Services and Payment Systems implementing the Directive 2007/64/EC and Regulation (EC) No. 1781/2006 of the European Parliament and the Council of 15 November 2006 on information on the payer accompanying transfer of funds.

607. Criterion 5.2 (d) *[CDD measures when there are ML/FT suspicions]* is met through Art. 4 (13) of the LMML and Art. 9 of the LMFT. All obliged persons are always required to identify their clients where a suspicion of money laundering arises. Following recommendations made during the previous evaluation, Bulgaria has introduced a legal requirement to identify the clients in case of suspicions of financing of terrorism, which is set out under Art. 9 (3) of the LMFT. When financial institutions have doubts about the veracity or adequacy of previously obtained data or when they have been notified of any change, they are obliged to identify and verify the identifications pursuant to Art. 4 (14) of the LMML.

Identification measures and verification sources (c.5.3)*

608. Art. 3 (1) of the LMML obliges all financial institutions to identify and verify the identity of their customers, whether they are natural or legal persons, while Art. 6 sets out the procedures for identification and verification. Art. 1 of the RILMML emphasises that the identification of a customer and of a beneficial owner of a customer-legal entity, as well as the verification of the identification data should be done through the use of documents, data or information from independent sources.

609. The information regarding the identification of legal entities can be verified by one or more methods detailed in Art. 4 of the Rules on the implementation of the LMML, such as: visits to the premises of the company, obtaining information from independent databases, bank references etc.

Identification of legal persons or other arrangements (c.5.4)

610. Criterion 5.4 is set out in Art. 5 of the LMML, which establishes that financial institutions have to determine whether their customer acts on his behalf and at his own expense or on behalf and at the expense of a third party. In this last case, evidence of the representative powers and identification of the representative shall be required.

611. Art. 3, Para. 5 of the RILMML provides the definition of the beneficial owner of a customer-legal entity, which should be observed by all obliged entities applying the necessary CDD measures.

612. In addition, Art. 6 of the RILMML requires establishing the relationship between the representative and the person on whose behalf the operation or deal is performed. Identification is also required if the operation or deal is performed through a third person-bearer of a document.

613. Information on the legal persons is to be found *i.a* in the Commercial Register. The access is granted to all data and documents relating to the companies (denomination, address, object of activity, financial results etc…) and their associates and managers (personal identification data, power of attorney, decisions etc…) including the refusals for registration. The access to the commercial register is free of charge, including the access to the electronic copies of all documents (scanned documents) required in the registration process. Any person obligated to apply for entry data or to present documents at the Commercial Register must perform the registration/updating within seven days from the moment the registration obligation or the changes occurred. During the on-site visit, the evaluators examined the information contained in the Commercial register and are of the opinion that the transparency of the legal persons is ensured to a satisfactory level.

Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2)

614. Art. 3 (1) 2 of the LMML stipulates that the measures preventing the use of the financial system for money laundering purposes, shall include the identification of the actual owner of the client which is a legal-person, taking relevant measures to verify its identification in a way providing enough grounds for the person under Paragraphs 2 and 3[37] to accept the actual owner as being established.

615. Art. 1 of the RILMML provides that the identification of a customer and of a beneficial owner of a customer-legal entity, as well as the verification of the identification data shall be done through the use of documents, data or information from an independent source.

616. The definition of the beneficial owner in the RILMML does not specifically refer to the natural person(s) who ultimately owns or controls a natural person –as required in the FATF Glossary- although it refers to the person on whose behalf a transaction is being conducted. This was also revealed during the on-site visit as all representatives stated that under their understanding the concept of beneficial owner can be applied only to legal entities.

617. Art. 3 (5) of the RILMML defines the beneficial owner of a legal entity as:

1. *natural person or natural persons who directly or indirectly own more than 25% of the shares or of the capital of a customer-legal entity, or of another similar structure, or exercise direct or indirect control over it;*
2. *natural person or natural persons in favour of which more than 25% of the property is controlled or distributed, whenever the customer is a foundation, a non-profit organisation or another person performing trustee management of property or property distribution in favour of third persons;*
3. *a group of natural persons in favour of whom a foundation, or a public benefit organisation, or a person performing trustee management of property or property distribution in favour of third persons is established, or acts, when these persons are not determined but can be determined by specific signs.*

618. The specific requirements as per criterion 5.5.1 are reflected in Art. 5 (1) of the LMML. According to this provision, financial institutions shall establish whether their client acts on its own behalf and at its own expense or on behalf and at the expense of a third party. Where a transaction or deal is effected through a representative, evidence for the representative powers and evidence to identify the representative and the person represented should be gathered. However, the definition of beneficial owner should clearly comprise the notion of ultimate owner of a legal body or arrangement, although indirect control is covered.

[37] i.e. Obliged entities.

619. If transaction or deal is effected on behalf and at the expense of a third party without proxy, Art. 5 (2) of the LMML requires that the financial institution shall be bound to identify such third party, on whose behalf the transaction has been executed, and the person executing the transaction.

620. In cases where there is a suspicion that the person effecting the transaction or deal is not acting in their own name and for their own account, Art. 5 (3) of the LMML requires that financial entities shall submit a suspicious transaction report and undertake proper measures to collect information for identifying the person in whose benefit such transaction or deal is actually being effected.

621. Furthermore, Art. 6 of the RILMML requires that:

> *(1) In the cases of conducting an operation or deal on behalf or for the account of a third person there shall be identified the person who performs the operation or deal, and also the person on whose behalf the operation or deal is performed and also the relation between them should be found out.*
> *(2) In the cases of performing an operation or deal through a third person-bearer of a document for the performance of the operation or deal, also the third person-bearer of the document shall be identified.*

622. In regards to c. 5.5.1*, Bulgarian legislation strictly obliges to identify the person on whose behalf the operation or deal is performed, but no reference to the verification is mentioned. However, the authorities explained that the general rule on identification and verification as described under Art. 2, 3 and 4 of the RILMML applies in all cases. Although the explanation seems valid and confirmed by the on-site interviews, the evaluation team is of the opinion that clearer legal provisions would avoid any possible confusion.

Information on purpose and nature of business relationship (c.5.6)

623. Art. 3 (3) of the LMML states that one of the preventive measures to be applied by financial entities includes the collection of information from the client regarding the purpose and the nature of the relationship, which has been established or is to be established with the client.

624. The above article is complemented under Art. 8 (1) of the RILMML, which stipulates that the information collected during the identification process shall be used by the obliged entity for an initial assessment of the customer's risk profile. Additional measures and action undertaken by the financial institution should aim to ensure that they are commensurate with the risk, based on the type of client, the nature of the client's activity and the business relations with the client (Art. 8 (7) of the RILMML).

625. In practice, these articles seem to be inconsistent with Art. 2 of the RILMML, regarding the data to be collected when identifying clients. As per this article, financial institutions can, upon risk assessment, gather information about the profession of the client. The evaluators are of the opinion that the professional background must be considered an essential information to be gathered in the first stages of the identification process providing input for the risk assessment and not to be only taken into account upon risk.

Ongoing due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

626. Pursuant to Art. 3 (4) of the LMML, one of the preventive measures prescribed is the ongoing monitoring of all established commercial or professional relations as well as the verification of all transactions performed within such relations to determine the extent to which these comply with the available information on the client, its' commercial activity and risk profile, including clarification of the funds' origin in all cases under the Law.

627. The requirements in regard to the ongoing due diligence are further detailed in Art. 9 of the RILMML, which establishes that financial institutions shall maintain up-to-date information on their clients and on the operations and transactions carried out by them, while periodically

checking and updating the existing databases. In the case of higher-risk customers, databases must be checked and updated at shorter intervals. Additional action for identification and verification shall be taken when:

- a transaction or operation of value that differs from the typical value for the concrete client takes place
- there is a significant variation from the usual use of the opened account
- the financial institution becomes aware that the information gathered about an existing client is insufficient.

Risk – enhanced due diligence for higher risk customers (c.5.8)

628. Art. 4 (16) of the LMML stipulates that reporting parties may apply simplified or extended measures, depending on the potential risk assessment.

629. Enhanced due diligence measures are described under Art. 8 (2) of the RILMML which establishes that, on the base of analysis, reporting entities shall define a category of customers or business relations of a higher risk whom shall be put under special supervision and in relation to whom they shall apply extended measures. In those categories can be included customers who do not have permanent residence or place of commercial activity in the country, as well as offshore companies, companies of nominal owners or of bearer shares and companies of trustee management or other similar structures.

630. Enhanced customer due diligence measures may include; undertaking visits to the address indicated by the client; requesting additional documents and information from the client; gathering information through another client; referring to the internet; requiring references from the counterparts inside the country or abroad or from other reporting parties; gathering information on the origin of the incomes; verification of the activities of the client including through visits to the production facilities or administrative premises of the client; acquiring information from the counterparts; verification through the employer of a client being a natural person; measures included in the instructions issued by the Director of the FID-SANS; and other measures deemed appropriate by the entity.

631. It should be noted that according to Art. 9 (4) of the RILMML, the databases of the clients and the business relations of potentially higher risk customers shall be checked and updated at shorter intervals.

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9) and relating to overseas residents (c.5.10)

632. Art. 4 (17), (18) and (19) of the LMML describe certain cases where financial institutions are not required to identify their clients:

- where the client is a government authority of the Republic of Bulgaria;
- where the client is an institution having government authority functions in accordance with the *acquis communautaire* provided that: the financial institution has gathered sufficient information which does not create any doubt as to the institutions identity, the institution follows accountability procedures and its activity is transparent, the institution reports to a Community authority, to an authority of a Member state, or there are verification procedures which ensure control of its activities.

633. Although the LMML refers literally to exemptions from the identification of the clients *("no identification shall be performed and no declaration …"*) in fact, the identification is implicit as the reporting entity must be sure that the client is a government authority and gather sufficient information to eliminate any doubt on the institution's identity.

634. Referring to insurance companies, the Bulgarian law only refers to one of the examples of the FATF Methodology. Thus, Art. 4, (12) of the LMML allows simplified measures stating that *insurance companies shall identify their clients when executing an insurance contract under*

Section I of Annex 1 of the Insurance Code, where the per annum gross amount of periodic premiums or instalments under such insurance contract is BGN 2,000 [€1,000] *or more, or the premium or instalment under such insurance contract is a one-time payment and amounts to BGN 5,000* [€2,500] *or more*. Therefore, when the amount is inferior, no identification or any other measure is required.

635. The BNB has issued guidelines in order to reflect the trends and studies performed at EU level, European Supervision Authorities (ESA) compendium papers and reports. Section 2.3.2, of the latest Guidelines elaborates on the banks obligations to implement sufficient measures in order to establish if a customer (including EU bank or a bank from a 3rd equivalent country) qualifies for a reduced risk group. In this respect, the banks are requested to identify and verify the customers, and based on the information collected, to assess if the customer could be classified in a low risk group.

636. In order to ensure easy and uniform implementation of the provision by the obligated persons, the BNB Governor and the Minister of Finance have issued a list of 3rd equivalent countries which was updated in 2012 to correspond to the Common Understanding between EU Member States.

637. The Bulgarian approach regarding simplified due diligence measures is largely modelled on the EU Directive, however it is not fully in line with the FATF standard. While the methodology allows simplified due diligence measures, the LMML releases financial institutions from identifying their clients. There is no customer due diligence measure at all in the referred cases.

638. As established under Art. 4 (19) of the LMML, the above exceptions apply when a bank account of a notary or a person providing by occupation, advice in legal matters[38] from the Republic of Bulgaria, from another Member State or 3rd equivalent country, is used to deposit amounts of a from the same professional category, the bank shall not perform the identification, provided that such identification has been made and the declaration accepted by the notary public or by the person under Article 3, paragraph (2), subparagraph (28), and the information gathered in such identification is available to the bank upon request. The bank shall gather sufficient information so as to verify compliance with the conditions for applying simplified measures.

Risk – simplified/ reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

639. According to Art. 4 (13) of the LMML, financial institutions must identify their clients outside the cases of regular identification process, when a suspicion of money laundering arises. Similarly, Art. 9 (3) of the LMFT states that when suspicion of financing of terrorism arises, financial institutions must identify and verify their customer. On another side, Art. 7 of the LMML require financial institutions to gather all information and components of a transaction or deal when suspicion of money laundering arises. However, it should be noted that there is no clear and explicit mandate under the Bulgarian legislation regarding not applying simplified CDD measures when suspicion of ML or TF exists (except for the credit institutions in ML cases, according to section 232 of the Guidelines issued by the BNB).

640. Art. 4 (20), prohibits financial institutions from applying simplified due diligence to clients belonging to countries that do not apply or do not fully apply international standards against money laundering.

[38] Art 3, paragraph (2), subparagraphs (11) and (28): Notaries public and Persons providing, by occupation, advice in legal matters, where they: a) Participate in the planning or performance of a client deal or transaction concerning: aa) Purchase or sale of a real property or transfer of a merchant's business; bb) Management of cash, securities, or other financial assets; cc) Opening or operating a bank account or a securities account; dd) Raising funds to incorporate a merchant, increase the capital of a company, extend a loan or for any form of raising funds for the business operations of such merchant; ee) Incorporate, organise operations or management of a company or another legal person, an offshore company, a company managed under a trust arrangement or any other such entity; Fiduciary property management; b) Act for the account or on behalf of their client in any financial or real property transaction;

Risk Based application of CDD to be consistent with guidelines (c.5.12)

641. Art. 8 - 10 of the RILMML ensure the application of the risk-based approach for the CDD measures providing that the information pursuant to Art. 2 and 3 of the LMML shall be used by the obliged persons for an initial assessment of the risk profile of the customer.

642. The BNB has issued specific guidelines on the development and introduction in the banks of systems for the analysis of risk and undertaking the relevant CDD measures. These guidelines were updated at the beginning of 2012. The risk criteria related to country, customer type, product and services are described and minimum number of risk group – low, normal and high – are determined. Workshops are organised for banks and financial institutions registered by the BNB to explain the risk based approach.

643. Guidance on the application of simplified CDD, was elaborated by FID-SANS at the beginning of 2010 and serves as a basis for clarifying the procedure to the obliged entities. During the on-site visit the assessors were informed that the Bulgarian FIU regularly provides training to the obliged entities under the LMML which includes information on the application of the requirements for beneficial ownership as well as for simplified CDD.

644. Additional training has also been provided by the BNB and FSC.

Timing of verification of identity – general rule (c.5.13)

645. Art. 4 (15) of the LMML states that verification of the clients' identification data and the real beneficial owners shall be conducted before establishing commercial or professional relations, opening an account or executing a transaction.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

646. Exceptions to the above criteria are set out under the RILMML, in Art. 1 (3). According to this provision, by way of derogation, financial institutions can conclude the verification process during the establishment of business relations when all of the following conditions are met:

- the performance of the verification before the establishment of business relations would lead to interruption of the normal conduct of the respective business activity;
- measures for effective management of the money laundering risk have been taken in each concrete case;
- the verification is completed within a reasonably short period after the initial contact with the customer.

647. Bulgarian credit institutions are allowed to open a bank account before the verification of the client's identity is completed, where the account is not closed before the completion of the verification, and when no operations by or on behalf of the holder of the account are carried out before the completion of the verification, including transfers to the account on behalf of or at the expense of its owner.

648. Art. 1 (4) of the RILMML establishes that, by way of derogation, the verification of the beneficiary to an insurance policy can be performed after establishing business relations only if it is carried out at the time or before payment is effected under the insurance policy, or at the time or before the beneficiary exercises rights vested under the insurance policy.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

649. Art. 4 para 4 of the LMML provide that when financial institutions are not able to identify the client, as well as upon failure to submit the declaration[39], they shall decline to execute the

[39] LMML Art 4. (7) Persons effecting a transaction or deal via or with a person referred to in Art. 3, paragraphs (2) and (3) at a value exceeding BGN 30,000 [€15,000] or its equivalent in foreign currency or, respectively, exceeding BGN 10,000 [€5,000] or its equivalent in foreign currency where payment is made in cash, shall be bound to require the declaration prior to effecting such transaction or deal.

transaction or to enter into any commercial or professional relations, including opening an account.

650. In the case of an already existing business relation, the reporting entities are required to terminate the business relationship upon establishing that the identification and verification information and data obtained is not in accordance with the legislation in force and should consider whether to submit a STR to Financial Intelligence Directorate of the State Agency for National Security.

651. These criterions are not fully met taking into account that the LMML only refers to identification, whereas the FATF Methodology refers to failing of criterions 5.3 and 5.5. Therefore, failure to complete verification of identification and identification - verification of the beneficial owner should be contemplated as well.

Existing customers – (c.5.17 & 5.18)

652. Art. 3 (1) 4 of the LMML requires ongoing monitoring of all established commercial or professional relations and verification of all transactions performed within such relationships to determine the extent to which these comply with the available information on the client, its commercial activity and risk profile, including clarification of the funds' origin in all cases under the law.

653. Art. 9 of the RILMML includes requirements for CDD to be performed in relation to existing customers by financial institutions, as follows:

- maintain up-to-date information on their clients and on the operations and transactions carried out by them while periodically checking and updating the existing databases;
- databases of the clients and the business relations of potentially higher risk shall be checked and updated at shorter intervals.

654. Where necessary, the information should be checked for updating and additional action should be taken for the identification and verification of the identity when: a transaction or operation of value that differs from the typical value for the concrete client takes place; there is a significant variation from the usual use of the opened account or the entity becomes aware that the information gathered about an existing client is insufficient.

655. Criterion 5.18 is not applicable as Bulgarian legislation does not permit keeping of anonymous accounts, accounts in fictitious names or numbered accounts.

Effectiveness and efficiency

656. The evaluation team welcomes the efforts which were made by the authorities in order to bring the legislation more in line with international requirements in respect of CDD obligations, and particularly the adoption of the new LMFT law. In addition, the effort made by the authorities in raising awareness amongst FI on the scope and proper application of the CDD measures was noted on-site.

Credit institutions, insurance companies and financial intermediaries

657. All financial institutions appeared to be generally conscious of the identification obligations. They were well aware of their obligation to retain the relevant documentation and the importance of their role in the preventive ML/FT regime. In some cases (related to foreign customers), difficulties in accessing sources of verification of data were detected. The meetings with the sector lead to the conclusion that the concept of beneficial owner was understood only in relation to the clients which are legal persons, and not to natural persons.

658. The concept of establishing the mind and management was not fully understood by the reporting entities, and the legal requirement to establish *"de facto control"* was considered as merely the shareholding. For the reporting entities, the verification of the beneficial owner appeared to be difficult in some cases (for example when the customer is a foreign company

incorporated in an off-shore jurisdiction), and the evaluation team considers that more involvement of the authorities on the matter is needed.

659. During the interviews, the banks representatives informed the evaluators that there are no accounts of companies held by owners in bearer share form and no such custody services are provided. However, it is questionable how this can be possible in practice since there are currently 482 companies allowed to issue bearer shares in Bulgaria (according to the authorities information on the shareholders is visible in the commercial register as there is a declaration obligation).

660. Although the concept of enhanced due diligence measures was generally known, the implementation of this requirement did not appear to be entirely clear, especially in the non-banking sector. In case of credit institutions, BNB has issued guidelines regarding situations of ECDD and criteria for its implementation.

Money remittance and exchange bureaus

661. In practice, money remittance offices identify their client when carrying out a transaction of BGN 2,000 or more according to the EU Regulations 1781/2006. The exchange bureaus identify their clients when carrying out transactions over 10,000 BGN (or below, if linked). The meetings with the industry revealed that they were aware of their obligations and their IT tools were sophisticated enough to detect cases of smurfing and structuring. According to the officials met on-site, when the client is a legal entity and the amount involved is high, the beneficial owner is checked in the commercial registry.

Post offices

662. The Bulgarian Post representatives were generally aware of the CDD obligations. It should be noted that the only service provided is money transfer, from one post office to another. The maximum amount permitted is BGN 6,000 (€3,000) for each wire transfer. According to the professionals met on-site, the overwhelming majority of transactions are domestic and involve small amounts: payment of taxes, remuneration to employees, small bills or sending money to family members, etc.

663. International transfers are limited to members of Euro-Giro. Incoming payments service was open to 140 member countries, but outgoing transfer of money was only available to 10 European countries at the time of the on-site visit. It appeared that the databases of post-offices are well maintained and transactions which involve smurfing and structuring are easily detected.

Recommendation 6 (rated NC in the 3rd round report)

664. Bulgaria received a Non-Compliant rating during the 3rd MER as there was: no clear provision in law or regulation or other enforceable means for the determination of whether a customer is a PEP; there was no provision for senior management approval to establish a relationship with a PEP and to continue business relationship where the customer subsequently is found to be or becomes a PEP. It was also noted that there was no requirement for financial institutions to conduct enhanced ongoing monitoring on a relationship with a PEP. The evaluators found that some financial institutions needed more training on PEPs issues and there was a serious concern on effective implementation.

Risk management systems, senior management approval, requirement to determine source of wealth and funds and on-going monitoring (c. 6.1- c. 6.4)

665. Bulgaria has taken positives steps to comply with the recommendations made in the 3rd Round Evaluation with regard to politically exposed persons.

666. Art. 5a of the LMML establishes that financial institutions shall take enhanced due diligence measures in relation to clients who are currently holding or have previously held a high government position in the Republic of Bulgaria or in a foreign country, as well as any clients, who are persons related to them. Once included in the high risk category, enhanced customer due diligence measures shall apply which include: gathering information on the origin of the incomes

(source of wealth); verification of the activities of the client including through visits to the production facilities or administrative premises of the client; acquiring information from the counterparts; and other measures deemed appropriate by the entity. According to Art. 9 (4) of the RILMML, the databases of the clients and the business relations of potentially higher risk customers shall be checked (on-going monitoring) and updated at shorter intervals.

667. Art. 8a of the RLMML defines the above as customers, potential customers and beneficial owners of the clients that are legal entities who are:

- heads of State, heads of government, ministers and deputy ministers;
- members of parliament;
- 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;
- members of courts of auditors;
- members the boards of central banks;
- ambassadors and charges d'affaires;
- high ranking officers in the armed forces;
- members of the administrative, management or supervisory bodies of state-owned enterprises.

668. The listed categories of PEPs are broadly in line with the 3rd EU Directive but still do not include *"important political party officials"* as required by the FATF Methodology. However, it should be noted that mayors and deputy mayors of counties, the mayors and deputy mayors of districts and the chairpersons of the municipal council are considered PEPs, and political parties are listed as obliged entities. Therefore, from the effectiveness point of view, this deficiency seems to be mitigated.

669. According to Art. 8a (5) 4. & 5. of the RLMML, related persons are also considered to be PEPs. The definition of a related person includes family members and "*any natural person who is known or it can be supposed from publicly available information to have joint beneficial ownership of legal person, or any other close business, professional or other relations, with a person referred to in Para. 1; or any natural person who has sole beneficial ownership of a legal person which is known or it can be supposed from publicly available information to have been set up for the benefit de facto of the person referred to in paragraph 1".*

670. Financial institutions are obliged to elaborate effective internal systems to determine if a client (potential customer, existing customer or the beneficial owner of a customer-legal person) is a PEP or a related person to a PEP. Such systems can be based on different sources of information: information gathered through the application of enhanced due diligence measures; written declaration required from the customer with the purpose of determining whether the person falls within the categories of PEPs and information received through the use of internal and external databases.

671. Art. 8a (8) of the RILMML requires that, for establishing business relations with a PEP, financial institutions should seek the approval of an official at a managerial position, designated by the respective executive body of the obliged person. The same obligation applies to continue the business relationship when the customers or beneficial owner of a customer-legal entity becomes a PEP after being accepted as a client.

672. Although the Bulgarian legislation obliges the approval of an official at managerial position, it does not specify *senior managerial position*, as required in the FATF Standard.

673. Financial institutions are obliged to undertake adequate steps to establish the origin of the funds, used in the commercial or professional relations with a customer or the beneficial owner of a customer-legal person for whom they have found out that he/she is a PEP, or a related person to a PEP. It should be noted that in case of domestic PEPs, financial institutions are able to get sufficient knowledge of the origin of the income of PEPs as this is available through the Court of Auditors pursuant to the anti-corruption legislation adopted by Bulgaria.

Additional elements

Domestic PEP-s – Requirements

674. Bulgarian legislation does not distinguish between foreign and domestic PEPs, and the same enhanced CDD measures are applied to mayors and deputy mayors of counties, the mayors and deputy mayors of districts and chairpersons of the municipal councils.

675. A register of domestic persons occupying a high government position is available on the web site of the Bulgarian Court of Auditors. The register contains all the declarations which the domestic PEPs are obliged to file annually pursuant to the Law on Publicity of Property of the Persons Occupying High Government Positions.

Ratification of the Merida Convention

676. The Convention was signed by Bulgaria on 10 December 2003 and ratified on 20 September 2006.

Effectiveness and efficiency

677. The interviews with representatives of financial institutions during the on-site visit revealed that they are aware of the obligation of taking enhanced due diligence measures (including on-going monitoring and verification of the source of incomes) when the client is a PEP.

678. It should be noted that in the last 4 years, the Bulgarian FIU received PEP related STRs resulting in opening 27 cases (8 related to foreigners and 19 related to domestic persons) that are based on the enhanced measures applied in regard to politically exposed persons.

679. On a less positive side, the interviews revealed that in practice, the approval of the management is not always required before opening a business relationship with a PEP.

680. It seems that identification and verification of input data and source of funds and the origin of the incomes do not raise difficulties in case of domestic PEPs, however some institutions encountered obstacles when verifying the data on international PEPs.

Recommendation 7 (rated PC in the 3rd round report)

681. Bulgaria was rated partially compliant rating in the 3rd round evaluation as there were no enforceable requirements to:

- assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective;
- obtain senior management's approval before establishing new correspondent relationship; and
- document the respective AML/CFT responsibilities of each institution.

682. Furthermore, the existing requirements were limited to banks and no guidance on this issue had been issued.

Require to obtain information on respondent institution & Assessment of AML/CFT controls in Respondent institutions (c. 7.1 & 67.2)

683. Art. 5b. (1) 1 of the LMML requires that when entering into a correspondent relations with a credit institution from a third country (non-EU), credit institutions shall gather sufficient information on the respondent credit institution to enable it to gain full understanding of the nature of its activity and to determine, on the basis of publicly available information, the institution's reputation and the quality of its supervision. This requirement does not apply if the credit institution is a credit institution from the Republic of Bulgaria, from another Member State or a bank from a third country named in a list as endorsed under a joint order issued by the Minister of Finance and the Governor of the Bulgarian National Bank.

684. Art. 5b. (1) 2. of the LMML requires the credit institution entering in correspondent relationship to assess the internal controls against money laundering and financing of terrorism applied by the respondent credit institution.

685. It is noted that these requirements are still limited to credit institutions and have not been extended to all financial institutions as required by the standard.

Approval of establishing correspondent relationships (c.7.3)

686. Art. 5b. (1) 3 of the LMML requires the prior approval of a person holding a managerial position with the credit institution before a relationship of a new correspondent banking relations can take place.

687. As in the case of Recommendation 6, the Bulgarian legislation entails the approval of an official at managerial position, but it does not specify *senior managerial position*, as required in the FATF Standard and as recommended by the 3rd round MER.

Documentation of AML/CFT responsibilities for each institution (c.7.4)

688. Art. 5b. (1) 4. of the LMML obliges the credit institutions to allocate the responsibilities of either of the two correspondent institutions concerning the application of measures against money laundering and financing of terrorism and document this allocation accordingly.

Payable through Accounts (c.7.5)

689. With regard to *"payable-through accounts"*, Art. 5b. (2) of the LMML requires that in cases where third parties which are clients of the respondent credit institution also have access to the institution's correspondent account, the Bulgarian credit institution must satisfy itself that the respondent institution carries out identification, identification verification and on-going monitoring of third parties having direct access to its account, and that the respondent institution is able to provide the necessary identification and other data about such clients upon request.

Effectiveness and efficiency

690. FID-SANS informed the evaluation team that, following the introduction of the relevant provisions in the LMML, they found no infringements in the application of the measures related to correspondent banking in its inspections conducted in 2008-2012.

691. The BNB confirmed that procedure of establishing correspondent relationship is part of their regular AML/CFT inspections in banks. No breaches from the legal procedure were found. Due to the implementation of ECDD, the banks in Bulgaria have closed correspondent relationships with Iranian banks.

692. Bank compliance officers met during the on-site visit proved a good understanding of the correspondent banking requirements. Senior executives of banks met explained that in practice most correspondent banking arrangements were conducted through banks in the same banking group.

Recommendation 8 (rated PC in the 3rd round report)

693. Bulgaria was rated PC rating in the 3rd round evaluation as financial institutions were not required to have policies in place to prevent the misuse of technological developments in ML/FT.

Misuse of new technology for ML/FT (c.8.1)

694. Measures for preventing the misuse of technological developments have been implemented in Bulgaria through different legal provisions, especially for the products and transactions that ensure a high level of anonymity.

695. Art. 5c of the LMML stipulates the obligation of applying extended measures in respect of products or transactions which might lead to anonymity. Those measures are further elaborated under Art. 8b of the RILMML, compelling reporting entities to analyse the risk associated with

the respective products or transactions, to undertake their constant monitoring and take appropriate measures to determine the level of risk. In addition, the FI should acquaint the employees with the risk related to the respective products or transactions and with the measures necessary to counteract the risk.

696. Prior to the on-site visit, the FID-SANS had issued guidance on the implementation of the rules of the measures from LMML and RILMML for preventing the misuse of new technologies, products and deals which could lead to anonymity. This guidance included types and development of new payment methods (NPMs), risk assessment of the NPMs, typology and case studies, indicators (red flags) for identification of suspicious transaction, tendencies established in connection with the use of NPMs in money laundering schemes which could lead to anonymity.

Risk of non-face-to-face business relationships (c8.2)

697. Financial institutions are under obligation to take appropriate measures to verify the client's identification data when establishing commercial or professional relations or effecting a transaction or deal by an electronic statement, electronic document or electronic signature, or any other form where the client is not present.

698. According to Art. 4 (5) of the LMML, such measures consist of checking the documents made available, requiring additional documents (same as in the case of the high risk situations described for enhanced CDD measures), confirmation of identification by person other than those that are obliged persons or by a person under the obligation to apply anti-money laundering measures in an EU member country, or the introduction of a requirement for the first payment involved in the transaction or deal to be made using an account set up in the client's name with a Bulgarian bank, a branch of a foreign bank that has received permission (license) from the Bulgarian National Bank to operate in Bulgaria through a branch, or with a bank from an EU member country.

Effectiveness and efficiency

699. During the on-site interviews the evaluation team was informed that in practice, non-face-to-face business relationships are rarely established. Usually, when establishing a business relationship with Bulgarian banks, the customer is required to be present.

700. The common non-face-to-face transactions and operations are: limited internet banking; use of ATM machines; use of prepaid cards; and the transmission of instructions via facsimile, telephone or similar means. The guidance issued by the FIU includes risks and typologies of these payment methods.

701. Bulgaria has taken very positive steps in order to comply with the recommendation made during the previous evaluation report. The requirements of the FATF standards seem to be met, and parties under obligation, especially financial institutions, demonstrated awareness of their obligations.

3.2.2 Recommendations and comments

Recommendation 5

702. Although difficult to apply in practice, the wording of the LMML creates a blanket exemption for simplified due diligence measures, which is in line with the 3rd EU Directive but not with the FATF standards. Therefore, the authorities are encouraged to replace "no identification" by "simplified customer due diligence measures".

703. Bulgarian legislation doesn't specifically prohibit (except for the credit institutions in ML cases, according to section 232 of the Guidelines issued by the BNB) the application of simplified due diligence measures even if suspicious of money laundering or financing of terrorism arises. Bulgarian authorities are strongly recommended to amend legislation in order to address this deficiency.

704. The definition of beneficial owner should clearly comprise the notion of ultimate owner of a legal body or arrangement, although indirect control is covered. In general, more awareness is required amongst the industry on the beneficial owner. The concept of beneficial owner for a natural person is not fully understood by the reporting entities.

705. Bulgarian authorities are encouraged to amend the legislation in order to include the verification in case of transactions performed on behalf of another person, together with the identification requirements.

706. The financial institutions should be required to gather data about the profession of their client at the earliest stages of the identification process in order to be able to make a correct risk profile.

707. The sector showed awareness of cases when enhanced due diligence is required, but effective implementation of the non-banking financial institutions could not be fully demonstrated.

Recommendation 6

708. The concept of *"clients"* that are considered PEPs should also include beneficial owners of natural persons, as currently only applies to customers, potential customers and beneficial owners of the clients that are legal entities.

709. Authorities should ensure that the requirement of approval of an official at a senior managerial position before establishing, business relations with PEP's or related persons, is applied in practice by all financial institutions.

710. Approval of an official at a senior managerial position while continue business relations with a client that has become a PEP is not explicitly required under the legal framework. Although it was confirmed by the financial industry that in practice the notion of *funds* also comprises *wealth*, the Bulgarian authorities should consider introducing explicitly the requirement to establish the source of *wealth.*

Recommendation 7

711. The requirements on correspondent banking and other relationships should be extended to the whole of the financial sector and not limited merely to the credit institutions.

712. The special measures apply only to non-EU correspondent relationships and should be extended to all countries.

713. Authorities should include in Laws or regulations the requirement of approval of an official at a senior managerial position before establishing correspondent banking relations.

Recommendation 8

714. The system seems to be in place and effectiveness has been demonstrated.

3.2.3 Compliance with Recommendations 5, 6, 7 and 8

	Rating	Summary of factors underlying rating
R.5	**LC**	• The definition of beneficial owner does not clearly comprise ultimate ownership although it covers indirect control; • In certain cases, the LMML requires no identification instead simplified due diligence measures; • No explicit prohibition for not applying simplified due diligence when suspicious of ML and FT arises; **Effectiveness**

		• Understanding of the BO in case of natural persons not fully demonstrated; • Information regarding profession only to be collected upon risk assessment may impact effectiveness of c.5.7; • Lack of sources for the verification of data of foreign customers and beneficial owners; • Concerns about implementation of enhanced customer due diligence, particularly in the non-banking financial sector.
R.6	**LC**	• Approval of an official at a senior managerial position before establishing, business relations with PEP's or related persons is not required; • Approval of an official at senior managerial position before continuing business relations of a client that has become a PEP is not required; • The concept of "clients" that are considered PEPs should also include beneficial owners of natural persons.
R.7	**LC**	• The requirement to gather sufficient information about the respondent institution is not extended to all financial institutions to cover the similar to the correspondent banking relationships; • The special measures apply only to non-EU correspondent relationships; • Approval of an official at a senior managerial position before establishing a corresponding banking relationship is not required.
R.8	**C**	•

3.3 Third Parties and Introduced Business (R.9)

715. Recommendation 9 was rated as NA in the 3rd round evaluation report as financial institutions did not rely on third parties to conduct CDD.

716. At the time of the on-site visit, the Bulgarian authorities stated that only limited categories of financial institutions were permitted to rely on identification by a third party. Furthermore, the third party must be a credit institution. The limited implementation of this option in Bulgarian AML/CTF legislation is based on a risk analysis performed by the FIU at the time of introduction of this option.

3.3.1 Description and analysis

Recommendation 9 (rated N/A in the 3rd round report)

717. The conditions for reliance on a third party to conduct *"identification"* of a customer are set out in Art. 6a of the LMML. This article allows the BNB, credit institutions and certain other financial institutions to rely on the *"previous identification of a client"* in subject to certain defined conditions.

718. Although Art. 6a merely refers to *"identification"* it does require that the information stipulated under Art. 6. (1) through (4) must be available. These articles as set out under R.5 above, require both identification and verification of the client and the identification and verification of the client's ultimate beneficial owner. It would therefore appear that the full range of data for identification and verification is required.

Requirement to immediately obtain certain CDD elements from third parties; availability of identification data from third parties (c.9.1 & 9.2)

719. The conditions for reliance on a third party are:

- The third part must be a credit institution;
- The seat of the credit institution which has performed the identification is in the Republic of Bulgaria, in another Member State or in a named country.
- The information required is at the disposal of the person which makes a reference to a previous identification performed by the credit institution;
- The credit institution which has performed the previous identification is able to provide the person which makes the reference, immediately upon request, with certified copies of identification documents.

720. Thus, there is a clear requirement that the obliged persons should have the ability to obtain the required certified copies proving the CDD information promptly and without delay.

Regulation and supervision of third party & adequacy of application of FATF Recommendations (c.9.3 & 9.4)

721. As set out above, the reliance is only possible with credit institutions from countries which apply the same requirements as those provided in the Bulgarian AML/CTF Law. The equivalent countries are defined as another Member State (of the EU) or in countries named in the list under Art. 4 Para. (9) (equivalent third country).

722. The third country equivalence is judged on the basis of the criteria elaborated within the EC Committee on the Prevention of Money Laundering and Terrorist Financing. Art. 4 Para. (9) of LMML ensures that the list referred shall include countries the legislation of which provides for requirements consistent with the requirements under the LMML. This mechanism covers the requirement of criterion 9.3.

723. The Common Understanding adopted by the Member States within the Committee on the Prevention of Money Laundering and Terrorist Financing takes into account the assessments carried out by FATF and the FSRBs as well as other sources of information that could indicate possible deficiencies with the AML/CTF system of the respective jurisdictions. Bulgaria abides the Common Understanding.

Ultimate responsibility (c.9.5)

724. Ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party. According to the provisions of the Art. 6a (2), reference to a previous identification by a third party does not relieve the obliged person from making such reference from any liability for non-compliance with the CDD as set out in the LMML.

Effectiveness and efficiency

725. It appears that reliance on third parties and introduced businesses are applicable to business from local credit institutions and foreign banks. The interviewed foreign bank subsidiary stated that they could rely on identification on group level, but as matter of practice they always ask for the related documents.

726. The LMML is silent in regard to identification within the same financial group although Article 6a does not appear to differentiate between independent credit institutions and members of the same banking group.

3.3.2 Recommendations and comments

727. N/A

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**C**	

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

Recommendation 4 (rated C in the 3rd round report)

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

728. Art. 13 of the LMML allows the FIU to request information about suspicious transactions, deals or clients from reporting entities, with the exception of the Bulgarian National Bank and the credit institutions that operate in Bulgaria, only when an STR has been submitted, or when there is a request from government authorities or within the frame of the international information exchange. This information has to be provided within the time period set by the Agency. Similarly, according to Art. 17 para 8, when the FIU performs its supervisory functions, it shall have free access to require documents and gather evidence in connection with the implementation of the tasks assigned to them.

729. To request information from the Bulgarian National Bank and the credit institutions, a written notification of submission of an STR, information from government authorities or from international exchange is required. This information shall be provided within the time period set by the Directorate.

730. The evaluation team was explained on-site that the information requests from BNB and credit institutions is regulated in a separate sub-paragraph because this requests must be submitted by the FIU in a written form, while for the rest of the reporting entities the request can be made via telephone.

731. The Bulgarian authorities explained that there is no limitation in the scope of the information that can be received (including names of the account holders, proxies, number of the account, all kind of contracts and other document that are used as grounds for executing the transfer, SWIFT documents, and all other information relevant to the account, to the suspicious transaction or the suspicious client). The specifications of the request are made case by case and it depends on the initial suspicion.

732. Although the LMML allows the FID-SANS to request and compel the credit institutions to submit information, this provision is not confirmed by the Law on Credit Institutions (LCI) which in its Art. 62 (1) prohibits the disclosure of *"information which is bank secrecy"*. The exceptions to this are provided in Art. 62 (8): at the request of the chairman of the State Agency National Security – where it is required for the protection of the national security; if there is data on organised crime or on money laundering, the Prosecutor General or a deputy, authorised by him, may request the bank to provide the data. The requests addressed to the bank and the information received as an answer shall be filed in a register at the Prosecutor General and at the BNB. The FIU is not listed for the purpose of these exceptions.

733. According to Bulgarian authorities, the exception provided by the Law on Credit Institutions is considered to be part of *"lex generalis"* when speaking about the activity of the credit institutions in general. When speaking about measures taken for prevention and fight against money laundering the *"lex specialis"* is the LMML and *lex specialis derogate legi generali.* In

practice there have been no refusals to provide banking (or other secrecy) information to the FIU under Art. 13 LMML since the establishment of the FIU.

734. Under Art. 13 (3) of the LMML, the SANS may request information from state and municipal authorities, under the same conditions related to the existence of an STR. The request cannot be denied, and this information has to be provided within the time period set by FID-SANS.

735. Art. 13 (7) of the LMML states that reporting entities, even advocates, may not refuse or restrict information requested by FID-SANS due to considerations of official, banking or commercial secrecy.

736. Listing of official, banking or commercial secrets, and protected private information, is complemented by the *"safe harbour"* provision under Art. 15 of the LMML which states that the disclosure of information shall not give rise to liability for breach of other laws or of any contract and no liability is brought forth even in cases when it is found that no offence has been committed, and the operations and deals have been lawful.

737. Bank and professional secrecy provisions are stipulated under Chapter eight of the LCI. According to this Law, bank secret contemplates facts and circumstances concerning the balances and transactions on accounts and deposits of the bank's customers.

738. Pursuant to Art. 62 (6) 7. & 8. of the LCI, the directors of the Combating Organised Crime Chief Directorate and the Criminal Police Chief Directorate of the Ministry of Interior – for the purposes of disclosure and investigation of crimes, and the Chairman of the State National Security Agency – where it is required for the protection of the national security, can obtain banking information upon a court order. In case of only requiring information on the balances and flow of funds on accounts of undertakings with over 50 per cent state and/or municipal interest, a written request to the banks is sufficient, as provided in Art. 62 (8) of the Law on Credit Institutions. This is, however, limited to very specific circumstances and does not cover the generality of financial crime and money laundering.

739. According to Art. 62 (10) of the LCI, banking information can be accessed when it is requested by the Chief Public Prosecutor or a deputy authorised in the context of potential organised crime activity or money laundering without a court order. The requests as made to banks and the information received in response shall be kept in a register with the Chief Public Prosecutor and the Bulgarian National Bank.

740. Taking into account Art. 62 (10), the Prosecutor has no powers to require information to banks without a court order when there is data about financing of terrorism, as it is restricted to organised crime or money laundering, unless financing of terrorism is carried out by an organised crime group.

741. Insurance companies' secrecy is covered in Arts. 93 and 94 of the Bulgarian Insurance Code. According to Art. 94, the information covered by insurance secrecy can be disclosed before the authorities of the Court, the Prosecution Office, the investigation authorities, the police authorities in accordance with the procedure provided for by law, and the SANS in accordance with the terms, conditions and procedure provided for in the LMML.

742. Art. 25 (1) item 2 of the Law on Financial Supervision Commission establishes that information representing professional secrecy may be disclosed before the SANS under terms and procedure set by joint instructions insofar as this is necessary for performance of their functions.

Sharing of information between competent authorities, either domestically or internationally

743. FID-SANS may exchange information, on its own initiative or upon request, on cases related to suspicion of money laundering with the respective international authorities, authorities of the European Union and authorities of other states, based on international treaties and conditions of reciprocity (Art. 18 of the LMML).

744. The exchange of information is regulated under Art. 3a LMML (with supervisory authorities, including classified information), Art. 12 (2) and (4) LMML (with law enforcement), Art. 15a (1) of the LMML (use of the information for the purpose of AML), Art. 9, 9a and 10 LMFT (receiving information), Art. 16 of the LDFSPACA (in force at the time of visit, providing information to CEPACA), Art. 30 of the new AFFSUAA (providing information to CEPACA).

745. The interaction between FID-SANS and other domestic competent authorities rely on joint instructions. In this regard, SANS has signed instructions with Financial Supervision Commission, National Revenue Agency, the Ministry of Interior, CEPACA and the National Social Security Institute Ministry of Justice and Prosecutor's Office. The evaluation team was told that the MoU or other collaboration document between the FIU and BNB was signed in 2003.

746. It should be noted that although these instruction were signed by SANS, when exchanging information on AML/CFT matters the contact point is FID-SANS as the only structure of SANS which is competent for AML/CFT matters. As described by the Bulgarian authorities, every time such instructions contain AML/CFT stipulations, FID-SANS is asked to provide input/comments/approval before the act is concluded.

747. Sharing of information between SANS and the Prosecution Office is permitted through the instruction signed between both authorities. However, according to this instruction, the competent authority in AML/CFT matters seems to be SANS. It is not clear, under which provision this information could be shared with FID-SANS.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

748. Although there is no specific obligation, financial institutions seem to be able to share information for the purposes of R.7 and R.9 (see analysis of the respective Recommendations). The LMML and the LCI are silent, therefore it is unclear if financial institutions can share any information requested from another financial institution, domestic or international, without breaching bank secrecy provisions.

749. However, the bank secrecy as defined in the LCI include only *"facts and circumstances concerning balances and operations on accounts and deposits held by clients of the bank"*, not the identity of the client, the holding of accounts or any other verification information related to the maintenance of the account. In addition, pursuant to Art. 14 of the LMML information can be shared in regard to the existence of possible suspicion and reporting carried out to the FIU.

750. As regards the exchange of information where this is required by SR.VII, this matter is undertaken in application of EU Regulation 1781/2006 on wire transfers, as all financial institutions that can make wire transfers payments are directly bound by it. The requirements for transfers outside the Community are set out in Art. 7 of this EU Regulation.

Effectiveness and efficiency

751. The evaluation team was not informed about any practical impediments to obtaining information from financial institutions or any other reporting entity. Similarly, no issues were detected for the exchange of information between competent authorities.

3.4.2 Recommendations and comments

752. The LMML Law regulates the FID-SANS access to information subject to banking and secrecy laws. Also, it clearly provides in Art. 13 (7) that reporting entities, even advocates, may not refuse or restrict information requested by FID-SANS due to considerations of official, banking or commercial secrecy. However, a difficulty arises from the fact that the LCI provides a limited list of exceptions from the prohibition to disclose information subject to banking secrecy rules and the FIU is not to be found in this list. Although it appears that in practice this legal inconsistency does not impede the information exchange with the FIU, the evaluation team is of the opinion that a clarification in this matter will exclude any doubts or misinterpretations.

753. The domestic information exchange for AML/CFT purposes is not regulated by Law or Regulation and relies on bilateral agreements which can be sufficiently broad or not. Therefore, the evaluation team strongly advises the Bulgarian authorities to review legislation in order to ensure that domestic information exchange is clearly permitted.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	

3.5 Record Keeping (R.10)

3.5.1 Description and analysis

Recommendation 10 (rated LC in the 3rd round report)

754. Bulgaria was rated LC rating on the 3rd MER. The evaluators noted that the AML/CFT Law should be amended to provide a legal basis for keeping transactions records and identification data for longer than 5 years if necessary, when properly required by a competent authority. It was also recommended that, apart from banks, the necessary component of transaction records should be clarified as well as a provision should be introduced to comply with Criterion 10.1.1, thus establishing that records must be sufficient to permit reconstitution of individual transactions – including the amounts and types of currency involved if any – so as to provide, if necessary, evidence for prosecution of penal facts.

755. At the time of the on-site visit, no steps have been taken to remedy the deficiencies detected in the 3rd MER[40]

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

756. The record keeping requirements are covered by Art. 8 of the LMML which establishes that *"in the cases under Arts. 4- 7, the persons under Art. 3, paragraphs (2) and (3), shall be bound to keep the documents and data about clients and about transactions or deals for a period of five years following their completion. For clients, the period shall commence from the beginning of the calendar year following the year of terminating the relationship, and for deals and transactions it shall commence from the beginning of the calendar year following the year of effecting the latter."*

757. The minimum data to be included in a payment transfer is determined in Regulation No. 3 on the Terms and Procedure for the Execution of Payments Transactions and Use of Payment Instruments, which also defines the minimum 5 year period for keeping the information related to a transaction. Art.s 13, 18 and 23 of the above mentioned Ordinance refer to credit and debit bank transfers and to money remittance payment orders.

758. On another hand, Art. 6 (4) of the LMML, obliges to collect information about their clients and maintain accurate and detailed documentations about their transactions involving cash funds or valuables, including the information and documents required under the Law on Foreign Exchange.

759. There is no requirement to maintain transactions records in order to permit reconstruction of individual transactions. Bulgarian authorities explained that financial institutions are required to keep a backup storage of the information, which would permit to comply with this requirement. Notwithstanding this fact, the evaluation team is of the opinion that an explicit obligation should be introduced.

[40] The new LMML, that entered into force on 25 December 2012 establishes new requirements that comply with R.10

760. At the time of the on-site visit[41], the LMML obliged to keep documents for a period of 5 years. The Criminal Procedure Code empowers the prosecutor to extend the period for keeping the information and documents by the obliged sectors in the course of an investigation process or in court proceedings. Similarly, the FSC as a supervisory body also has powers to prolong the period of 5 years in case of some non-banking institutions.

Record keeping of identification data, files and correspondence (c.10.2)

761. Although Art. 8 of the LMML provides for the keeping of all documents and data about clients and transactions, Art.s 4-7 of the LMML only refer to the identification of the client – section I- and to the collection of information when a suspicion of money laundering arises – section II. There is not express reference to keeping of business correspondence.

762. Ordinance no.10 issued by the BNB establishes in its Art. 10 that bank files shall contain an inventory of the documents in the file; internal bank documents, minutes, agreements, contracts, etc.; financial and other information about the customers and the market; other documents and information of essential significance for the bank. Business correspondence could be included under the file of the client, however it is not clear. On another hand, art. 74 (1) of Ordinance no. 38 on the requirements to the activities of investment intermediaries provides that the investment intermediary shall keep the whole documentation and information related to its activity on a magnetic (electronic) and/or paper medium, which includes all the correspondence, documentation and information with the client, regardless of the is medium on which is recorded the information. In this case, the mandate is clear.

763. According to art. 74. (1) of Ordinance no. 38 of 25 July, 2007 on the requirements to the Activities of investment intermediaries, the investment intermediary shall keep the whole documentation and information related to its activity on a magnetic (electronic) and/or paper medium, which includes all the correspondence, documentation and information with the client, regardless of the is medium on which is recorded the information.

764. It can be concluded that Bulgarian legislation does not fully comply with criterion 10.2, as maintenance of business correspondence is not explicitly required for all financial institutions.

Availability of Records to competent authorities in a timely manner (c.10.3)

765. As stated under Art. 9 of the LMML, the relevant data and documents are required to be provided to the FID-SANS upon request, in the original or a transcript certified *ex officio*. However, the law does not establish any reasonable timeframe in which documents are required to be presented.

766. During the on-site interviews the evaluation team was informed that in practice the period for reply is included in the letter of request and no unduly delay was encountered in practice.

Effectiveness and efficiency

767. The obligation of keeping all documents for a period of five years seems to be clearly understood by all financial institutions. During the interviews with the representatives and supervisory authorities it was mentioned that normally documents are stored in both paper and electronic format and all files include the information required by the law.

768. The competent authorities stated that information is available upon request in a reasonable delay; however there is no precise legal timeframe.

[41] The new LMML, that entered into force on 25 December 2012, has included a new Para. 2 created under art 8: *"(2) Under a written ordinance of the Director of the Financial Intelligence Directorate of the State Agency for National Security the term under Para. 1 for keeping the information can be prolonged to 7 years."*

3.5.2 Recommendation and comments

Recommendation 10

769. Financial institutions are only specifically obliged to keep the documents related to the identification data and business correspondence. Other files are not covered. The components of transaction records that are specified through Regulation No. 3 of the BNB only covers bank transfers and money remittance payments and does not apply to other financial institutions. It is therefore recommended that legislative amendments should be introduced to extend the requirement to all obliged entities.

770. A new requirement should be introduced to ensure that transactions records are sufficient to permit reconstruction of individual transactions as required in the FATF standards.

771. A new requirement should be introduced to require keeping of documents for more than five years when required by a competent authorities[42], especially the FIU.

772. An obligation to ensure that documents are available to competent authorities promptly and without any delay should be introduced.

3.5.3 Compliance with Recommendation 10

	Rating	Summary of factors underlying rating
R.10	**PC**	• The requirement to keep records of all the components of transaction records covers only banks transfers and money remittance payments and does not apply to other financial institutions; • No provision to ensure that transaction records should be sufficient to permit reconstruction of individual transactions; • There is no obligation to keep the documents for more than five years if requested by a competent authority for all FI.

Unusual and suspicious transactions

3.6 Monitoring of Transactions and Relationship Reporting (R. 11 and R. 21)

3.6.1 Description and analysis[43]

Recommendation 11 (rated PC in the 3rd round report)

773. The 3rd Mutual Evaluation Report concluded that there was no clear requirement in the AML/CFT Law to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions. The situation in regards to Recommendation 11 remains the same[44].

[42] The new LMML, which entered into force on 25 December 2012, included a new Para. 2 under art 8: "(2) Under a written ordinance of the Director of the Financial Intelligence Directorate of the State Agency for National Security the term under Para. 1 for keeping the information can be prolonged to 7 years."

[43] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

[44] The new LMML which entered into force on 25 December 2012 contains the following requirement in Art. 7 b (1): *The persons under Art. 3, Paras. 2 and 3 are required to apply special monitoring all complex or unusually large transactions or operations, as well as all deals and operations, which do not have visible economic or legal purpose, that could be determined on the basis of the information available to the person under Art. 3, Paras. 2 and 3, or do not correspond to the available information on the client.*

(2) Whenever the persons under Art. 3, Paras. 2 and 3 detect deals or operations pursuant to Para. 1, they shall gather information on the significant elements and amounts of the operation or deal, the relevant documents and other identification data.

(3) The information gathered for the purposes of this Art. shall be documented and stored in a way providing access to the Financial Intelligence Directorate of the State Agency for National Security, the relevant supervisory authorities, and the auditors."

Special attention to complex, unusual large transactions (c. 11.1) and Examination of complex and unusual transactions (c. 11.2)

774. Bulgarian legislation requires special monitoring and enhanced due diligence measures when the transaction has no economic explanation or readily visible grounds in case of high risk countries and customers. However there is no legal provision that creates a requirement for special attention and specific mechanisms for controlling complex and unusual transactions.

775. The only article that appears to cover criteria 11.1 is set out under Art. 9 (5) of the RILMML, which establishes that additional action must be taken for the identification and verification of identification when:

a. a transaction or operation of value that differs from the typical value for the concrete client takes place
b. there is a significant variation from the usual use of the opened account

776. The Bulgarian authorities have stated that in practice the requirements of Recommendation 11 are applied by the obliged persons and this is proved in the STRs received by the FIU. According to the authorities, a substantial part of the STRs demonstrate the presence of some unusual scheme in the operations performed or a sudden change of the typical profile of the customer or the customer's behaviour.

Record-keeping of finding of examination (c. 11.3)

777. As stated under the analysis of Recommendation 10, all documents are kept for a period of five years and they are available to the competent authorities upon request. Still, there is no specific requirement to keep findings of unusual and complex transactions for auditors and competent authorities for at least 5 years.

Effectiveness and efficiency

778. During the meetings with the private sector the evaluation team had the impression that whenever they face a case of complex and unusual transaction additional documents are required and sometimes an STR is submitted. However, due to the lack of legal provision, full effectiveness could not be assessed.

Recommendation 21 (rated PC in the 3rd round report)

779. Bulgaria received a partially compliant rating in the 3rd round evaluation as there was no requirement to set out in writing any findings of examinations on the background and purpose when transactions have no apparent economic or visible lawful purpose and to maintain such finding for at least five years to assist competent authorities. Furthermore, there were no provisions for non-compliant countries and no mechanisms in place to apply counter measures. The assessors had found it difficult to measure full effectiveness because list of countries was not yet developed.

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 FAT Recommendations (c 21.2)

780. Art. 7a of the LMML has introduced a requirement for the obliged persons to place under special monitoring the commercial or professional relations, and transactions involving persons from countries, which do not apply or do not fully apply the international standards against money laundering. When the transaction has no economic explanation or readily visible logical grounds, the obliged persons are also required to collect additional information, where possible, on any circumstances related to the transaction, as well as its purpose.

781. Art. 7a (3) also requires that countries which do not apply, or do not fully apply international standards against money laundering, are to be specified in a list approved by the Minister of Finance in accordance with the decisions under Art. 40, Para.4 of Directive 2005/60/EC of the

European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. In practice, the FATF statements concerning the high risk jurisdictions are disseminated by the FIU and the BNB and published on FIU's website.

782. The implementation of the criteria is based also on the powers of the Director of FID-SANS to provide obligatory instructions to the obligated persons pursuant to Art. 8. (3) 10. of the RILMML. In addition, art. 8. (4) of the RILMML stipulates that the customers, operations and transactions that are linked to states included in the list under Art. 7a (3) of the LMML shall be considered of higher risk and shall be subjected to enhanced due diligence measures. The latter provision does not exclude the treatment of other states as high-risk jurisdictions, as these can be included based on the instructions of FID-SANS.

783. The information on transactions involving persons from countries, which do not apply or do not fully apply the international standards against money laundering, is available to the FIU pursuant to the provision of Art. 7. (2) and Art. 8 of the LMML. The information is also available to the law enforcement agencies subject to the provisions of Art. 12 (4) of the LMML and the exchange of information between the FIU and law enforcement as well as subject to the provisions of the Penal Procedure Code and the Law on the Judicial Power.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c 21.3)

784. In accordance with Art. 8 (3) 9. of the RILMML, FID-SANS is authorised to instruct the obligated persons to take additional measures as part of enhanced CDD measures. Such instructions have been issued in regard to Iran and the situation in Syria, apart from the notifications in regard to the FATF statements.

785. One of the elements of the indicators and criteria for suspicious transaction reporting included in the internal rules of the obligated persons is the special attention to high-risk jurisdictions and the FATF actions in respect of such jurisdictions is an important criteria for determining the application of the risk based approach.

Effectiveness and efficiency

786. Notifications are sent on a regular basis to the credit institutions by FID-SANS as well as by the BNB in order to keep the list of countries, which do not apply or do not fully apply the international standards against money laundering updated. For all other institutions FID-SANS publishes announcements on the website of SANS. FID-SANS has elaborated a mechanism to ensure the application of the financial restrictions for Iran.

787. The information on transactions involving persons from countries, which do not apply or do not fully apply the international standards against money laundering, is made available to the FIU and other law enforcement authorities.

788. On-site interviews indicated that financial institutions are aware of the requirements and are regularly advised of concerns about the weakness in the AML/CFT systems of other countries and have procedures in place to imply the enhanced CDD measures. However not all of them seemed fully aware of the counter-measures they need to apply in case of countries that do not apply or insufficiently apply the FATF Recommendations.

3.6.2 Recommendations and comments

Recommendation 11

789. The Bulgarian authorities should make the necessary legislative changes to implement R.11[45]: require the financial institutions to pay special attention to all complex, unusual large transactions,

[45] In the new LMML, which entered into force on 25 December 2012 a new article has been introduced as follows

or unusual pattern of transactions, that have no apparent or visible economic or lawful purpose; and to set forth the findings in writing and to keep them available for five years.

Recommendation 21

790. Specific guidance and awareness raising in this regard should be issued/undertaken by the authorities to assist FI on the measures that they could apply in the event of facing relations with the risky countries.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**PC**	• There is no specific requirement for financial institutions to pay special attention to all complex, unusual large transactions, or unusual pattern of transactions, that have no apparent or visible economic or lawful purpose; • There is no specific obligation to set forth the findings in writing and to keep them available for five years.
R.21	**LC**	***Effectiveness*** • The FI were not fully clear what counter-measures applicable in case of countries that do not of not fully apply the FATF Recommendations.

3.7 Suspicious Transaction Reports and Other Reporting (R. 13 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)

791. Bulgaria was rated PC in the last evaluation round as the following shortcomings were identified: Attempted suspicious transactions are not explicitly covered; Insider trading and market manipulation are not predicate offences and therefore not covered by the reporting obligation, No reporting obligation covering funds suspected to be linked or related to, or to be used for terrorist acts or by terrorist organisations; There were few STRs from non-banking financial institutions (effectiveness issue).

Requirement to Make STRs on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

792. At the time of the 4rd round report, the reporting obligations continue to be provided by the same Art 11 of the LMML. This Art requires reporting entities that where money laundering has been suspected, the obligated persons shall be bound to notify the FID immediately prior to the completion of the transaction or deal while delaying its execution within the allowable time as per the regulations dealing with the respective type of activity.

793. In case a delay in the transaction is objectively impossible, the FID shall be notified immediately after its completion.

"Art. 7 b (1) The persons under Art. 3, Paras. 2 and 3 are required to apply special monitoring all complex or unusually large transactions or operations, as well as all deals and operations, which do not have visible economic or legal purpose, that could be determined on the basis of the information available to the person under Art. 3, Paras. 2 and 3, or do not correspond to the available information on the client.
(2) Whenever the persons under Art. 3, Paras. 2 and 3 detect deals or operations pursuant to Para. 1, they shall gather information on the significant elements and amounts of the operation or deal, the relevant documents and other identification data."

794. Allowable time is the time which is prescribed by sectoral laws on each reporting entity, which is on disposal to reporting entity to close the deal. According to the statements of representatives of reporting entities met on site, usually this period is up to 24 hours.

795. Art 11 of the LMML thus requires reporting entities to report suspicion on money laundering, not funds that are proceeds from criminal activity, as required by criterion 13.1 of the FATF Methodology.

796. The Bulgarian authorities argued that apart from the definition provided by the CC for the ML offence, the LMML does contain in its Art. 2 a separate definition which shall be taken into consideration for reporting purposes, which is broader and include the expression *"proceeds from criminal activity"* in itself.

797. Art. 2 of the LMML reads as follows: *any transformation or transfer of property acquired through or in connection with any criminal activity or participation therein in order to conceal the unlawful origin of such property, or abetting a person participating in such an activity in order to avoid the legal implications of their actions; concealing the nature, origin, location, allocation, movement or rights related to property acquired through criminal activity or participation therein; acquisition, possession, or use of property, with the knowledge at the time of receiving, that it has been acquired through criminal activity or participation therein.*

798. If it is to accept authorities' argument, it has to be said that LMML requires an additional mental element which again limits reporting obligation as the property transferred or in other way manipulated with the purpose *to conceal its unlawful origin*. The Methodology, on the other hand, requires reporting entities to report proceeds from criminal activity regardless of the purpose. [46]

799. In cases when the delay of the transaction or deal is objectively impossible, the reporting entity shall notify the FID-SANS immediately after its execution. In practice, the majority of reports come after the execution of the transaction. This is logical bearing in mind that compliance officers should monitor and analyse their client's business in a broader sense than just on transaction or deal, and to discover STR consequently. Bulgarian FIU, which holds supervisory function as well, uses the fact that STRs are reported after a long time after the execution of transaction, as a trigger element for an on-site inspection.

800. Notification to the FID-SANS may be done also by the personnel of the reporting entities that are not responsible for enforcing anti-money laundering measures. The FID SANS shall protect the anonymity of such personnel. This mechanism ensures a controlling mechanism against corruption in reporting entities. As explained by the authorities, this happened in several (relatively rare) cases and usually was related to the specific area of expertise or responsibilities (within the obliged entity) of the person filing the report.

801. The Rules on Implementation of LMML additionally stipulates (Art. 13) the way of fulfilling the reporting obligations. According to the article the disclosure under Art. 11 of the LMML shall be carried out in writing and using the form adopted by the Director of Financial Intelligence Directorate of State Agency for National Security. In addition, officially certified copies of all gathered documents on the operation or transaction and on the client shall be enclosed in the disclosure.

802. The evaluation team was informed that in urgent cases disclosure of the information can be done by telephone orally, while the written confirmation shall be filed within 24 hours. This provision facilitates the application of the postponement power of the FIU. Reports which are submitted in a format other than the prescribed form are still considered to be valid.

[46] Bulgarian authorities informed evaluators that the following amendment to the LMML was adopted on 11.12.2012. In Art. 11, Para. 1 after the words *"money laundering"* the following words are added *„or presence of funds of criminal origin"*.

803. Although these provisions clearly benefit the reporting obligation set out in Art 11 of LMML, there is no clear legal obligation in the LMML for further regulating suspicious transaction reporting. Unlike in case of the cash transaction reporting, CDD measures etc., where that legal basis does exists, in case of the reporting obligations set in Art. 11, no reference is made to the RILLMML.

804. Reporting is done on the basis of Guidance on Reporting under the LMML and LMFT. This document is published by the FIU on the web site of SANS and includes the necessary form for reporting. Guidance also provides for some additional information on reporting obligation by providing that suspicion on ML or TF can be in relation not only to operations and transactions, which is explicitly provided in the LMML, but also to the clients.

805. Detailed criteria for reporting and suspicions criteria must be included in the internal rules of the obliged persons which are subject to endorsement by the Chairperson of SANS. *"Model"* criteria for detecting suspicious operations have been published at the web site of SANS to assist the reporting entities. Indicators or criteria for recognising suspicious transactions regarding ML for 30 categories of reporting entities are elaborated and published on the SANS web site. These indicators are very detailed and constitute sound basis for reporting STRs.

806. The obligation to report suspicious transaction extends to transactions that are linked to terrorism financing. According to Art 9 Para 3 of the LMFT, should suspicion arise about the financing of terrorism, the reporting entities listed in LMML, shall: identify the relevant customers and verify their evidence of identity used in the suspicious operation or transaction in accordance with the procedure provided for in Article 6 of the LMML (identification and verification); gather information on the transaction or operation in accordance with Article 7 of LMML, and immediately notify the FID-SANS before the operation or transaction is performed, while delaying its implementation within the admissible period laid down by the legislative regulations on the relevant type of activity. Art 9 Para 5 states that reporting entities are obliged to notify SANS when there is some objective impossibility to delay operation or transaction, immediately after its execution.

807. Art 9 Para 1 of the LMFT prescribes more general obligation which is not restricted only to reporting entities. This Para reads as follows: *"Any person, who knows that given financial operations or transactions are intended to finance terrorism, must immediately notify the Minister of Interior and the Chairperson of the State Agency for National Security."*

808. It can be concluded that any person is obliged to report the knowledge about intended terrorism financing to the minister of Interior and the Chairperson of the SANS, but reporting entities are obliged to report not only knowledge but suspicion on possible terrorism financing. This report is to be submitted to the FIU. It remains unclear who else is informed on this suspicion, since Para 3 explicitly states that report is submitted ***also*** to the FID SANS. Having analysed the whole Art 9, evaluators consider that Minister of Interior and the Chairperson of SANS are also receiving the TF related STRs.

809. Art 9 Para 4 of the LMFT expands reporting obligation from Para 1 and 3 by stating that *"The notification obligation under Paragraphs (1) and (3) shall also apply to attempted operations or transactions aimed at the financing of terrorism, and to funds suspected to be related to or used for acts of terrorism, or by terrorist organisations or terrorists."*

810. The definition of the *"financing of terrorism"* for reporting purposes is provided in the LMFT and shall be considered as *"any direct or indirect, illegal and intentional provision and/or raising of funds, financial assets or other property, and/or provision of financial services intended or known to be intended to be used, in full or in part, for terrorist activities within the meaning given by the Criminal Code.*

811. Although this definition suffers from some shortcomings (funds collected by any means not only illegally; funds only suspected that are going to be used for terrorism financing), the situation with respect to reporting obligation is remedied by Art 9 Para 4 of the LMTF which requires

reporting entities to report funds suspected to be related to or used for acts of terrorism, or by terrorist organisations or terrorists.

812. According to Para 6 of the Art 9 of the LMTF the reporting entities are obliged to include criteria for the identification of suspicious operations, transactions and customers directed at financing terrorism in the internal rules referred to in the LMML.

813. Guidance on Reporting under the LMML and LMFT provides for more details on reporting, including the reporting form. This Guidance states that reporting entities should follow the criteria listed in the internal rules together with the model criteria published on the SANS web page, as well as to follow the messages referred to the high risk countries released there. Suspicion criteria have been developed and published on the SANS web site and contain indicators related to customers who are listed in various lists and costumers form high risk countries, customer's behaviour indicators and indicators related to transactions or deals.

No Reporting Threshold for STRs (c. 13.3 & c. SR.IV.2)

814. Art. 11 of the LMML does not contain any threshold for reporting suspicious transactions. Art 9 of the LMFT does not mention any threshold either.

815. Regarding attempted transactions Art 11 states that transaction or deal that triggers suspicion should be reported before its execution, while delaying its execution within the allowable time as per the regulations dealing with the respective type of activity. Furthermore, Para 5 of the LMML requires that the reporting obligation shall apply even where the transaction or deal has not been completed. By these provisions, reporting of attempted transactions as required by the standards is covered.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

816. There is no limitation in regard to reporting suspicion involving tax matters. Since Bulgaria adopted all-crime approach, tax crimes are predicate offences for money laundering.

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

817. Bulgaria introduced the *"all crime approach"*, thus all obliged entities are required to report when they suspect or have reasonable grounds to suspect that fund are proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically.

818. In addition, Art. 2 of the LMML (definition of money laundering) states in Para. 2 that money laundering shall also be the case when the activity, through which the property under Para. 1 has been acquired, has been performed in a European Union member state, or another country not falling under the jurisdiction of the Republic of Bulgaria.

Effectiveness and efficiency R.13 & SR.IV

819. Bulgarian authorities have published elaborated sets of model indicators for recognising suspicious transactions for all reporting entities. These model indicators are included in the internal rules of every reporting entity, which are subject (internal rules) to approval by the FIU.

820. Although the guidance is elaborated satisfactorily, results in terms of number of STRs show limited success. According to statistics provided to the evaluation team it is seen that the most of the reporting is done by the banking system. Other financial institutions do not report in satisfactory manner.

821. The following statistics are provided by authorities:

Table 27: Number of STRs forwarded by the FI to FID-SANS

Reporting Entity										
	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
	2008		2009		2010		2011		2012 (14.	

									July)	
Commercial banks	515	0	721	0	811	2	1034	1	445	2
Insurance companies	0	0	1	0	0	0	0	0	0	0
Currency exchange	1	0	0	0	2	0	0	0	19	0
Broker and investment companies	1	0	0	0	0	0	2	0	2	0
Securities' registrars	0	0	0	0	91	0	37	0	79	0
Financial houses	0	0	97	0	505	0	0	0	0	0
Tax authorities (National Revenue Agency)	27	0	26	0	11	0	8	0	7	0
Customs	33	0	15	0	11	0	8	0	4	0
Pension funds	4	0	4	0	1	0	0	0	0	0
State bodies (other than explicitly mentioned)	2	0	0	0	0	0	0	0	0	0
FSC and BNB	0	0	1	0	2	0	4	0	1	0
Privatisation authorities	0	0	1	0	1	0	0	0	0	0
Postal services	0	0	0	0	0	0	1	0	4	0
Leasing companies	0	0	1	0	2	0	2	0	1	0
Other non-banking financial companies	0	0	0	0	7	0	322	0	167	0
State authorities concluding concession contracts	0	0	0	0	1	0	0	0	0	0
Total	**583**	**0**	**864**	**0**	**1445**	**2**	**1418**	**1**	**729**	**2**

822. Statistics also show the constant increase of number of reports submitted by banks. The reporting for 2009 increased by 35% compared to 2008. The reporting in 2010 increased by 66% compared to 2009 or 125% compared to 2008.

823. These figures should also be viewed together with the increased reporting since 2009 from the non-banking financial sector and (especially for 2012) as a result of the efforts of the FIU to raise awareness through trainings, inspections as well as through the increased consultancy provided by the FIU during the discussion of and following the amendments of the LMML and LMFT of 2011.

824. During the on-site interviews the evaluation team noted that the knowledge on reporting obligation among banks is on a satisfactory level, while other reporting entities show varying degrees of knowledge, in the sense that most of the reports seem to be submitted by a limited number of entities which are more aware of the AML/CFT obligations.

825. The low level of reporting by other financial intermediaries (such as insurance companies and securities traders) was explained by the authorities by the low level of business in those sectors, especially in the context of the financial crisis. The evaluators are of the opinion that these arguments are valid. However, continuous awareness raising and training programs are still needed to increase the number of STRs.

826. Some of the reporting is done by state authorities like the Tax and Customs Administrations.

827. With regard to the quality of reports, it can be concluded that it is on a satisfactory level since almost half of the reports analysed are sent to the law enforcement for further investigation. There is also anecdotal evidence on good quality of reports, since some of the most important cases which resulted in convictions or good quality indictments stem from reporting regime.

828. Although criteria for reporting are elaborated and published, reports on terrorist financing are still rare. This could give rise to concerns about the clarity of the reporting requirements and the effectiveness of the reporting regime. More outreach and guidance to reporting sector would be beneficial in order to increase the number of STRs related to TF.

829. Authorities explained that TF reporting is partly also done through ML related STRs as during the analytical work it was found that ML reports were in fact FT linked and referred to partial

matches with various lists of terrorists or other TF suspicions. Although the evaluation team could accept this explanation, it raises concerns on the ability of the reporting entities to tell apart ML and TF suspicions and about the timeliness of the analysis of the TF related STRs, in cases where the reporting entities incorrectly indicated ML instead of TF suspicions.

3.7.2 Recommendations and comments

830. The Bulgarian authorities are invited to adopt necessary amendments to LMML to enable reporting entities to report *"funds"* that are suspected to be the proceeds of criminal activity, and all proceeds from crime, not only those which are intended to be disguised or the unlawful origin of such property to be concealed (eliminate the additional mental element required for reporting).

831. The necessary amendments to LMML should be adopted in order to create a solid legal basis for the Rules on Implementation of LMML in the part which regulates reporting obligation.

832. Bulgarian authorities should put more efforts to promote greater reporting of STRs by obliged entities by raising awareness on the reporting requirement for those sectors which have submitted few STRs.

833. More training and awareness raising programs are needed to assist reporting entities in distinguishing between TF and ML related STRs.

834. Since the criteria for reporting are very well elaborated and published, awareness raising campaign should concentrate on training on implementation of stated criteria.

3.7.3 Compliance with Recommendation 13 and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**LC**	• Shortcomings identified in criminalisation of ML impact on reporting obligations; • Reporting obligation is restricted to proceeds from crime that are used only in order to conceal their unlawful origin; **Effectiveness** • Effectiveness of the reporting regime in case of the non-banking financial sector not fully demonstrated.
SR.IV	**LC**	**Effectiveness** • The effectiveness of the reporting regime has not been proven.

Regulation, supervision, guidance, monitoring and sanctions

3.8 The Supervisory and Oversight System - Competent Authorities and SROs / Role, Functions, Duties and Powers (Including Sanctions) (R. 23, 29, 17)

835. Bulgaria was rated LC in the last evaluation round as the following shortcomings were identified: More resources should be dedicated by both BNB and FSC with respect to AML/CFT issues; more training and a change in culture is required in the NRA; more co-ordination between all four players is required to effectively supervise and control the AML/CFT obligations of all subject persons (effectiveness issue).

3.8.1 Description and analysis

836. A general description of the financial sector and its supervisors is set out in section 1.3 above. Section 1.5 above sets out the institutional framework for combating money laundering and terrorist financing.

837. With regard to the application of the AML/CTF measures, the supervisory regime is organised in accordance with the requirements of the LMML, LMFT, Law on Credit Institutions, the Law on Payment Services and Payment Systems, the Insurance Code as well as the relevant bylaws including Ordinance No 38 of 25 July, 2007 on the Requirements to the Activities of Investment Intermediaries.

838. Overall, the FID-SANS has primary responsibility for the supervision of AML/CFT measures in all obliged persons. The LMML does require other supervisory authorities to cooperate with FID-SANS and, where necessary, to exchange classified information for the purpose of their legally established functions. Art. 3a (2) requires that where supervisors conduct examinations they should include a check for the compliance of obliged persons with the requirements of the LMML and, where a violation is established, the supervision authorities shall inform FID-SANS.

839. Apart from FID-SANS other supervisory bodies are involved in the financial institutions compliance.

Bulgarian National Bank (BNB)

840. The BNB is responsible for the supervision of all banks (credit institution) which are engaged in the business of publicly accepting deposits or other repayable funds and extending loans and other financing for their own account and at their own risk. The permissible range of activities for banks is set out in Art. 2 of the Law on Credit Institutions (LCI).

841. The BNB is also responsible for supervision of the payment institutions and electronic money institutions. Other financial institutions whose principal activity to acquire holdings in a credit institution, extend loans with funds other than accepted deposits or other repayable funds or perform as a main activity any of the activities specified under Art.3 LCI shall be registered at the BNB.

Financial Supervision Commission (FSC)

842. Under Art. 1 (2) of the Financial Supervision Commission Act (FSC Act) the FSC is responsible for the supervision of:

- Insurers, re-insurers, and insurance agents, headquartered in the Republic of Bulgaria; insurers, re-insurers, and insurance agents from an European Union Member State or a state - party to the Agreement on Establishment of the European Economic Area, which engage in operations on the territory of the Republic of Bulgaria; insurers and re-insurers, headquartered in states, other than those indicated, licensed by the Commission for Financial Supervision, to conduct operations in the Republic of Bulgaria through a branch; insurance agents, headquartered in states, other than those indicated, listed in a Commission for Financial Supervision registry;
- Mutual Investment Schemes, investment intermediaries and management companies;
- Pension Funds and Health Insurance Companies;
- Market Operator and/or Regulated Market; and
- Central Securities Depository.

National Revenue Agency (NRA)

843. In April 2008 the registration authority for bureaux de change was changed and the FIU no longer maintains the register of the exchange offices. The registration of exchange offices is now made at the National Revenue Agency, by entering them in a public register. As of 29 June 2012 there were 710 exchange offices registered in the public register.

Authorities/SROs roles and duties & Structure and resources

Recommendation 23 (23.1, 23.2) (rated LC in the 3rd round report)

Regulation and Supervision of Financial Institutions (c. 23.1); Designation of Competent Authority (c. 23.2)

844. As stated above, the primary responsibility for primary responsibility for the supervision of AML/CFT measures in all obliged persons rest with FID-SANS. However, all supervisory bodies are required to include inspections for the compliance of obliged persons with the requirements of the LMML and LMFT when they conduct examinations.

FID-SANS

845. The LMML sets out broad responsibilities for the supervisory activities of the FID-SANS over the financial institutions and other obligated entities. The regulation and supervision activities of the FIU focuses around the surveillance over the organisation of the reporting entities' internal control mechanisms and inspections over compliance with AML/CTF measures. Under Art. 17 (3) of the LMML, FID-SANS is entitled to conduct both off-site and on-site inspections on the reporting entities.

846. Art. 16 of the LMML and Art. 19 of the RILMML specify the mechanism for off-site inspections and the evaluation of the internal rules of the reporting entities. Art. 23 of the RILMML provide for the FID-SANS competences for on-site inspections.

Bulgarian National Bank

847. The Law on the BNB, as well as the LCI and the legal acts for its implementation, constitute the general legal framework for credit institutions activities. Under art.3a LMML and 9a (2) LMTF, the BNB shall perform inspections on the supervised institutions to establish if they comply with the requirements of the AML/CFT legislation. Besides the provisions of the LMML and LMFT, under Art 79. (1) of the LCI, the BNB is authorised to supervise: the activities of banks to ensure the observance of the rules in the LCI and the acts on its implementation; the sound and safe management of banks and the risks they are exposed to or may be exposed to; and the maintenance of own funds adequate to the risks. Both laws require that any noncompliance by the obliged entity to be reported by the BNB to the FID-SANS.

848. In order to strengthen the role of the BNB in the prevention process the LCI was amended to oblige the banks to create compliance systems in accordance with the best practices. In particular, Art. 73 (1) of the LCI requires that the competent managing body of each bank shall adopt and regularly review in accordance with the best internationally recognised practices for corporate governance of banks, the systems for prevention against the risk of money laundering.

849. The inspection process is supported by an AML/CFT Manual on Inspections in Banks and Financial Institutions. It prescribes tools and techniques including sample testing. The AML/CFT Manual was developed initially with the assistance of US and UK experts. After the accession of Bulgaria to the EU the Manual was updated based on the policy and documents adopted at the FATF and EU level including the papers drafted by the EBA.

Financial Supervision Commission

850. As previously stated, under Art. 1 (2) of the Financial Supervision Commission Act (FSC Act), the FSC is entitled to supervise: the activities of the regulated securities markets, the Central Depository, investment intermediaries, investment and management companies, natural persons who are directly engaged in securities transactions and investment consultancy, public companies and other issuers of securities under the Public Offering of Securities Act, Law on Measures against Market Abuse with Financial Instruments, Act on Special Investment Purpose Companies and the Law on Markets and Financial Instruments.

851. Art. 1 (3) of the FSC Act requires that the FSA shall supervise through:

- Issuance of permits (licenses) and approvals, and by refusing to issue such permits and approvals;
- Conducting off-site and on-site inspections on the operations of the supervised persons; and
- Implementation of administrative enforcement measures and imposing of administrative sanctions.

852. The FSC Act does not contain any specific provisions concerning money laundering. The FSC Act does, however, require the FSC to supervise compliance with the Insurance Code and the LMFI both of which contain a number of requirements concerning the implementation of AML/CFT measures.

853. There do not appear to be any other provisions for assessing the AML/CFT issues of mutual investment schemes, pension funds and voluntary health insurance schemes and the Central Securities Depository. Therefore, the FSC's statutory responsibility for supervising the AML/CFT compliance in these latter bodies is taken from Art. 3a. (2) of the LMML.

National Revenue Agency

854. The NRA, is established by the Law on National Revenue Agency as a specialised state body under the Minister of Finance for the purpose of establishment, securing and collection of statutory government claims and private state receivables specified by law.

855. The main objectives of NRA are related to tax matters, government claims on taxes and compulsory insurance contributions. It also ascertains administrative violations and imposes administrative penalties under the tax laws, as well under the laws containing provisions for the compulsory insurance contributions.

856. On AML/CFT supervision, NRA collaborates with the FID. The targets for joint control actions that have been carried out were selected by NRA and approved by the State Agency for National Security (SANS). The AML/CFT checks were performed by NRA's officials when carrying out control actions pursuant to other acts.

Recommendation 30 *(all supervisory authorities) (rated LC in the 3rd round report)*

Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)

FID-SANS

857. The department of FID-SANS which performs functions related to the AML/CTF supervision of the obliged persons comprises 7 officials. In 2011 a new system for risk analysis of the obliged entities was introduced thus providing the basis for a more efficient AML/CTF supervision.

858. FID-SANS considers that it has sufficient technical resources and budget to exercise its functions. The overall resources available to FID-SANS are considered under Recommendation 26 above.

Bulgarian National Bank

859. The BNB has established a Special Supervision Directorate (SSD) for the supervision of banks for compliance with the LMML and the LMFT. This directorate is a separate one from the directorate performing on-site prudential supervision, the Directorate performing off-site prudential supervision and the Directorate involved in drafting the methodology for prudential supervision.

860. Since 1998 the number of the staff in SSD was increased to 12 inspectors. One additional inspector was recruited to the Special Supervision Directorate in 2011. The SSD staff consists of experts who have been working in the SSD for 14 years. The SSD staff involved in the AML/CFT supervision has relevant expertise to supervise the banks and relevant financial institutions for compliance with the AML/CFT regulations. According to the Bulgarian

authorities, the employees of SSD are frequently asked to assist the law enforcement authorities and Bulgarian Courts in investigations of ML cases.

861. BNB staff took part in annual seminars and workshops organised by the IMF, Joint Vienna Institute, Bank de France, Deutsche Bundesbank and De Nederlandsche Bank. During these training sessions the participants were informed about the new trends of ML/FT and the best practices for preventing criminal money from entering the financial system.

Financial Supervision Commission

862. AML/CFT supervision is considered to be an integral part of the general supervision that the FSC conducts. FSC staff engaged with the AML/CFT activity consists of the following:

- Supervision of Investment Activity Division:
  - Investment intermediaries and securities markets Department – 8 employees,
  - Issuers Department – 20 employees,
  - Preliminary supervision Department – 20 employees.
- Insurance Supervision Division:
  - Preliminary Supervision Regime Department – 5 employees,
  - Inspection Department - 9 employees,
  - Off-site Inspection Department – 8 employees.
- Social Insurance Supervision Division:
  - Operational Control Department - 6 employees,
  - Off-site Inspection Department – 8 employees.
- In total: 84 employees.

863. Under a Twinning Project BG/07/IB/EC/02 for further strengthening of the administrative capacity of the FSC aiming at the efficient implementation of the *acquis communautaire*[47], the FSC staff was trained by high-level experienced Italian representatives. The Twinning Partner of the Commission was the Italian Ministry of Economy and Finance. One of the Components of the Project was "Further action within the scope of the FSC powers and activities in the field of AML sector". The main result achieved by the end of the project was the adequate application of the Law on the Measures against Money Laundering by the supervised entities, in particular:

- Procedures for the reporting of money laundering cases to the competent domestic and foreign authorities developed;
- AML Inspection Manual further developed;
- Providing of trainings on the best EU practices for dealing with information on suspicious transactions of money laundering received by or sent to the Financial Intelligence Directorate within the State Agency for National Security and other securities supervisory bodies;
- Drafting and application of a procedure for the interaction with other competent bodies, especially the Financial Intelligence Directorate within the State Agency for National Security and foreign AML bodies, in relation to the enforcement cases concerning money laundering;
- Preparation of guidance for the reporting of money laundering cases;
- Further development of the existing AML inspection manual and training on the implementation of the AML inspection manual.

National Revenue Agency

864. There is no dedicated section of the NRA for anti-money laundering and counter financing of terrorism measures. The supervision for AML/CFT purposes is applied by the inspectors employed at the NRA as civil servants. Out of a total of 7,610 officials, 295 are in charge with special control on the persons operating as exchange offices. The inspections on AML/CFT

[47] The cumulative body of European Community laws, comprising the EC's objectives, substantive rules, policies and, in particular, the primary and secondary legislation and case law – all of which form part of the legal order of the European Union (EU).

matters are performed by NRA's officials when carrying out control actions pursuant to other acts – the National Revenue Agency Act, the Tax and Social Security Code of Procedure and the Currency Act.

865. The awareness of NRA's employees in terms of the implementation of the measures against money laundering and the performing of checks is being increased by means of holding the specialised training seminars together with FID-SANS employees which were attended by 291 NRA employees.

866. However, during the on-site interviews, the representatives of the agency showed a rather low level of understanding and acceptance of the AML/CFT issues and it was apparent to the evaluation team that their primary area of concern was related to tax matters.

Authorities' powers and sanctions

Recommendation 29 (rated LC in the 3rd round report)

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1); Powers of Enforcement & Sanction (c. 29.4)

867. Art. 17. (1) of the LMML sets the primary responsibility for the implementation of the LMML to the Minister of Finance and the Chairperson of the SANS who, in the implementation of their functions shall collaborate and set joint instruction of on supervision. Art. 17 (5) states that examinations may be performed jointly with the prudential supervisory authorities.

868. The regulation and supervision activities of the FID-SANS are focused on the review of the reporting entities' internal control mechanisms (off-site supervision) and on targeted inspections over compliance with AML/CTF measures (on-site supervision).

869. Art 16 of the LMML states that the reporting entities shall be bound to adopt, within 4 months following their registration, internal rules for the control and prevention of money laundering, which shall be approved by the Chairperson of the State Agency for National Security. The internal rules shall establish clear criteria for detecting suspicious transactions or deals and clients, the procedure for personnel training and the use of technical means for the prevention and detection of money laundering, as well as a system for internal control over the implementation of the AML/CFT measures.

870. Art. 17 of the LMML provides that the supervisory bodies within FID-SANS may inspect on-site the obligated persons on the application of measures on the prevention of the use of the financial system for the purpose of money laundering. The examinations shall be done on the basis of a written order by the Chairperson of the SANS or by an official, authorised by him/her, where the objectives, time limit and the venue of the examination, the examinee, as well as the names and positions of the examiners shall be defined. The obligated persons, the state authorities, the local government bodies and their employees shall be obliged to cooperate with FID-SANS in performing their supervisory functions. When performing on-site inspections, bodies of supervision shall have the right to free access in the office premises of the obligated persons, as well as the right to require documents and gather evidence in connection with the implementation of the task assigned to them.

871. According to Art. 23 of the LMML a person who or refuses to cooperate pursuant to Art. 17, or to provide free access to the office premises or to submit the required documents or evidence pursuant an on-site inspection, shall be punished by a fine of BGN 500 to BGN 10,000, unless such an offence constitutes a crime.

872. The regulation and supervision over the reporting entities is also ensured by Art. 3a of the LMML, which provides that authorities for supervision of the obligated persons, when carrying out examinations, shall include a check for the compliance with the AML/CFT requirements. Where a violation is established, the supervision authorities shall inform the FID-SANS thereof,

by sending it an abstract from the relevant part of the memorandum of findings. Similarly, the powers to supervise for CFT purposes are provided by the LMTF, which stipulates in Art. 9a that in the course of the inspections carried out by the supervisors they shall also include verification on CFT compliance. If any infringements are identified, the supervisory bodies shall inform the SANS by sending an excerpt from the relevant part of the statement of ascertainment.

873. In terms of 29.2, as described above, FID-SANS is entitled to both on-site supervision and off-site inspections of the reporting entities. The on-site inspections are currently carried out based on risk assessment following the Methodology for planning of on-site inspections on the persons obliged to report under the LMML. Moreover, according to the RILSANS (Art. 32e (7) 14-21), FID-SANS shall carry out on-site inspections on the obligated persons on the implementation of the measures against money laundering and the measures against financing of terrorism, as well as where suspicion of money laundering and financing of terrorism exist.

874. According to the Methodology for planning of on-site inspections, the FID-SANS shall carry three types of inspections: incidental inspection (conducted on the basis of a motivated request in writing from another SANS directorate, supervisory authority or other state authority which requires taking of urgent and timely actions), planned inspection (carried out on the grounds of a preliminary prepared and approved three-month plan) and thematic inspection (checking the implementation of certain requirements under LMML related to the use of the financial system for money laundering and financing of terrorism purposes).

875. The legal framework for BNB to carry out on-site inspections and its ability to require documents from the supervised entities is vested in Article 80 of LCI[48], Article 4 of Law on the Bulgarian National Bank[49], and Articles 3a and 17 of LMML as described above. According to Art. 103 para (1) 8) of the LCI the BNB may impose the measures (*i.a.* issue a written warning; convene a shareholders' general meeting; impose on the bank more stringent prudential requirements than those imposed on it in normal operation; etc…), when it finds out that a bank or any of its administrators or shareholders have committed certain offences *i.a.* effecting any transactions or operations representing money laundering or in violation of the Law on the Measures against Money Laundering and the acts on its implementation.

876. According to Art. 12 of the FSC Act, the Commission, shall: regulate the activities of the supervised persons by adopting regulations provided by law, and issuing instructions and guidelines in accordance with the objectives of Art. 11; exercise state supervision under the Public Offering of Securities Act, Law on Measures against Market Abuse with Financial Instruments, Act on Special Investment Purpose Companies and the Law on Markets in Financial Instruments; exercise state insurance supervision under the Insurance Code and the Health Insurance Act and exercise state social insurance supervision under the Social Insurance Code. Art. 19, Para.5 of the FSC Law stipulates that the inspected person is obligated to cooperate with the Commission and the administration officials thereof and assist in executing it supervisory obligations.

877. The NRA shares the responsibility for supervision over the activities of exchange bureaus with FID-SANS. According to the Art 16 para 2 of the Currency Law, the authorities of the NRA shall audit the activities of currency exchange offices and in carrying out audits shall be entitled to: obtain unrestricted access to the offices of audited persons; require documents, references and explanations in writing; check available amounts in levs and other currency, as well as quantities and quality of precious metals and gemstones and items made containing them or made of them; carry out audits of clients of audited persons for the purposes of obtaining cross-reference; use expert help; impose measures to secure evidence following the procedure of the Tax and Social Insurance Procedure Code.

[48] The Bulgarian National Bank may require banks and their shareholders to submit to it all the relevant accounting and other documents, and any information on their activities, and may conduct on-site inspections through the employees and other persons authorised by it.

[49] In connection with the performance of its functions, the Bulgarian National Bank may demand from banks to submit any documents and information, and may also carry out the requisite examinations.

878. According to Art. 24 of the LMML, the protocols establishing AML/CFT violations shall be drawn up by officers of the Ministry of Finance or of the SANS, while the penal decrees shall be issued by the Minister of Finance or the Chairperson of the SANS, or by officials duly authorised by them. According to Art. 32a of the RILSANS, FID-SANS is empowered to carry out current and incidental control over implementation of the duties under the LMML and the LMFT and their implementation acts and to draw up protocols of findings, statements of establishment of administrative infringements for the LMML and the LMFT and prepare projects for penal decrees.

879. The authorities explained that the reason for involving the Ministry of Finance in the sanctioning regime is that some of the sanctions might be very severe including the withdrawal of the licence granted to the financial institutions; therefore, for such a sanction the endorsement of the MoF is necessary.

880. The evaluators were informed that in practice the final bills of sanctions pursuant to an internal ordinance of SANS are prepared in close cooperation of FID-SANS with the legal department of SANS and issued by the Chairperson of SANS.

881. In terms of criteria 29.3, no court order is required for the inspectors of the supervisory bodies to obtain access for supervisory purposes, including FID-SANS.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

882. As set out above, Bulgarian legislation provides adequate supervisory power for the supervisory bodies to monitor and to ensure compliance of regulated entities with AML/CFT requirements.

883. Supervision of the implementation of the AML/CFT in financial institutions is the primary responsibility of FID-SANS. However, it is obvious that the FIU cannot undertake alone the entire supervisory activity for all the reporting entities over all the country, therefore it is supported in its supervision duties by the prudential supervisors: the BNB, the FSC, and the NRA which also have responsibilities for AML/CFT supervision.

884. In order to effectively target the off-site and on-site supervision, FID-SANS developed a comprehensive supervision methodology which stipulates that FID-SANS shall prepare a risk assessment analysis which subsequently is subject of approval by the director of FID. The risk assessment is prepared considering: the number of the Suspicious Transactions Reports (STRs) received from different obliged persons; the findings of the control authorities established during the on-site inspections on the persons obliged to report under the LMML; the findings of the analysis on the opened files and the number and amount of the cash transactions according to the register under the Art. 11, Para 2 of the LMML. On the basis of this analysis, all 30 categories of persons with the obligation to report under LMML are classified in categories ”low–risk”, „medium–risk” and „high-risk”. The risk analysis is taken into consideration in the process of preparing of the inspection plans for on-site supervision.

885. Art. 4. (6) and Art. 16 of LMML stipulate that the internal rules of the reporting entities are to be submitted for endorsement to the Chairperson of FID-SANS within 14 days of their adoption. The Bulgarian authorities consider that this has as effect the provision of methodological guidance and instructions for the effective application of the AML/CTF measures. A clear obligation in regard to the application of CTF measures is included in Art. 9 (6) of the LMFT, according to which the obligated persons shall include in the internal rules, criteria for the identification of suspicious operations, transactions and customers aimed at financing terrorism.

886. Further requirements on the internal rules of the reporting entities are set out in the RILMML. According to Art. 17 the internal rules are to include clear criteria for detecting suspicious operations or transactions or clients; the terms and conditions for collection, analysis, storage and disclosure of information on operations or transactions; the rules of the organisation and the work of the specialised units; the distribution of responsibilities for the implementation of the measures

against money laundering within the branches of the Obligated persons; the use of technical means for the prevention of money laundering; the system for internal control on the implementation of the obligations provided for in the LMML and the acts of its implementation; the rules for the training of the officials within the specialised units; the rules for the training of the other employees; and other requirements depending on the characteristics of the activities of the obligated persons.

887. The on-site inspections are carried-out in accordance with the Manual on performing on-site inspections on obliged persons from 2012 stipulating that the inspections shall be: incidental, planned and thematic. Incidental inspections shall be the one carried out pursuant to a motivated request in writing from another SANS directorate, a supervisory body or another state body, as well as after performing an analysis of either a submitted Suspicious Transactions Report (STR), or of a request received by a foreign financial intelligence unit requiring urgent and timely actions to be taken. Planned inspections shall be carried out by officials of FID-SANS on their own, as well as together with bodies designated by special legislation to control the persons obliged to report under the LMML, namely Bulgarian National Bank (the Banking Supervision Department), Financial Supervision Commission, National Revenue Agency, State Commission on Gambling etc. The thematic inspections shall follow a planned inspection and shall cover the manner of implementation of specific requirements under the LMML.

888. During the on-site inspections the FID-SANS officials shall request the necessary documents and shall check *i.a.:* the manner of responding to the recommendations of previous on-site inspections; adoption of internal AML/CFT rules and procedures; the designation pf responsible persons for the implementation of the AML/CFT measures; the existence of a register/log on suspicious and reported transactions and its content; the existing procedure of identification of clients; checks (random) to determine whether any risk assessment is carried out (in compliance with the Art.4, Para 16 of the LMML) concerning some categories of clients or business relations and whether there have been taken extended CDD measures in compliance with Art. 8, Para 3 of the RILMML; checks on the extended measures for special monitoring on high–risk clients been taken; the manner if identifying the natural persons who are the beneficial owners of the client – legal person and the documentation required; the manner of processing and storing the information and documents about any client and relevant operations etc.

889. Customer Due Diligence is a major element of the internal rules of the obliged entities and the Bulgarian authorities informed the evaluators that the inspections first evaluate the level of implementation of identification requirements under all cases specified in Art. 4 of the LMML, as well as the provisions regarding the identification of situations representing lower or higher ML/FT risk and the application of adequate measures accordingly.

890. The practical collaboration and cooperation between the FID-SANS and the general supervisors is regulated through *Instructions for cooperation and information exchange* which are agreements between institutions. Such agreements have been signed with FSC and NRA. The MoU with BNB has not been updated since 2003 when the FIU was part of the Ministry of Finance which in the context of join supervision might negatively impact effectiveness.

891. The evaluation team welcomes the creation of the SSD within the BNB. The scope of the supervisory actions of SSD has been more focused on general assessment of the relevant procedures, including checks for the compliance of examinees with the requirements of the LMML. The SSD of BNB would benefit in having more resources for targeted AML/CFT on-site supervision.

892. During the on-site interviews, the NRA, in its capacity of supervisory authority for exchange offices, demonstrated a marginal awareness and involvement for AML/CFT issues. Monitoring their turnovers in real time and random checks done on the spot, supplemented by one joint inspection with the FIU, appears not to be sufficient to ensure effective supervision over the exchange offices.

893. The FSC has integrated its AML/CFT responsibilities into its overall supervisory framework. As such, there is no dedicated resource or pool of expertise available.

Recommendation 17 (rated LC in the 3rd round report)

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

894. The range of sanctions for infringements of provisions of the LMML that are available to FID-SANS include:

- The range of fines applicable for Administrative breaches for non-compliance pursuant to Art. 23[50] of the LMML under which the maximum fine is 50,000 BGN (€25,000);
- The power to compel the undertaking of concrete steps by the obligated persons in case of infringements pursuant to Art. 19 of the LMML;
- The power to issue written warnings and recommendations with regard to infringements established during the on-site inspections pursuant to Art. 32e, Para. 7, Item 21 of the RILSANS;
- The power to withdraw a license or deregister an entity/person pursuant to Art. 19 of the LMML;
- The power (part of off-site inspections) to refuse endorsement of the internal rules of the reporting entities in case: they do not comply with the AML/CTF measures, they have not been adopted at an adequately high managerial level; or are not sufficient to achieve the results desired through the AML/CTF. The internal rules are consequently returned for correction and report back within a legally defined timeframe. This mechanism is stipulated in Art. 19 of the RILMML.

895. According to Art. 24 of the LMML the protocols (bills of infringements) establishing violations shall be drawn up by officers of the Ministry of Finance or of the SANS, while the penal decrees shall be issued by the Minister of Finance or the Chairperson of the State Agency for National Security, or by officials duly authorised by them for that purpose. The preparation of statements, the issuance, appeal and execution of penal orders shall be done pursuant to the procedure specified in the Law on Administrative Violations and Sanctions.

896. Criminal sanctions are also possible pursuant to Art. 253b of the Criminal Code. This article provides that any official who violates or fails to comply with the provisions of the LMML shall be punished, in cases of significant impact, with deprivation of liberty for up to three years and a fine of BGN 1,000 (€500) to BGN 3,000 (€1,500), unless the deed does not constitute a more serious crime.

897. Art. 152, (1) of the LCI provides that whoever commits or permits the commitment of a violation under the LCI or the regulatory acts governing its enforcement, provided the act does not constitute a crime shall be sanctioned by a fine from BGN 1,000 to BGN 4,000 and in case of

[50] A person who commits a violation or allows commitment of a violation pursuant to Articles 4, 5, 6, 7, 8, 9, 13 and 15a, or refuses to cooperate pursuant to Article 17, Paragraph (7) or to provide free access to the office premises of the persons pursuant to Article 3, Paragraphs (2) and (3), or to submit the required documents or evidence pursuant to Article 17, Paragraph 8, shall be punished by a fine of BGN 500 to BGN 10,000, unless such an offence constitutes a crime.

(2) A person who commits a violation or allows commitment of violation pursuant to Articles 11, 11a and 14, shall be punished by fine of BGN 5,000 to BGN 20,000, if the offence does not constitute a crime.

(3) A person who commits, or allows another to commit a violation pursuant to Article 16 shall be punished by fine of BGN 200 to BGN 2,000.

(4) Where a violations under paragraphs (1), (2) and (3) has been committed by a sole proprietor or a legal person, financial sanctions shall be imposed to the amount of BGN 2,000 to BGN 50,000.

(5) If a person commits or allows a violation under this Act or the statutory acts on its application to be committed, outside of cases under Paragraphs 1-4, shall be imposed a fine of BGN 500 to BGN 2,000.

(6) When the violation under Paragraph 5 has been committed by a sole proprietor or a legal person, financial sanction to the amount of BGN 1,000 to BGN 5,000 shall be imposed.

repeated violation – from BGN 3,000 to BGN 12,000. However, Art. 152, (2) of the LCI provides that if the infringer under Art. 152, (1) of the LCI is a bank, it shall be sanctioned by a financial penalty from BGN 50,000 (€25,000) to BGN 200,000 (€100,000), and in case of repeated violation – from BGN 200,000 (€100,000) to BGN 500,000 (€250,000). Art. 73 (1) of the LCI does include as a requirement that banks shall adopt and regularly review systems for prevention against the risk of money laundering.

898. Although Art. 138 of the Law on Payment Services and Payment Systems (LPSPS) sets out penalties for administrative breaches, the Act itself does not directly contain any AML/CFT requirements. However, Art. 29 (6) of the LPSPS stipulates that if the BNB is informed by the competent authorities of the host Member State that they have reasons to suspect that a payment institution authorised in Bulgaria will use or uses a branch or an agent for the purposes of money laundering or financing terrorism, or that using an agent or establishing a branch may increase the risk of money laundering or financing terrorism, the BNB may refuse to register the branch or agent or delete an already effected registration. In case of non-compliance the banks, PI, EMI and FI registered by BNB are also subject to penalties and supervisory measures determined in Art.122 - 125 LPSPS.

899. FSC has no powers to impose sanctions on AML/CFT breaches but only to withdraw licence or refuse granting a license for the specific activity. The FSC has issued two refusals for granting a license for activity of a management company and one refusal for granting a license for activity of an investment intermediary on the ground that the resources used for the contribution made to the capital of the companies had unclear origin.

900. For the period 2007–2012 a total of 68 insurance entity licenses have been withdrawn. These withdrawals however are not based on violations of the LMML and the LMFT. For the period 2007-2012 there are no refusals for issuing a license for a pension insurance company for performing activity on supplementary pension insurance and no refusals for issuing of authorisation for managing of pension fund.

901. The following table sets out the sanctions that were imposed by FID-SANS as a result of its on-site inspections.

Table 28: Administrative sanctions imposed by FID-SANS

Year	On-Site Inspections		
	Number	Bills of Infringements	Sanctions (BGN)
2008	74	51	110,500
2009	87	157	163,200
2010	58	141	302,500
2011	93	58	199,000
2012*	79	31	70,300

*30.09.2012

Table 29: Sanctions imposed by the FID-SANS to banks (BGN)

	2008	2009	2010	2011	2012
Number of AML/CFT violations identified by the supervisor	3	0	13	3	5
Type of measure/sanction					
Written warnings and/or recommendations	1	0	0	1	1
Fines	0	3	0	7	3
Withdrawal of license	-	-	-	-	
Total amount of fines	0	60,000	0	31,000	6,000
Number of sanctions taken to the	0	3	0	3	0

court (where applicable)					
Number of final court orders	0	3	0	3	0

902. According to the Bulgarian authorities, the following violations of the AML/CTF legislation were found during on-site inspections: no declaration of the origin of funds; incomplete identification or no declaration for the origin of funds; record keeping failing; failure to report suspicion on a timely basis and cash threshold transactions not reported.

Table 30: Sanctions imposed by the FIU to financial institutions (BGN)

	2008	2009	2010	2011	2012
Number of AML/CFT violations identified by the supervisor	7	5	3	15	0
Type of measure/sanction					
Written warnings and/or recommendations	4	4	0	3	1
Fines	10	7	7	8	7
Withdrawal of license	-	-	-	-	-
Total amount of fines	29,000	38,000	20,000	16,000	14,000
Number of sanctions taken to the court (where applicable)	7	6	4	4	2
Number of final court orders	7	6	3	1	0

903. The most common breaches were: failure in CDD requirements, failure to report connected transactions; operation not suspended despite incomplete identification or no declaration for the origin of funds; no declaration for the origin of funds; lack of identification of the beneficial owner; failure to report suspicion on a timely basis; cash threshold transactions not reported; no internal rules within the legally specified timeframe.

Table 31: Sanctions imposed by the FIU to insurers and insurance intermediaries (BGN)

	2008	2009	2010	2011	2012
Number of AML/CFT violations identified by the supervisor	5	7	18	2	10
Type of measure/sanction					
Written warnings and/or recommendations	0	1	0	2	0
Fines	1	3	17	10	0
Withdrawal of license	-	-	-	-	-
Total amount of fines	10,000	15,000	77,000	24,000	0
Number of sanctions taken to the court (where applicable)		3	7	8	0
Number of final court orders	NA	3	6	1	0
Average time for finalising a court order					

904. The following violations of the AML/CTF legislation were found during on-site inspections: no declaration for the origin of funds; lack of identification of the beneficial owner; operation not suspended despite incomplete identification or no declaration for the origin of funds; no internal rules within the legally specified timeframe; cash threshold transactions not reported; no internal rules within the legally specified timeframe.

Table 32: Sanctions imposed by the FIU to investment intermediaries (BGN)

	2008	2009	2010	2011	2012
Number of AML/CFT violations identified by the supervisor	4	12	6	4	2

Type of measure/sanction					
Written warnings and/or recommendations	0	3	0	0	4
Fines	3	7	1	4	0
Withdrawal of license	-	-	-	-	
Total amount of fines	9,000	29,000	1,000	16,000	8,000
Number of sanctions taken to the court (where applicable)	3	4	1	4	1
Number of final court orders	**3**	**2**	**1**	**4**	**0**

905. The following violations of the AML/CTF legislation were found during on-site inspections: operation not suspended despite incomplete identification or no declaration for the origin of funds; no declaration for the origin of funds; lack of identification of the beneficial owner; record keeping failures; no internal rules within the legally specified timeframe; cash threshold transactions not reported.

Table 33: Sanctions imposed by the FIU to pension insurers and health insurers (BGN)

	2008	**2009**	**2010**	**2011**	**2012**
Number of AML/CFT violations identified by the supervisor	0	2	6	0	0
Type of measure/sanction					
Written warnings	0	0	0	1	1
Fines	0	4	1	5	0
Withdrawal of license	-	-	-	-	-
Total amount of fines	0	12,000	3,000	12,000	0
Number of sanctions taken to the court (where applicable)	0	4	0	2	0
Number of final court orders	0	4	0	0	0
Average time for finalising a court order					

906. The following violations of the AML/CTF legislation were found during on-site inspections: lack of identification of the beneficial owner; operation not suspended despite incomplete identification or no declaration for the origin of funds; no cash threshold reporting within the timeframe under the RILMML.

907. All of the above sanctions were levied against legal persons. At the time of the on-site visit, no sanctions had been taken against directors or senior management of legal persons.

908. As described above, the BNB is also authorised to impose sanctions for AML/CFT breaches as a result of its inspections on banks, as demonstrated in table below:

Table 34: Supervisory measures imposed by BNB

Year	**Number of inspections in banks**	**Sanctions**
2008	21	7
2009	23	6
2010	13	4
2011	20	5

909. The evaluation team was advised that no serious breaches of the AML/CFT Law were found as a consequence of these inspections. The written warnings which were issued were mainly related to improving the monitoring systems in respect of PEPs or persons from high risk jurisdictions. No infringements of the law were established when PI or EMI were inspected.

910. The FSC has no prerogatives to impose sanctions for AML/CFT matters. If the FSC has suspicions it has the obligation to provide information to the FID-SANS. The FSC may revoke the license issued upon FID-SANS sanctions.

911. Although the Bulgarian authorities are empowered with a wide and comprehensive range of sanctioning measures, which appeared to be applied in a number of cases as corrective measures on compliance issues, the evaluators are of the opinion that the maximum fine of BGN 50,000 (€25,000) cannot be regarded as sufficiently dissuasive for the financial institutions, especially for the major ones. The sanctions imposed to the financial sector are not published.

Designation of Authority to Impose Sanctions (c. 17.2)

912. The designated authorities, BNB, and FID-SANS (as described under R 29.4), are both empowered to apply sanctions during the inspections depending on the nature of requirement that was not complied with. The other supervisory bodies (FSC and NRA) can only inform the FIU if in the course of a prudential supervision mission, an AML/CFT breach was identified and in this case the FIU will impose the respective sanction.

913. BNB may issue sanctions and impose penalties based on Art. 103 (2) and Art.152 of the LCI and Art.19 (2) of the LMML for bank institutions and their directors or senior management. The same provisions apply in cases of registered non-banking financial institutions. The corrective measures for PIs and EMIs are determined in Art.s121-125, 138 of the LPSPS. The entities that are supervised or registered by BNB are subject to penalties imposed by FID-SANS, upon the written request by FID-SANS, or on its own initiative.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

914. The sanctioning powers set out above apply to directors and senior management of financial institutions. Criminal sanctions are possible pursuant Art. 23 of the LMML (that makes reference to "a person who commits a violation") and Art. 253b of the Criminal Code.

915. However, the assessors noted that, no financial sanctions had been applied to directors and board members of supervised entities. This could indicate the limited effectiveness of the sanctioning regime and that its practical implementation needs to be revised in order to meet the criterion.

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)

916. The BNB is the main prudential supervisory authority in Bulgaria and in its organisational framework covers the necessary activities to assure compliance of most of the financial sector and the application of the AML/CFT regulations as well as other applicable rules.

917. FID-SANS exchanges information with the supervisory authorities for prudential supervision of the financial institutions on a regular basis. This includes exchange of information in regard to the licensing of financial institutions as well as in regard to changes that occur to the ownership and management of these entities.

Bulgarian National Bank

918. Before starting business in Bulgaria, a bank (credit institution) must obtain a license from the BNB. The establishment, the management, the licensing and withdrawal of a license of a bank is defined in Chapters 2 and 3, LCI. The shareholders and managers must meet the requirements provided in the LCI and the relevant ordinances.

919. The origin of funds for setting up financial institutions (other than credit institutions) and the fit and proper criteria are determined for a list of activities under Art.3 of the LCI. In addition, the

BNB has issued Ordinance No 26/2009 defining the registration process. A substantial part of it is the assessment of the origin and transparency of capital of such institutions before being registered. According to art. 6 of the Ordinance No 26 the applicant for a licence to act as a financial institution should submit to BNB a declaration on the origin of the funds used to make contributions for acquiring subscribed shares, respectively against participations in the applicant's capital.

920. The LCI defines the criteria for fitness and properness of shareholders holding 3% and above 3% and for approving the holding equal and above 10 %, 20%, 33% and 50% of the bank capital (Art.s 28-28a of the LCI).

921. On the share-holders, the BNB shall carry out an assessment based on the documents and information provided by the proposed acquirer, as well as on the basis of other information and documents at disposal. The approval is issued, after analysis on the influence of the proposed acquirer on the credit institution in order to ensure its sound and prudent management and on the basis of the assessment which shows suitability and financial soundness of the acquirer.

922. The assessment shall be based on a number of criteria *i.a.:* the reputation of the proposed acquirer; the reputation and experience of any person who will direct the business of the bank as a result of completion of the proposed acquisition; the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged etc.

923. The ML/FT risk is part of the above mentioned assessment and the BNB should establish whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk.

924. The relevant documents for *"fit and proper"* evaluation are further described in detail in a Regulation No 2 issued by BNB (Art.s 6-10) according to which, any natural person, having subscribed for three per cent or over three per cent of the voting shares, shall submit the following documents *(i.a.)*: identification documents, profession or occupation; description of the professional activity of the person for the last five years; data on the amount of the income received by the person and taxes paid for the last five years; a certificate proving no previous conviction or, in case of a foreign person, another document to the same effect; documents about the available funds in the banks, where the person has accounts.

925. Any natural person elected as a member of the management board, the board of directors or the supervisory board shall submit similar information and documents in order to obtain the an approval under the Law on Credit Institutions.

926. Further on, the *"fit and proper"* requirements are detailed in Regulation 20/2009[51], Regulation 26/2009[52] and Regulation 16/2009[53] issued by BNB according to which, the banks' and other financial institutions managers shall: have university education; at least three years professional experience in the field of economics, law, finance and computer science; have not been a member of a managing or controlling body, or general partner in a company, which has been terminated by bankruptcy, if creditors have not been paid; has not been deprived of the right to hold positions of financial responsibility. A manager of a financial or credit institution must not been convicted of a premeditated crime of general character, unless rehabilitated.

927. According to the Bulgarian authorities, the assessment procedure of the expertise and integrity of the directors and senior management includes review, analysis and evaluation of the documents relating to their type and content.

928. The BNB requires managers of banks and FIs to complete fit and proper questionnaires at the time of application or whenever any change in the initial data occurs or whenever the BNB

[51] applicable for banks
[52] applicable for financial institutions
[53] applicable for Payment Institutions, Electronic Money Institutions and Payment System Operators

decides to update the information. The update is usually done over a year cycle. If the managers do not satisfy the requirements BNB is empowered to refuse the specific person to be registered as a manager in accordance with Art. 14 and Art.16 of the LCI.

929. Due to insufficient transparency of the capital or inadequate fit and proper BNB has refused the initial registration of 7 entities applying for registration as financial institutions and 3 entities applying for a license as a payment institution.

930. According to Art. 3 (2) of the LCI, financial institutions which are not subject to licensing (authorisation) or registration under another law shall be entered into a Register of the BNB in order to be able to operate. The Register shall be public and a certificate shall be issued upon registration in it. Thus all financial institutions operating in Bulgaria are subject to the licensing or registration requirement.

931. The legal provision for licensing the payment service providers and e-money institutions are similar to those applicable for the credit institutions.

Financial Supervision Commission

932. The FSC is entitled to assess the origin of funds for the establishment of an investment intermediary and a management company and the fit and proper criteria as provided in the Art.s11, 13 and 26-26d of the Law on Markets and Financial Instruments (LMFI) which stipulates the conditions for granting and withdrawal of licence for designated services. The LMFI regulates also the rights of FSC to assess the conditions to pursue the business in general. Additional requirements on the fit and proper criteria required for the managers of a financial institution are listed in Art. 5 of the Ordinance 26/2009.

933. According to Art. 11 of the LMFI, a person who is a member of the governing or control body of the investment intermediary or manages its activity must comply with a series of criteria *i.a.*: have higher university education and professional experience; not have been sentenced for an intentional crime of general nature; not have been member of a management or supervisory body, or unlimited liability partner in a company, for which bankruptcy proceedings have been instituted; not have been deprived of the right to occupy positions involving financial responsibilities etc.

934. Similar *"fit and proper"* requirements are provided by the Insurance Code (Art. 13, 14) and Social Insurance Code (Art. 121e).

935. Art. 13 of the LMFI provides that in order for one or more investment services and activities to be carried out by way of occupation by persons which are not banks, a license from the Commission is being required. In order to obtain the licence, a series of documents is necessary, including the particulars for the persons who have direct or indirect qualifying holding[54] in the company. Those persons shall present written statements according to a model form set by the deputy chairman of the FSC, about the origin of the funds with which the payments against the subscribed shares have been made.

936. A substantial part of the licensing procedure of the FSC is the assessment of the origin and transparency of capital of investment intermediaries before registration. Strict requirements regarding the good reputation, the absence of previous infringements of the law, financial stability and professional background and qualification are implemented for members of the managing or controlling bodies, proxies (both natural persons and legal entities) and qualified shareholders are provided for in Art. 26-26d of the LMFI.

937. A license from the FSC is also required for the performance of an activity as a management company. During the licensing proceedings an essential part is the assessment of the good

[54] "Qualifying holding" means any direct or indirect holding which represents 10% or more of the capital or of the voting rights in the general meeting according to LMFI Additional provisions 1.21

reputation, the absence of previous infringements of the law, financial stability and professional background and qualification of the applicant.

938. According to Art. 94. of the Collective Investments schemes and other undertakings for collective Investments Act, a management company shall notify the Commission within three business days of the election of a new member of the company's management or supervisory body or the authorisation of another person, who is to effectively manage the company or enter, independently or jointly with another person, into transactions on the company's behalf, and shall enclose the required data and other required documents about the person. The managers or controlling bodies shall inform the Commission of any change in the declared by them circumstances within three business days of the change. If they not meet the requirements, the Deputy Chairperson of the Commission may obligate the management company, to dismiss such person from office or to elect another person as a member of the relevant management or supervisory body of the company.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

939. The BNB is the licencing authority for e-money institutions (EMI) and payment institutions (PIs). The Licensing procedure is implemented for payment institutions (PI) and e-money institutions (EMI). The procedure is in compliance with the EU Directive 2007/64/EC on payment services in the internal market and Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

940. On the national level, Art. 10 (4), of the LPSPS defines the licensing procedures for EMIs and PIs and sets out the requirements for the fitness and propriety of management and shareholders. To be granted licence as a payment institution, the applicant must concurrently comply with a set of conditions *i.a.*: to be registered or be in the process of establishing a limited liability company or a joint-stock company; to have paid the required capital; the origin of the company's paid-in capital or the funds used to acquire shares in the case of transfer of shares shall be transparent and legal; to apply reliable rules to ensure robust governance; to have effective procedures to identify, manage, monitor and report the risks; to have adequate internal control mechanisms, including sound and effective administrative and to have a programme of anti-money laundering measures.

941. Article 10 (4) item3 requires that the origin of the paid-in capital or the funds used to acquire shares in the case of transfer of shares shall be transparent and legal.

942. The persons managing and representing the applicant company and the members of its management and supervision bodies, including the representatives of legal entities, must possess the appropriate knowledge and experience and have good reputation.

943. Further details on *"fit and proper"* requirements (similar to the ones applicable for the credit and financial institutions above) are provided in Art.3 and 4 of Regulation No 16/2009 issued by BNB.

944. The exchange bureaux are not subject to licensing subject to only to registration with the NRA. For their entry in the registry, the persons shall file a written sample request which shall contain: the identity and address details of the person making the registration request, the identity of persons, representing the Vendor pursuant to their Registry in the Registry Agency; unified identification code determined by the Registry Agency, respectively unified identification code under BULSTAT; open bank accounts in this country and abroad (account number, name of the bank and bank code); exact addresses of the sites for exchange of currency etc...

945. According to the provisions of the Ordinance No 4 issued by Ministry of Finance, the registrar reviews the legality of the official documents submitted according to the Art. 6 of the same Ordinance. Whenever there exist grounds for entry *i.e.* all the requested information is provided, the respective entry will be made. In case of eventual change of registered data the person shall undertake to advise the NRA within 14 days.

946. The request for entry in the NRA registry shall be complemented by the necessary documents in original or officially verified copy which will include conviction office certificates of the natural persons - vendors, the members of the management and the control bodies and unlimited partners in the legal entities. Declarations by the natural persons - vendors, as well as by the members of the management and the control bodies and unlimited partners in the legal entities shall certify the following circumstances:

a) that the person has not been a member of a management or control body or unlimited partner in a company terminated for insolvency, if non-satisfied creditors were left;
b) that during the last five years, preceding the date of the resolution for declaration of a bank or other financial institution in insolvency, the person has not been a member of its management or control body;
c) that the person has not been deprived of the right to financially responsible occupation;
d) that the person has not been declared bankrupt, respectively insolvent or in compulsory liquidation as a Sole Proprietor during the last five years;
e) that against the person have not been instigated any pre-court proceedings for general crimes;

947. The Bulgarian postal services offer domestic money remittance services which is executed through its own network. Also, the Bulgarian Posts acts as the agents to the MoneyGram and respective services were provided in approximately1000 service points. Generally the Postal Services providers are subject to the FID-SANS supervision. As reported during the on-site visit there has been only 2 examinations within the service points.

Licensing of other Financial Institutions (c. 23.7)

948. The licencing regime for the e-money institutions is described above. The supervisory regime of the e-money service provider could not be assessed as their supervision was just implemented by the BNB starting 2011.

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); Statistics on On-Site Examinations (c. 32.2(d))

FID-SANS

949. The second department of FID-SANS performs its functions related to the AML/CTF supervision of the obligated persons using 7 officials.

950. In 2011 a new system for risk analysis of the obliged entities was introduced thus providing the basis for a more efficient AML/CTF supervision. Furthermore, in 2011 FID-SANS started performing, in addition to the planned inspections based on risk analysis of the general reporting mechanism, the volume of entities etc., also specific inspections (thematic and incidental) based on the analysis of concrete information received pursuant to the LMML and the LSANS and related to potential infringements of the AML/CTF system.

951. On-site inspections have been performed on the basis of the abovementioned requirements of the legislation as well as on the basis of a methodology for the planning of the inspections. The methodologies have been regularly updated – firstly in 2008, again in 2010 and finally in 2012. These updates have taken into account the developments in the field.

952. In addition, since 2011, quarterly and annual risk analysis of the obliged entities have been undertaken by FID-SANS based on a methodology adopted in May 2011. This methodology provides a means of general assessment of the situation (for each category of Obliged persons). The risk analysis serves as a guide for the planning of inspections and the focusing of the training activities of FID-SANS.

953. In 2011 the control over the obliged persons was strengthened. In addition to the risk assessment process outlined above, a new system of planning of the thematic and incidental inspections was introduced and the number of on-site checks of the obliged persons was increased.

954. In accordance with Art 17. (8) of the LMML, during the on-site inspections, FID-SANS is entitled free access to office premises and to compel the provision of all necessary data and documents required in order to check the compliance with the AML/CTF measures. The Bulgarian authorities informed the evaluators that the average time for an on-site inspection is one week but depending on the situation it might be prolonged. The bills of findings are prepared by the control units of the FIU while the bills of sanctions are issued by the Chairman of the State Agency for National Security, or by officials duly authorised by him/her.

Table 35: FID-SANS inspections (total)

Year	On-Site Inspections	Off-Site Inspections
2008	74	725
2009	87	933
2010	58	653
2011	93	1,668
2012	49	3,219

Table 36: FID-SANS inspections on other financial institutions

	2008	2009	2010	2011	2012
Banks	1	0	3	4	6
Financial institutions, incl. former financial houses	0	3	2	1	3
Currency exchange and remittance	8	4	3	4	12
Postal services	1	1	0	1	1

955. In addition to the forgoing, the following joint inspections were carried out.

Table 37: Number of On-Site Inspections jointly with the authorities for supervision

	2009	2010	2011[55]	30.9.12
Banks (FID-SANS & BNB)				1
Exchange bureaus and the other payment service providers (FID-SANS & NRA)				5
Insurers, Re-insurers and insurance intermediaries (FID-SANS & FSC)	4	2		2
Mutual investment schemes, investment intermediaries and management companies (FID-SANS & FSC)	2	2		2
Pension insurance and health insurance (FID-SANS & FSC)	2	1		2

Bulgarian National Bank

956. Banks and financial institutions licensed or registered by BNB are subject to constant on-site AML/CFT examinations conducted by BNB according to the Art 3a of the LMML or by FID-SANS according to Art.17 (2) of the LMML separately and in some cases jointly. BNB examines banks over a period of 1.5-2 years and the other financial institutions on risk-based analysis.

[55] The authorities explained that the reason for not having any joint inspection in 2011 is the fact that the FIU moved from one premise to another

957. The usual number of on-site inspections conducted with banks varies between 17 and 20 per year depending on the size and complexity of the banks. The average time of the on-site inspections varies from 2 weeks up to one month. Every bank is inspected off-site by questionnaires and information collected and analysed by BNB.

958. All the banks are subject to annual off-site inspections. The same approach is implemented for payment institutions (PIs) and electronic money institutions (EMIs). Based on a risk assessment, the BNB drafts and approves annual inspection plans for examining the supervised entities on-site. If necessary, and on the ground of an official request by a competent authority, the BNB may perform targeted inspections.

959. The number of inspections that BNB has performed annually is presented in the table below.

Table 38: BNB AML/CFT on-site inspections on Banks, payment institutions and electronic money institutions

Supervised institution	2008	2009	2010	2011
Banks	21	23	13	20
PIs		3	8	8
EMIs				2

960. The following inspections of credit institutions (also performing remittance), financial institutions (including institutions engaged in remittance services, currency exchange bureaus, money remittance agents and postal services transferring money) were inspected for the period 2008-2012 (including also all planned until Sept. 2012)

Financial Services Commission

961. Inspections performed by the FSC also include compliance with the LMML provisions by the entities subject to supervision. The average time for the on-site inspection is 45 working days. In case of finding any violation, FSC should inform the State Agency for National Security, as it should forward to them an excerpt of the respective part of the statement of findings according to the Art. 3a. (2) of the LMML.

962. For the period 2007-2011, all pension companies have been inspected at least once. Social Insurance Supervision Division gave 12 recommendations and sent 3 reports to SANS.

963. Art. 19 of the FSC Act requires and empowers the FSC to conduct both on-site and off-site inspections. The powers of the FSC under Art. 19 include the right to enter premises, to examine all necessary documents and receive explanations. There is, however, no requirement in the FSC Law for the FSC to consider AML/CFT compliance during its on-site or off-site inspections.

Table 39: On-site inspections conducted by the FSC which included AML/CFT issues

	2007	2008	2009	2010	2011
Investment Supervision Division	46	31	50	48	15
Insurance Supervision Division	101	45	68	72	71
Social Insurance Supervision Division	7	8	8	6	5

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

964. The NRA is the competent authority for registration and for the control of the currency exchange bureaus as per the Currency Law. The employees from the Operational Checks Departments of the Control Directorates of the NRA's Territorial Directorates make checks on the spot in the currency exchange sites. For AML/CFT purposes, the FID-SANS is the authority empowered to conduct supervision.

965. From 1 April 2012 the operation of the currency exchange bureaus was also controlled by means of monitoring their turnovers in real time via the implemented remote connection of sites' fiscal devices to NRA.

966. For the period 2008-2012, the NRA conducted 1,184 checks of currency exchange bureaus (in 2008 - 473 checks, in 2009 - 258 checks, in 2010 - 130 checks, in 2011 - 178 checks, and in 2012 - 145 checks). Statistics on the on-site inspections on AML/CFT compliance, carried-out on exchange bureaux by FID-SANS are provided under Recommendation 32 below.

967. The Bulgarian postal services offer domestic money remittance services which is executed through its own network. Also the Bulgarian Posts acts as the agents to the MoneyGram and respective services were provided in approximately 1,000 service points. Generally, the Postal Services providers are subject to the FID-SANS supervision for AML/CFT purposes. As reported during the on-site visit, there have been only 2 examinations within the service points which do not seem to represent a fully satisfactory supervision process.

Supervision of other Financial Institutions (c. 23.7)

968. The mutual aid funds exist in Bulgaria as a vehicle established only by the members and aiming to assist only those members of cooperative societies (pursuant to the Law on Cooperative Societies). The mutual funds are obliged entity under Art. 3, Paragraph 2, Item 8 of the LMML and are subject to both on-site and off-site supervision conducted by FID-SANS.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

969. Statistics on the overall supervisory activity deployed by FID are maintained as described under the essential criterions above.

970. The tables below emphasis the on-going supervisory activity in the evaluated interval.

Table 40 – Total number of Off-Site Inspections financial institutions[56]

Category of Reporting Entity	Number of Off-Site Inspections				
	2008	2009	2010	2011	2012*
Credit and financial institutions, exchange bureaux and payment service providers	53	43	114	114	39
Insurers and insurance agents	15	15	21	17	111
Mutual investments schemes	50	12	8	5	12
Pension funds and health insurance	2	5		2	10
Persons lending cash against pledge of chattels	21	336	219	170	47
Postal operators	2		3	3	2
Leasing entities	8	19	49	11	13
Total	151	430	414	322	234

* To 30 June 2012

Table 41 – On-Site Inspections financial institutions[57]

Category of Reporting Entity as per Art. 3, Para. 2 LMML / Number of On-Site Inspections	2nd half 2008	2009	2010	2011	2012*
Banks	1		3	4	6
Financial Houses, Financial Institutions		3	2	1	3
Exchange bureaus and the other payment service providers;	8	4	3	4	12
Insurers, Re-insurers and Insurance	2	5	4	1	20

[56] As defined by FATF Glossary
[57] Idem

intermediaries					
Mutual investment schemes, investment intermediaries and management companies;	4	4	5	4	3
Pension insurance and health insurance;	1	2	2	2	2
Legal persons which have employee mutual aid funds;		1	2		2
Postal operators licenced to perform postal money orders under the Postal Services Act;	1	1		1	1
Market operator and/or regulated market;				2	
Leasing enterprises;	1	7	2	1	
Total number of On-Site Inspections:	18	27	23	20	47

* To 30 September 2012

Table 42 – Joint Inspections

Category of Reporting Entity as per Art. 3, Para. 2 LMML / Number of On-Site Inspections jointly with the authorities for supervision	2009	2010	2011	2012*
Banks;				1
Exchange bureaus and the other payment service providers;				5
Insurers, Re-insurers and Insurance intermediaries	4	2		2
Mutual investment schemes, investment intermediaries and management companies;	2	2		2
Pension insurance and health insurance;	2	1		2
Total number of joint on-site inspections:	8	5		12

** To 30 September 2012*

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

971. The FSC does not keep official statistics on formal requests.

972. FID-SANS has received the following requests for assistance from the supervisory authorities (BNB, FSC, NRA) in regard to the prudential supervision of the respective supervisor or in regard to potential breach of LMML (in all cases information was provided or further action was taken):

Table 43: Requests received by FID-SANS from/to supervisory authorities

Year	Requests from other supervisory authorities	FIU requests to other supervisory authorities
2008	13	No data available
2009	11	No data available
2010	10	No data available
2011	9	2
2012 (as of 28.06.2012)	10	4

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])

973. The licensing and registration process employed by the BNB and FSC are based on EU Directives and on best practices that takes into consideration the FATF Recommendations. Fitness and properness of both senior staff and capital providers is considered. There have been a number of instances whereby licences have been refused due to concerns over fitness and propriety and/or lack of transparency of capital.

974. The representatives of the BNB explained the evaluation team that once a person applies for a management position in a bank and receives supervisor's approval, she/he is subject to monitoring once every two years through questionnaires and interviews. Lower level management are checked only during the on-site visits. In addition, the shareholders of more than 3% of a bank's shares must submit every year to BNB an up-date of their investments and declare their financial status.

975. If the share is 10 % or more of the capital, the requirements become tighter. The LCI (Art.28) defines that any natural or legal person, as well as persons acting in concert, shall not, without the preliminary approval by the BNB, directly or indirectly acquire shares or voting rights in a bank licensed in the Republic of Bulgaria, if as a result of such acquisition their holding becomes qualifying or if this holding reaches or exceeds the thresholds of 20, 33 or 50 per cent of the shares. The information and documents to be submitted to the BNB for approval are listed in art.7, Regulation 2.

976. The FSC is responsible for the licensing and fit and proper assessment of securities and insurance agencies and brokers. The requirements and the procedures are similar to the ones for the credit institutions. Concerning the investment intermediaries and management companies, although the *"fit and proper"* legal provisions are largely in place, it is still unclear how the directors and senior management are evaluated in relation to their expertise and integrity in practice.

977. According to Art. 26e of the LMFI, the Deputy Chairperson of the FSC shall evaluate the acquisition or the increase of the qualified holding, respectively, in order to ensure the stable and prudent management of the investment intermediary. The evaluation shall be performed by applying the criteria, set in para. 2 of Article 26e of the LMFI, including whether well-grounded assumptions may be made that, in relation with the acquisition, money laundering or terrorism financing is or will be performed, under the LMML or the LMFT, or that the risk of such action will be increased.

978. Since 2007 the FSC has issued two refusals for granting a license for activity of a management company and one refusal for granting a license for activity of an investment intermediary on the ground that the resources used for the contribution made to the capital of the companies had an unclear origin.

979. The registration process of Exchange Bureaus by the National Revenue Agency does not include any assessment of the internal procedures regulating customer relations and implementation of compliance measures. The measures applied by the NRA do not provide the verification of beneficial owners or fit and proper tests for applicants of the share-holders of exchange bureaux.

All the AML/CTF control functions lay on the supervision department of FID-SANS. The Postal Services providers are subject to the FID-SANS supervision and only 2 AML/CFT examinations have been carried out.

980. BNB and FSC conduct both on-site and off-site reviews which include an examination of the supervised entities AML/CFT procedures. The assessment process is assisted by off-site request letters, interviews and questionnaires.

981. While the BNB has a dedicated division (SSD), the FSC verifies the AML/CFT compliance during their general supervision activities and appear to be more focused on prudential issues. To increase its capacity in AML/CFT matters, FSC has developed a handbook for the application of LMML and LMFT. When developing this handbook, the specifics of the activities of each type of supervised entities were taken into account. The Bulgarian authorities mentioned that in all on-site inspections performed by FSC, AML/CFT compliance issues are included.

982. The NRA, in its capacity of supervisory authority for exchange offices demonstrated a marginal awareness and involvement for AML/CFT issues. During the on-site interviews, the NRA representatives informed the evaluation team that there is no formal mechanism in place to describe how the AML/CFT issues should be covered. As a practice, in case a suspicion arises they would inform the FID-SANS.

983. Joint supervision were conducted by the FID-SANS together with the general supervisors, following a specific risk analysis. The risk analysis is used to select the category of entities to be supervised. In general, indications of involvement in VAT schemes, references in cash transaction reports and suspicion of other criminal activities would be a reason to start an examination. According to the procedure, the FID-SANS informs the other supervisors but, in order to avoid tipping off, it does not name the subject prior to the day of examination.

984. Such examinations, which have been led by law enforcement initiatives, are mostly undertaken to collect evidence for future police investigations and punishment. The role of the financial supervisors is limited to assess the compliance measures. In practice the findings of such examinations satisfy both sides, as in most cases the sanction imposed is also related to failure to adequately apply AML/CFT measures.

985. In practice, it appears that the law enforcement requirements take priority over compliance assessments. The evaluators consider that the supervisors should develop their own bespoke risk assessment models starting from the issuing of the methodological guidelines and systematic supervisory actions including targeted on-site as well as off-site examinations and analyses of the findings.

986. The inspections conducted by the supervisors have also contributed to raising awareness and the application of the required AML/CFT measures. In that respect, the FSC has publicly announced its findings in regard to established weaknesses in AML/CTF compliance of the supervised entities including instructions given to the supervised entities. The inspection activities of FID-SANS have also contributed to the effective implementation of the obligations of the financial institutions.

987. With regard to supervisory powers, all of the supervisors have adequate powers to fulfil their AML/CFT supervisory functions.

988. Art. 23 of the LMML provides for the mechanisms to impose sanctions on any person who violates the law. However, a large part of the sanctions imposed by FID-SANS based on findings of the inspection have been appealed and subsequently confirmed by administrative courts. According to an analysis made by FID-SANS, most of the appeals were made to the sole purpose of postponing the payment and it was emphasised that the number of sanctions challenged in courts is decreasing every year. In 2012, 75% of the fines were paid without appeal and only 10% from the challenged sanctions were revoked by the courts, with most of the appeals still pending.

989. A broad range of sanctions are available for administrative breaches including fines and withdrawal of licences. The financial penalties are set out in the LMML, at a maximum fine of 50,000 BGN (€25,000). This level does not appear sufficiently dissuasive as it was noted that the LCI allows for fines up to 500,000 BGN (€250,000) for other offences. However, the Bulgarian authorities informed the evaluators that in practice every violation of the LMML or LMFT carries a separate sanction and that the total level of fines might be much higher in case of multiple breaches, which would ensure both effectiveness and proportionality.

990. When assessing the effective application of the financial sanctions for AML/CFT breaches, a number of factors must be taking into consideration as the maximum fine provided by the legislation, the size of the financial market and the country's general economic situation. This assessment is not easy, but taking into consideration the factors above, the evaluators consider that the level of fines imposed by the Bulgarian authorities seems to be satisfactory.

991. During on-site interviews, the representatives of the private sector confirmed that they received regular inspections on AML/CFT issues which are considered as comprehensive. In particular, the obligated persons who have been the subject of sanctions endorsed that subsequently they had taken significant steps to ensure the proper application of the AML/CFT requirements.

992. Nevertheless it was noted that at the time of the on-site visit, all sanctions had been applied to legal persons, no sanctions having been applied to board members or senior management.

3.8.2 Recommendations and comments

Recommendation 23

993. The measures applied in order to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding management function appeared sufficiently applied. Specific measures are imposed to ensure that the directors and the management of the financial institutions are evaluated on the basis of fit and proper criteria.

994. Taking into consideration the universal competences the FID-SANS has on the AML/CFT supervision over the financial institutions, the supervisory actions of the BNB, FSC and NRA should provide more targeted input on the assessment of the AML/CFT compliance measures taken by the entities under their supervision. Consideration should be given to thematic reviews.

995. The NRA should focus more on AML/CFT matters and develop its supervisory activities in the field, in order to be able to assist the FIU in its supervisory obligations.

996. The monitoring system for compliance of AML/CFT measures on financial services provided by Bulgarian Posts needs to be enhanced.

Recommendation 17

997. The supervisory bodies should consider (where appropriate) extending the range of sanctions to directors and board members of supervised entities, in order to enhance the responsibility of the management in detecting AML/CFT deficiencies and shortcomings.

998. The maximum fine of BGN 50,000 should be reviewed as it is not considered sufficiently dissuasive. The authorities may consider the publication of sanctions imposed for AML/CFT breaches.

Recommendation 29

999. All of the supervisors have adequate powers to fulfil their AML/CFT supervisory functions.

Recommendation 30 (all supervisory authorities)

1000. Despite the application of off-site monitoring measures and risk-based approach for on-site examinations, recruitment of additional staff by BNB, FSC and FID-SANS with respect to

AML/CFT supervision will ensure better fulfilment of compliance standards by the obligated persons.

1001. The creation of the permanent body to represent the interests of the responsible authorities in the prevention and combating money laundering and terrorist financing would benefit the overall implementation of the National Strategy for Combating Money Laundering and achieving the mutual interest of the state agencies.

Recommendation 32

1002. Comprehensive statistics are kept by the Bulgarian authorities on supervision.

3.8.3 Compliance with Recommendations 23, 29 & 17

	Rating	Summary of factors underlying rating
R.17	**LC**	• Maximum fine of BGN 50,000 not dissuasive enough.
R.23	**LC**	• The National Revenue Agency does not maintain adequate market entry procedures for the exchange bureau; ***Effectiveness*** • The National Revenue Agency, in its capacity of supervisory authority for exchange bureaux, demonstrated a marginal awareness and involvement in AML/CFT issues; • Effective supervision on Post Offices not fully demonstrated.
R.29	**C**	

4. PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

1003. The LMML does not make any distinction in the application of the obligations under the Law between those obliged persons and entities that fall under the category of financial institution and DNFBPs. Art. 3 (5) 2 of the LMML covers a range of DNFBP beyond those specifically enumerated in FATF Methodology.

1004. The LMML and LMFT apply to all DNFBPs mentioned in the FATF glossary. Therefore the provisions described under R. 5 to R. 10 apply as well to DNFBPs.

1005. Dealers in precious metals and dealers in precious stones have been *de facto* excluded from the scope of the LMML with the introduction of the Law Limiting Payments in Cash, which prohibits any payments in cash above 15,000 BGN.

1006. A description of the DNFBPs operating in Bulgaria is set out in section 1.3 of this report.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1. Description and analysis

1007. The deficiencies identified for financial institutions are also applicable to DNFBPs. The following sections therefore only highlight sector-specific differences.

1008. Many of the systemic deficiencies noted in Recommendations 5-10 and other preventative Recommendations (described in Section 3 above) are applicable to DNFBP. According to LMML, the DNFBP, like the financial institutions, must: identify customers and beneficial owners; keep records; inform the FID-SANS of suspicious activity; check lists for terrorist financing; delay unusual business activities if possible; and develop internal procedures and units dedicated to AML/CFT compliance.

Recommendation 12 (rated PC in the 3rd round report)

1009. Bulgaria was rated Partially Compliant rating under the previous evaluation report, due to the following factors: several DNFBP lacked awareness and full knowledge of their obligations to perform CDD; the same deficiencies for PEPs as described under financial institutions were applicable; a list of domestic PEPs has been drawn up, but DNFBP did not routinely check the list; most DNFBP were unaware of the timing of CDD or how to conduct such process; record keeping was well observed by professional organisations, however, certain DNFBP record keeping was only for tax compliance purposes; record keeping requirements needed to be improved by casinos; no measures to prevent misuse of technical developments in certain DNFBP sectors; and it was not clear how the provisions on complex/unusual transactions were being implemented across the range of DNFBP.

Applying Recommendation 5 (c.12.1)

Casinos (Internet casinos / Land based casinos)

1010. Casinos are subject to the AML/CFT measures pursuant to Art. 3 (2) 7) and 4 (3) of the LMML. At the time of the on-site visit, 26 casinos were operating in Bulgaria. It should be noted that the opening of accounts is not permitted in Bulgarian casinos and financial activities (exchange or remittance) would require the licensing (or registration depending on the nature of activities) in accordance with the Law on Credit Institutions or the Law on Payment Services and Payment Systems.

1011. The obligation of identification is carried out in two cases according to Art. 4 (3) of the LMML when the client enters the casino (Art. 72 of the Law on Gambling), when a transaction or

deal is performed by the client above BGN 6,000 (€3,000). Verification of the clients' identity shall be done according to Art. 6 of the LMML.

1012. Individuals without identity documents are not admitted into gambling halls and casinos as set out under Art. 45. (2) 4) of the Law on Gambling.

1013. Identification is required to be carried out in accordance with the general requirements of Art. 6. of the LMML providing for the identification applicable to all obliged persons.

1014. The risk of money laundering through casinos is not considered very high in Bulgaria, taking into account that payment of each winning in cash is only allowed up the amount of BGN 5,000 (€2,500), where the amount of money won is higher, then payment is transferred into a bank account. Section VII of Chapter Three of the new Bulgarian Gambling Law, which entered into force on 1 July 2012, provides the conditions and the order of organising remote gambling games. According to this new Law, the organiser of internet casinos has to apply for a license. Remote (online) gambling is subject to the same requirements applicable to the other casinos as the obligation encompasses "all persons organising gambling games". Therefore identification is performed by organisers of remote gambling at the opening of relations (opening account etc.) as well as every time an operation is carried out or a deal is concluded above 6,000 BGN (about 3,000 EUR). The linking of the customer CDD information to the transactions is possible due to the implementation of the general CDD requirements through using electronic account and through the application of the additional measures reflecting the higher risk related to non-face-to-face relations. No remote gambling entities existed at the time of the on-site visit.

Real estate agents

1015. Real estate agents are considered obliged entities pursuant to Art. 3. (2) 29. of the LMML *"persons providing real property intermediation by occupation"* and they are required to comply with the requirements set out under R 5.

1016. During the meetings with the real estate agents it was highlighted that the sector is not as vulnerable to money laundering as it was previously considered. Since the Law on Limitation of Cash Payments has entered into force they cannot deal with high amounts of cash and almost all operations are conducted via bank transactions.

Dealers in precious metals and dealers in precious stones

1017. Dealers in precious metals and dealers in precious stones have been excluded from the scope of the LMML following the introduction of the Law on Limitation of Cash Payments, which entered into force in February 2011. Art. 3 of the Law on Limitation of Cash Payments states: *Payments in the territory of Bulgaria shall be made only via bank transfers or deposits to payment accounts where: their value is equal to or in excess of BGN 15,000 [€7,500] or their value is below BGN 15,000 where they are part of a financial consideration under a contract the value of which is equal to or in excess of BGN 15,000.*

1018. This prohibition also applies in the cases of payments in foreign currencies where their equivalent in Bulgarian levs is equal to or in excess of BGN 15,000.

Lawyers, notaries and other independent legal professionals and accountants

Notaries

1019. Notaries are considered obliged subjects as per Art. 3. (2) 11. of the LMML. As already stated, they are obliged to perform all the CDD requirements as any other obliged subject. The numbers of public notaries in Bulgaria have drastically decreased from the previous evaluation (from 1,561 notaries to 630 notaries).

1020. The on-site visit revealed that since the new Law on Limitation of Cash Payments, notaries are no longer considered as a particular risky sector for AML/CFT purposes, as parties are not permitted to exchange more than BGN 15,000 in cash.

Lawyers and other independent legal professionals

1021. Art. 3. (2) 28 of the LMML considers obliged persons those that provide by occupation, advice in legal matters, where they:

(a) Participate in the planning or performance of a client deal or transaction concerning: purchase or sale of a real property or transfer of a merchant's business, management of cash, securities, or other financial assets; opening or operating a bank account or a securities account; raising funds to incorporate a merchant, increase the capital of a company, extend a loan or for any form of raising funds for the business operations of such merchant; incorporate, organise operations or management of a company or another legal person, an offshore company, a company managed under a trust arrangement or any other such entity;
(b) Act for the account or on behalf of their client in any financial or real property transaction

1022. Recommendation 5 is applied to lawyers except the consideration of submitting a suspicious transaction report in case of failure to complete CDD (c5.15 b)).

Accountants and auditors

1023. Accountants were included as a category of obliged persons under Art. 3. (2) 31. of the LMML following the amendments of the Law of July 2011.

1024. Auditors are also subject to the LMML as stipulated under item 18. of the above mentioned article.

Trust and company service providers

1025. Trust and company service providers are obliged persons under Art. 3 (2) 30. of the LMML, and they are defined persons, whose occupation is to provide:

a) *management address, correspondence address, or office for the purpose of legal person registration;*
b) *legal person, offshore company, fiduciary management company or similar entity registration services;*
c) *fiduciary management services for property or person under letter b)*

Private enforcement agents

1026. This category was added to the list of obliges persons through the amendments of the LMML that took place in July 2011. The risk identified to this category is mainly related to the selling of property within the process of execution of court decisions related to the enforcement of civil claims.

Applying Recommendations 6, 8, 9, and 11 (c. 12.2)

1027. The LMML applies to DNFBP the same way as to financial institutions and the concept of PEPs is applicable across the sector, and the same strengths and weaknesses are present (see section 3.2).

1028. Measures for preventing the misuse of technological developments have been implemented in Bulgarian legislation, and are applicable to all obliged persons including DNFBPs.

1029. Recommendation 9 applies only to some financial institutions and not to DNFBPs.

1030. The LMML has no specific requirements to pay special attention to complex and unusual transactions, as described under R.11. Nevertheless, some of the DNFBPs met, assured the assessors that, in practice, special attention is paid in cases of complex and unusual transactions.

Applying Recommendation 10

1031. Record keeping requirements are equally applicable to DNFBP's as to financial institutions, and the same deficiencies as identified under Recommendation 10 above are present. The

assessors noted that all DNFBPs interviewed were aware of the requirement to keep documents for a period of five years. In the case of casinos, documents are stored in both electronic and paper format.

Effectiveness and efficiency

1032. All representatives met from the DNFBP sector showed a good awareness of the customer due diligence obligations, especially those concerning identification of customer, keeping of documents for a period of five years and high risk operations. Concerns remain about effectiveness of some common issues, such as lack of instruments to verification of the identification and of the origin of funds.

1033. Although the requirement of enhanced due diligence measures was understood, the effective implementation of this obligation could not be demonstrated.

1034. The continuous video surveillance that casinos are obliged to ensure over the gaming tables, gambling machines, staff and participants for their own prudential reasons, helps in following each and every transaction. Internet gambling is not operative yet, therefore effectiveness could not be assessed.

1035. The interviews lead to the conclusion that more training and awareness regarding PEPs is required, especially for casinos and real estate agents. Some sectors had no cognisance about the enhanced due diligence obligations, while in other cases, approval from the management was not required.

1036. New business relations with non-present clients is not a common practice and very rarely take place, due to risk of fraud.

1037. It was confirmed during the meetings, that the Law on Limitation of Cash Payments has reduced the vulnerability of money laundering and financing of terrorism among the sector.

1038. All DNFBPs met had adopted internal rules following approval of the Chairperson of SANS, and regular training on AML/CFT issues has been provided. Confusion between the concept of money laundering and exclusively tax-evasion cases was detected in some meetings.

4.1.2. Recommendations and comments

Recommendation 5

1039. The Recommendations for the financial sector arte valid for the DNFBP.

1040. The representatives of the DNFBP sector met by the assessors appeared to understand their responsibilities and were aware of the scope of LMML and LMFT. As in the case of the financial sector, the representatives of the DNFBP sector who had been subject to a review by FID-SANS on AML/CFT issues considered the supervisory system as being comprehensive.

1041. Although in general terms the sector was aware of their obligations, especially those related to the identification of the client, Bulgarian authorities must ensure that verification of identification and of the sources of funds is equally performed.

1042. Although some sectors agreed that in some cases an enhanced due diligence was required, they were not sure about any enhanced measures to be taken. The authorities should continue the training and awareness raising programs.

Recommendation 6

1043. The same shortcomings as in R.6 are applicable for DNFBP's. Bulgarian authorities should ensure that in practice managerial approval is required when establishing business relations with a PEP or when the client becomes a PEP *a posteriori*.

1044. Some sectors were not sure about the risk of establishing business relations with PEPs and regarding the enhanced due diligence measures.

Recommendation 8

1045. N/A

Recommendation 9

1046. N/A

Recommendation 10

1047. The recommendations made for Recommendation10 applies to DNFBP.

Recommendation 11

1048. The Bulgarian authorities should make the necessary legislative changes to implement R.11.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**PC**	***Applying Recommendation 5*** • Technical deficiencies detected under R.5 are applicable to DNFBPS; **Effectiveness** • Lack of full awareness regarding the obligations of verification of identification and of the source of funds, except accountants and auditors; • Concerns remain in regards ECDD; ***Applying Recommendation 6*** • Technical deficiencies identified under R.6 are applicable; **Effectiveness** • In practice, no managerial approval is required; • Some sectors have insufficient knowledge regarding PEPs and respective enhanced due diligence measures; ***Applying Recommendation 9*** • N/A ***Applying Recommendation 10*** • Deficiencies underlined under R.10 apply equally to DNFBPs; ***Applying Recommendation 11*** • Lack of requirement to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions, which have no apparent or visible economic or lawful purpose.

4.2 Suspicious transaction reporting (R. 16)

(Applying R.13 and 21)

4.2.1. Description and analysis

1049. All the designated categories listed under the FATF Glossary are subject to the LMML and thus have reporting duties. In fact, the list of obligors in the Bulgarian legislation goes beyond the international standard in the sense that more categories of persons are listed as having obligations under the AML/CFT regime.

1050. The reporting entities are to be found in Art. 3 of the LMML which lists the following: Persons who organise and conduct gambling games; Legal persons which have employee mutual aid funds; Persons lending cash against a pledge of chattels; Notaries public; Market operator and/or regulated market; Trade unions and professional organisations; Non-for-profit legal entities; Registered auditors; Sports organisations; Merchants dealing in arms, petrol and petrochemical products; Persons providing, by occupation, advice in taxation matters; Wholesale traders; Persons providing, by occupation, advice in legal matters, (under some conditions); Persons whose occupation is to provide accounting services; Private enforcement agents.

Recommendation 16 (rated PC in the 3rd round report)

R.16 – applying R.13 & SR.IV

Summary of 2008 factors underlying the rating

1051. Bulgarian was rated PC in the 3rd MER as the deficiencies in the implementation of Recommendations 13-15 and 21 in respect of financial institutions apply equally to DNFBP. It was indicated that further education needs to be conducted on filing for both suspicious activity and terrorist financing and additionally training on addressing CDD for unusual or suspicious transactions and terrorist financing.

Requirement to Make STRs on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBPs)

1052. The LMML and LMFT do not distinguish between categories of obligors, therefore, the STR reporting regime as already described under Section 3.7 above apply equally to DNFBPs .

1053. Persons organising gambling activities and real estate agents are subject to the full reporting requirements under the LMML. The same applies to all mentioned categories of DNFBPs under Bulgarian legislation except for the persons providing legal advice.

1054. For notaries and accountants, the reporting obligation is not limited by any legal privilege.

1055. Since trusts are not known in the Bulgarian legal system they are not mentioned as reporting entities. Company service providers are reporting entities according to the Art 3 Para 2 Item 30.

1056. Bulgaria adopted the Law Limiting Payments in Cash which prohibits any payments in cash above 15 000 BGN with the following exceptions:

- Money drawing and deposit in cash from/to personal payment accounts;
- Money drawing and deposit in cash from/to accounts of incapable and handicapped persons, of spouses and first line relatives;
- Operations with foreign currency in cash by profession;
- Operations with bank-notes and coins, where one of the parties is the Bulgarian National Bank;
- Substitution of damaged Bulgarian bank-notes and coins by the banks;
- Payment of labour remunerations under the Labour code.

1057. The said Law de facto excludes the Dealers in precious metals or stones as according to the FATF Methodology; they are required to report suspicion transactions when they engage in any cash transaction equal to or above USD/€ 15,000.

1058. Nevertheless, some other high value goods dealers are included in the list of reporting entities, like merchants dealing in arms, petrol and petrochemical products and wholesale traders.

Legal Privilege

1059. Persons providing, by occupation, advice in legal matters, are obliged to report suspicious transactions where they perform a series of deeds as described in the analysis above. Their obligation is limited by professional privilege in accordance to the Law on Advocacy.

1060. According to Art. 3 para. (6) of the LMML the persons providing, by occupation, advice in legal matters, shall not be obliged to disclose any information obtained by them during or in relation to any court or preliminary proceedings, which are pending, about to be open, or are closed, as well as any information related to establishing a client's legal status.

No Reporting Threshold for STRs (c. 16.1; applying c. 13.3 to DNFBPs)

1061. 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)

1062. All DNFBPs are required to report unusual transaction irrespective of possible involvement of tax matters.

Reporting through Self-Regulatory Organisations (c.16.2)

1063. The LMML does not allow lawyers, notaries, other independent legal professionals and accountants to send their UTRs to their appropriate self-regulatory organisations, but requires them to report directly to the FIU.

Applying Recommendation 21

Special Attention to Persons from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBPS)

1064. According to the Art 7a of LMML the Obligated persons, including DNFBP-s, are required to pay special attention to business relationships and transactions with persons from countries that do not or insufficiently apply the FATF Recommendations.

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)

1065. Obligated persons, including DNFBP, are requested to monitor their commercial or professional relations, and transactions as described under Recommendation 21 above. When the transaction has no logical economic explanation or readily visible grounds, the obligated person shall collect to the possible extent additional information on any circumstances related to the transaction, as well as its purpose of transaction.

1066. However, based on on-site interviews, the evaluators are of the opinion that the DNFBP need further assistance from the authorities on the practical application of the requirements on detecting and keeping records of the findings of the examinations of transactions which have no logical economic explanation or readily visible grounds.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBPS)

1067. The evaluators are not advised of the existence of any additional countermeasures beside the obligatory reporting regime in case such a country continues not to apply or insufficiently applies the FATF Recommendations.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

1068. The general reporting regime as provided in Art11 of LMML provides that where money laundering has been suspected, the obligated person shall notify the Financial Intelligence Directorate of the State Agency for National Security immediately prior to the completion of the transaction. Therefore, the obligation to report of detected suspicious activities is extended to all categories of obligated persons including Auditors.

Additional Elements – Reporting of All Criminal Acts (c. 16.6)

1069. Bulgaria introduced the *"all crime approach"*, thus all obliged entities are required to report when they suspect or have reasonable grounds to suspect that fund are proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically.

1070. In addition, Art. 2 of the LMML (definition of money laundering) states in Para. 2 that money laundering is also present when the activity, through which the property related to criminal activity under has been acquired, has been performed in a European Union member state, or another country, thus not falling under the jurisdiction of the Republic of Bulgaria.

Effectiveness and efficiency

Applying Recommendation 13

1071. Criteria for reporting suspicious transactions are elaborated and published on the FIU web site. These criteria can serve as a sound basis for reporting.

1072. However, the DNFBPs submitted very few STRs. For example, accountants and auditors submitted 5 reports, all in 2012, lawyers only 2, real estate agents only 1 in past 4 and a half years.

Table 44: STRs submitted by the DNFBP

Reporting Entity	2008		2009		2010		2011		2012*	
	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
Notaries	1	0	3	0	4	0	3	0	2	0
Lawyers	0	0	0	0	1	0	1	0	0	0
Accountants/auditors	0	0	0	0	0	0	0	0	5	0
Company service providers	0	0	0	0	0	0	0	0	0	0
Tax consultants	1	0	0	0	0	0	0	0	0	0
Casinos/Gambling game operator	5	0	11	0	7	0	4	0	3	0
Real estate agents	0	1	0	0	2	0	0	0	0	0
Car dealers	0	0	1	0	0	0	0	0	0	0
Wholesale traders	0	0	1	0	0	0	0	0	0	0
Professional unions	0	0	0	0	1	0	0	0	0	0
Real estate intermediaries	0	0	0	0	2	0	0	0	0	0
Non-profit organisation	0	0	0	0	0	0	1	0	0	0
Total	**7**	**1**	**16**	**0**	**17**	**0**	**9**	**0**	**10**	**0**

* To 14 July 2012

1073. Some of the reporting entities met onsite do not understand at all the concept of reporting suspicious transactions. Some others reported different cases of fraud regarding false bankruptcy, which could be useful for the analysis but still is not directly linked to money laundering (that includes particularly notaries and lawyers).

1074. Although some outreach activities have been performed by the FIU, there is still a lot to be done in respect of the level of awareness of DNFBPs regarding reporting obligation.

1075. Overall, it must be concluded that the effectiveness of the reporting regime in respect of DNFBPs is an area for improvement.

Applying Recommendation 21

1076. FID-SANS publishes announcements on the website on countries that do not or insufficiently apply FATF Recommendations. FID-SANS has elaborated a mechanism to ensure the application of the financial restrictions for Iran.

1077. The information on transactions involving persons from countries, which do not apply or do not fully apply the international standards against money laundering, is made available to the FIU and other law enforcement authorities.

1078. The level of awareness across DNFBP sector concerning the jurisdictions that do not or insufficiently apply FATF Recommendations is an area for improvement. Not all of them seemed fully aware of the counter-measures they need to apply in case of countries that do not apply or insufficiently apply the FATF Recommendations

4.2.2. Recommendations and comments

Applying Recommendation 13

1079. The country should adopt the necessary amendments to LMML and LMFT in order to remedy deficiencies regarding technical compliance with reporting obligation described in section 3.7 of this Report.

1080. Encourage greater reporting of STRs by obliged entities by raising awareness of the reporting requirement of all DNFBPs.

1081. Since the criteria for reporting are very well elaborated and published, awareness raising campaign should concentrate on training on implementation of stated criteria.

Applying Recommendation 21

1082. Specific guidance and awareness raising in this regard should be issued/undertaken by the authorities to assist DNFBP on the measures that they could apply in the event of facing relations with the risky countries.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors underlying rating
R.16	**PC**	***Applying Recommendation 13*** • Weaknesses that applied to the financial sector regarding reporting obligation also apply to DNFBPs; • Effectiveness not demonstrated; ***Applying Recommendation 21*** **Effectiveness** • Low level of awareness across DNFBP sector concerning the jurisdictions that do not or insufficiently apply FATF

		Recommendations; • Not all of them seemed fully aware of the counter-measures they need to apply in case of countries that do not apply or insufficiently apply the FATF Recommendations.

4.3 Regulation, supervision and monitoring (R. 24)

4.3.1. Description and analysis

Recommendation 24 (rated PC in the 3rd round report)

Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

1083. A new Gambling Law came into force on 1 July 2012[58]. The Gambling Law (GL) sets out the requirements applicable to companies or entities which organise gambling ("land-based" or "remote") in the Republic of Bulgaria. The gambling industry is subject to licensing.

1084. According to Art. 4 (1) of the GL, gambling games and activities under this act may be organised by:

- Companies registered in the Republic of Bulgaria or in another EU Member State, another state signatory to the European Economic Area Agreement, or the Swiss Confederation, meeting the requirements of this act;
- Sole proprietors - only gambling games on gambling machines and activities of manufacturing, import, distribution, and servicing of gambling equipment;
- The state - only for supporting sports, culture, health care, education, and social services;
- Non-profit legal entities designated to perform social work activity, registered under the Non-profit Legal Entities Act - in the cases stipulated by this act;
- Non-profit legal entities registered in another EU Member State, in another state signatory to the European Economic Area Agreement, or in the Swiss Confederation, through a branch designated to perform social work activity - in the cases stipulated by this act, with the exception of political parties.

1085. The control over the observation of the Gambling Law is exercised by the State Commission on Gambling (SCG). If necessary, the Commission may be assisted by the NRA, the Ministry of Interior, FID-SANS and other state authorities as set out in the GL.

1086. In accordance with Art. 3 (2) 7. Of the LMML, persons organising gambling are considered to be obliged persons and are therefore subject to all the requirements as set out in the LMML. FID-SANS is the authority with primary responsibility for ensuring compliance of the casinos with the requirements of the AML/CTF legislation and has the power to apply sanctions as in the case of the financial institutions. FID-SANS cooperates with all other supervisory authorities, including the SCG.

1087. Casinos are licensed and supervised under the GL. In terms of market entry, the GL has several criteria to prevent the infiltration of criminals and their associates in shareholding or management of a casino, which are similar to those provided for the financial institutions. According to Art. 8 of the GL, a license for organising a gambling game, shall not be issued if the owner, partner, shareholder with qualified interest ("Partner or shareholder with qualified interest" shall be a person, who holds more than 33 per cent of the shares, respectively of the stocks of the company), manager, member of a management or controlling body of a company or non-profit legal entity, who has been found guilty in intentional crime of general nature, has been declared bankrupt and any creditor has remained unsatisfied etc…

[58] The new regulations came into force by March 2013 except one ordinance which has already been elaborated and is currently undergoing the adoption procedure.

1088. However, most of the conditions are to be determined based on a notarised declaration and it is unclear to which extent the SCG is verifying the accuracy of those declarations. Other official documents required for obtaining a license are determined in an ordinance of the Council of Ministers adopted on a motion by the Minister of Finance which was issued after the on-site visit; therefore the effective implementation (evaluation of the documents by SCG) could not be assessed.

1089. Art. 5 (3) of the GL requires that the documents proving ownership of the funds of the companies or sole proprietors seeking licence to organise gambling games, the funds for making such the investments, as well as their origin, shall be submitted together with the application for issuance of a license. This leaves outside of the scope of the verification of the source of funds the non-profit organisation listed under Art. 4 (1) 4, 5 of the GL. However, this must be read in conjunction with Art. 15 which states that the Non-profit legal entities may organise only for a charitable purpose one-off instant lotteries and raffles therefore they cannot incorporate casinos.

1090. There are no legal provisions in place to prevent criminals of being the beneficial owner of a significant or controlling interest in a casino.

Monitoring and Enforcement Systems for Other DNFBPS-s (c. 24.2 & 24.2.1)

Auditing companies and licensed auditors

1091. Art. 3 (2) 18. Of the LMML includes auditors as obliged persons and are therefore subject to all the requirements as set out in the LMML. The Institute of Certified Accountants is the professional association for certified accountants in Bulgaria. The Institute is responsible for the examination of the auditors, the maintenance of the register, training, internal control over the members, control over the quality of the auditing and the observation of the ethical standards by the members.

1092. FID-SANS is the authority responsible for ensuring compliance of the auditing companies with the requirements of the AML/CTF legislation.

Lawyers and notaries

1093. The persons providing legal advice are not subject to the full reporting requirements under the LMML. The latter category of obliged persons (lawyers) is limited by professional privilege in accordance to the Law on Advocacy.

1094. The General Assembly of Attorneys in the Country is composed of representatives of the Bar Associations at quota of representation 1 delegate for every 40 attorneys. The General Assembly of Attorneys in the Country elects among the main members the Chairperson of the Supreme Bar Council. The Supreme Bar Council elects among the main members two Vice Chairpersons and a Chief Secretary. The Assembly's activities are limited to assessing the compliance with the professional standards. The assessment of AML/CFT compliance measures would be case only in case of proceeding the claim on professional competence.

1095. The Notary Chamber of Bulgaria is the Bulgarian notaries' institution. It was established in accordance to the Law on Notaries and Notarial Practice. All notaries are members of the Notary Chamber and are listed in chambers' register. The Notary Chamber organises and supports the activity of the Bulgarian notaries, cares of protection and raising the prestige of the profession, supports the international contacts with similar organisations abroad.

1096. Notarial activities are mainly related to certifying deals, e.g. deals in real estate, but also include the provision of legal advice to the clients, execution of wills and management of property.

1097. According to the Law on Notaries and Notarial Practice, access is provided to all notaries to the register of population and the Ministry of Interior database of identification documents which has significantly reduced fraud related to real estate. In addition a register of all certified powers of attorney and proxies is maintained.

1098. FID-SANS is the authority responsible for ensuring compliance of the lawyers and notaries with the requirements of the AML/CTF legislation.

Intermediation in real estate transactions

1099. The National Association of Real Estate (NARE) is the main professional organisation for real estate intermediaries. The Association has regional structures. All major intermediaries participate in the association. The total number of real estate intermediaries in Bulgaria is 4,731 according to the National Statistical Institute (2011).

1100. The Association cooperates on a regular basis with FID-SANS to provide training for its members as well as in regard to the development of the internal rules of the obliged persons. The Association provides professional training for its members with domestic and foreign lecturers, which includes training and assistance in regard to AML/CFT measures.

1101. Art. 3 (2) 29. Of the LMML includes persons providing real property intermediation by occupation as obliged persons and, as such, all Real estate agents are subject to the full reporting requirements under the LMML.

1102. The responsibility for supervision according to the LMML lies with the FIU (pursuant to the general provisions on supervision of all obliged entities) and to the NRA. FID-SANS cooperates with the NARE to establish best practices and to provide guidance and training. According to the Bulgarian authorities, NARE includes all the major entities performing intermediation in real estate trading and thus covers most part of the industry. In practice, the supervision on AML/CFT matters seems to be carried out exclusively by the FIU which raises effectiveness concerns taking into account the number and the dispersion of the sector.

Provision of accounting services and tax advising

1103. Persons whose occupation is to provide accounting services are included as a category of obliged persons under Art. 3 (2) 32. of the LMML. As such, external accountants include all accounting firms, all commercial entities or sole traders which provide financial and accounting services as per the commercial registration, any accountant undertaking accounting services on the basis of two or more contracts, the freelance accountants registered as self-insured persons.

1104. The number of entities and natural persons engaged in such services was 9,306 (including persons providing tax advice) according to the National Statistical Institute data from 2011. No further registration of the entities in the sector is required (apart from the commercial registration and unlike the auditors). No further registration of the entities in the sector is required (apart from the commercial registration and unlike the auditors). There are several professional organisations of the sector.

Dealers in precious metals and precious stones

1105. Dealers in precious metals and precious stones are subjects for registration by the Ministry of Finance, International Financial Institutions and Cooperation Directorate (IFICD). The Bulgarian authorities maintain a register of all entities that have been issued a certificate to operate in the extraction, processing and trading in precious metals and gemstones and products thereof by occupation. Since the establishment of the register and as of 28 June 2012, 5,066 certificates have been issued to legal entities. A Register of all entities that have been issued a Registration Certificate is maintained by the Ministry of Finance.

1106. With the entering into force of the Law Limiting Payments in Cash in February 2011, the dealers in precious stones and metals have been excluded from the categories of obliged persons under the LMML.

Adequacy of resources of the supervisory authorities for DNFBPs (R. 30)

1107. FID-SANS has the primary responsibility for AML/CFT supervision of the DNFBP sector. In addition, FID-SANS receives some assistance from the supervisory authorities.

1108. In this regard, the FID-SANS has expanded its outreach efforts beyond banks and has recruited additional staff. FID-SANS has adopted a risk-based approach to supervision and, having conducted a risk analysis allocates resources according to the identified risks in each sector. The assessors were however concerned that with its main focus being on the financial sector and on the STRs analysis, and lacking the support from the SROs or other supervisors, FID-SANS was not able to devote sufficient resources to the AML/CFT supervision of the DNFBP sector. Certain categories such as the advocates remain unsupervised in practice due to lack of involvement of the SROs.

1109. The monitoring and ensuring compliance on all DNFBPs is performed on the basis of an analysis of the risk and is subject to the methodology for planning inspections in the respective categories of DNFBPs. In addition, in 2011, the system was further improved with the introduction of the two additional types of inspections (incidental and thematic inspections) which are based on the specific information on potential deficiencies within the reporting entities. Those additional types of inspections reduce the human resources needed for the control activities of FID-SANS.

Effectiveness and efficiency (R. 24)

1110. Casinos are subject to a comprehensive regulatory and supervisory system. They are licensed by the SCG and supervised for AML/CFT purposes by the FID-SANS who conducted on-site and off-site supervision on this category of DNFBP.

1111. According the LMML, the list of designated non-financial businesses and professions subject to AML/CFT requirements goes beyond the international standards, as the external accountants and private enforcement agents (bailiffs) have recently been included as obligors.

1112. The DNFBP are subject to FID-SANS supervision and inspection, which has a wide range of powers under the LMML and LMFT. The staff of the FID-SANS is well-trained and dedicated.

1113. In order to determine the entities to be inspected, risk analyses are carried out by FID-SANS, which are based checks performed on the whole sector (changes in the number of the entities and the volumes of transactions for example). The adequacy of the internal AML/CFT rules that have been filed to the FIU according to the LMML is one aspect that is taken into consideration when determining the entities to be visited on-site. By adopting a risk-based approach, the authorities focus on acknowledged risks and target to effectively allocate the human and other resources.

1114. However, due to the extension of the entities supervised by the FID-SANS, a full and sole outreach by it is virtually impossible, and the FIU may not have sufficient resources to fully supervise all subject entities. Therefore, the active support of the general supervisors appears to be necessary in the process. During the on-site interviews, the evaluation team noted that the supervisor's level of the knowledge of AML/CFT issues leaves room for improvement.

1115. In terms of compliance with the LMML and LMFT, inspections are performed independently by FID-SANS, NRA, and the State Commission on Gambling, or jointly between FID-SANS and one of the other supervisors.

Table 45: Off-site supervision on DNFBPs performed by FID-SANS

Category of Reporting Entity as per Art. 3, Para. 2 LMML	Number of Off-Site Inspections				
	2008	2009	2010	2011	2012*
Gambling sector	5	75	28	22	24
Notaries	307		35	1	5
Trade unions					2
Auditors		359	4	6	5
Tax advisors	19	20	34	19	24
Legal advisors	15	23	21	32	103
Real estate agents	25	21	21	42	129
Accountants				1,595	3,360
Total	371	498	143	1,717	3,652

* To 30 June 2012

Table 46: On-site inspections performed by FID-SANS on the DNFBPs

Category of Reporting Entity / Number of On-Site Inspections	2nd half 2008	2009	2010	2011	2012*
Persons organising and conducting gambling games;		2	2	1	6
Persons lending cash against a pledge of chattels (pawn shops);		2	3		3
Notaries public;	12	6	6	48	3
Trade unions and professional organisations;				1	
Non-for-profit legal entities;	4	3		2	
Registered auditors;	1	3	2	5	
Entrepreneurs selling automobiles by profession when the payment is implemented in cash and the value is over 30 000 levs or the equivalent in foreign currency[59];	3	7	3		
Persons who, by profession, carry out transactions with goods, in case of cash payment and its value amounts to over 30,000 BGN or the equivalent in foreign currency[60];	14	13	11	2	
Persons, who as profession implement consultations in the field of tax levying;	1	4	1		4
Wholesale traders;	1	6	1	5	3
Persons providing legal advice;	8	4	3		2
Real estate intermediaries;	7	6	2	1	
Company management and registration	2			1	1
Total number of On-Site Inspections:	53	56	34	66	22

* To 30 September 2012

1116. The SCG representatives indicated that the general risk assessment is taken into consideration when an on-site visit to a casino is undertaken. However, on AML/CFT matters, the focus seemed to be on threshold transactions reporting and the supervisors encountered difficulties in indicating the instances where following an on-site visit, a notification to the FIU is required. Confusion between the STRs indicators and the compliance requirements was also noted.

1117. On the positive side, it has to be mentioned that the evaluation team was informed that the source of funds is verified when a Casino is granted licence. There were no cases of monitoring of *"fit and proper"* criteria on managers or casino owners after the incorporation. The evaluation team was informed that only in cases the SCG would be notified by the FIU, such monitoring would be deployed. Since 2009, 10 joint (FID-SCG) on-site inspections were organised.

Table 47: Sanctions imposed by FID to Casinos (BGN):

	2008	2009	2010	2011	2012
Number of AML/CFT violations identified	0	0	4	0	2
Type of measure/sanction					
Written warnings and/or recommendations	0	2	1	0	0
Fines	0	0	0	4	0
Withdrawal of license	-	-	-	-	-
Total amount of fines	0	0	0	12,000	0
Number of sanctions taken to the court (where applicable)	0	0	0	4	0
Number of final court orders	0	0	0	4	0

[59] De facto excluded by the adoption of the Limitation of Cash Payments Act in 2011
[60] Idem

1118. The lack of identification of the client was the main AML/CFT breach identified to Casinos.

1119. While the Notary Chambers representatives informed the evaluation team that AML/CFT matters might be looked at during the general supervision activity carried out on notaries, the Supreme Bar Council officials stated that they will not get involved in AML/CFT issues. However, both general supervisors had limited knowledge on AML/CFT matters which were focusing on STR reporting obligations, leaving other aspects uncovered, or part of the obligations arose from the sectoral Laws.

Table 48: Sanctions imposed by FID-SANS to notaries (BGN)

	2008	2009	2010	2011	2012
Number of AML/CFT violations identified	5	31	4	19	0
Type of measure/sanction*					
Written warnings and/or recommendations	7	0	0	40	0
Fines	9	11	9	14	9
Withdrawal of license	-	-	-	-	-
Total amount of fines	13,500	11,000	20,000	17,500	12,300
Number of sanctions taken to the court (where applicable)	2	7	6	8	0
Number of final court orders	**2**	**7**	**6**	**4**	**0**

1120. The following violations of the AML/CTF legislation were found during on-site inspections: operation not suspended despite incomplete identification or no declaration for the origin of funds; lack of identification of the beneficial owner; no reporting of suspicious; cash threshold transactions not reported; no internal rules within the legally specified timeframe.

Table 49: Sanctions imposed by FID-SANS to auditors (BGN)

	2008	2009	2010	2011	2012
Number of AML/CFT violations identified by the supervisor	0	3	3	4	0
Type of measure/sanction*					
Written warnings and/or recommendations	3	1	0	4	0
Fines	0	1	3	2	2
Withdrawal of license	-	-	-	-	
Total amount of fines	0	5,000	11,000	4,000	4,000
Number of sanctions taken to the court (where applicable)	0	0	2	0	2
Number of final court orders	**0**	**0**	**1**	**0**	**0**

1121. The following violations of the AML/CTF regime were found during on-site inspections: lack of internal rules; no declaration for the origin of funds and lack of identification of the beneficial owner.

Table 50: Sanctions imposed by FID-SANS to tax consultants (BGN)

	2008	2009	2010	2011	2012
Number of AML/CFT violations identified	0	7	0	0	2
Type of measure/sanction					
Written warnings and/or recommendations	0	0	1	1	1
Fines	0	0	5	0	0
Withdrawal of license	-	-	-	-	-

Total amount of fines	0	0	16,000	0	0
Number of sanctions taken to the court (where applicable)	0	0	5	0	0
Number of final court orders	**0**	**0**	**5**	**0**	**0**

1122. The following violations of the AML/CTF legislation were found during on-site inspections: lack of internal rules; no declaration for the origin of funds; lack of identification of the beneficial owner; no internal rules within the legally specified timeframe.

Table 51: Sanctions imposed by FID-SANS to persons providing legal advice (BGN)

	2008	**2009**	**2010**	**2011**	**2012**
Number of AML/CFT violations identified	5	14	4	0	0
Type of measure/sanction					
Written warnings and/or recommendations	0	3	0	1	0
Fines	0	7	6	0	0
Withdrawal of license	-	-	-	-	-
Total amount of fines	0	50,000	26,000	0	0
Number of sanctions taken to the court (where applicable)		7	4		
Number of final court orders	0	7	4	0	0

1123. The following violations of the AML/CTF legislation were found during on-site inspections: no declaration for the origin of funds; lack of identification of the beneficial owner; no cash threshold transactions reporting.

Table 52: Sanctions imposed by FID-SANS to real estate intermediaries (BGN)

	2008	**2009**	**2010**	**2011**	**2012**
Number of AML/CFT violations identified	10	11	4	2	0
Type of measure/sanction*					
Written warnings and/or recommendations	3	0	0	1	0
Fines	15	12	6	2	0
Withdrawal of license	-	-	-	-	-
Total amount of fines	47,000	60,000	15,000	8,000	0
Number of sanctions taken to the court (where applicable)	2	12	0	2	0
Number of final court orders	0	12	0	1	0

1124. The following violations of the AML/CTF legislation were found during on-site inspections: no declaration for the origin of funds; lack of identification of the beneficial owner; no cash threshold transactions reporting.

1125. However, not the entire sector was fully aware of the enhanced measures that should be applied with regard to PEPs.

4.3.2. Recommendations and comments

Recommendation 24

1126. The pro-active role of the general supervisors should be increased in order to assist the FIU in its supervisory activities. Awareness rising for the SROs and other general supervisory authorities is still necessary, in order to increase AML/CFT skills and to render them able to devote a part of their regular supervision to AML/CFT compliance.

1127. Monitoring procedures for *"fit and proper"* criteria after the incorporation of the casino for managers or shareholders should be adopted and implemented.

1128. Advocates remain unsupervised in practice due to lack of involvement of the SRO. Measures should be taken to involve the Supreme Bar Council in AML/CFT compliance monitoring of the advocates in order to support the FIU.

1129. Clear obligation for the SCG to verify the accuracy of the declarations given according to Art. 8 of the GL should be provided.

1130. There should be provisions in place to prevent criminals of being the partners or owning a significant or controlling interest in a casino, below the 33% threshold.

4.3.3. Compliance with Recommendations 24 and 25 (Criteria 25.1, DNFBPS)

	Rating	Summary of factors underlying rating
R.24	**PC**	• Lack of requirement to verify the source of funds and the veracity of the declarations given when licensing a casino; • The threshold concerning the legal requirement to prevent criminals from holding a significant or controlling interest in a casino seems high; **Effectiveness** • The requirements to verify the source of funds and the veracity of the declarations given when licensing a casino could not be assessed due to late adoption of the respective Ordinance; • Low awareness on AML/CFT matters of most of the general supervisors, negatively impact their ability to support the FID-SANS in their supervisory activity; • no monitoring of *"fit and proper"* criteria on managers or casino owners after the incorporation; • Advocates remain unsupervised in practice due to lack of involvement of the SROs.

5. LEGAL ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal arrangements – Access to beneficial ownership and control information (R.34)

Recommendation 34 (rated N/A in the 3rd round report)

5.1.1 Description and analysis

Legal framework

1131. The Legal framework has not been changed on this matter since the last evaluation report.

Measures to prevent unlawful use of legal arrangements (c. 34.1)

1132. Evaluation team of the present round are not aware of any different information in this respect. Domestic interlocutors which the evaluation team met with on-site had no information on whether foreign trusts had ever operated in Bulgaria. There is no provision in domestic law which allows for the formation of trusts and they cannot be registered as such according to the legislation in force and therefore cannot be recognised in law.

5.1.2. Recommendations and comments

1133. N/A

5.1.3. Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	

5.2 Non-Profit Organisations (SR.VIII)

5.2.1 Description and analysis

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

Summary of reasons for the rating in the MER of 2008

1134. Bulgaria was rated partially compliant for the SR. VIII under the third round report. The lack of control and reporting mechanisms with regard to all NPOs was noted as a shortcoming under the respective resolution. The report also identified absence of outreach of the NPO sector.

Legal framework

1135. The general legal framework that regulates the legal status, registration and functioning of the NPOs is largely the same as it was during the 3rd Round Mutual Evaluation.

1136. The NPOs in Bulgaria can be established as associations or foundations. The Law on NPOs governs the establishment, registration, structure, activities and dissolution of non-profit legal persons. In Art. 6 of the Law defines that the legal personality of the non-profit organisation shall originate as from its registration in the register of non-profit legal persons within the jurisdiction of the district court at the seat of the legal person. All NPOs are registered in the local resister. In addition, the NPOs for public benefit are registered in a consolidated, national database.

1137. As specified under Article 2 of the Law on NPOs, the non-profit legal persons determined to conduct activities to the public benefit shall be subject to registration (in addition to the incorporation procedure) upon their establishment in special register with the Ministry of Justice. The NPOs are obliged persons under the LMML (and LMFT) and FID-SANS is authorised to request relevant information from the NPOs. The FID cooperates with the competent structure of SANS, responsible for the monitoring of NPOs in view of preventing potential misuse for TF purposes.

Review of adequacy of laws and regulations (c.VIII.1)

1138. In July 2012 a Working group has been established at the Ministry of Justice with the task to consider the necessity for amendment of the Law on NPOs, as well as to elaborate concrete proposals of draft provisions in order to address the relevant recommendations of the MONEYVAL report. The authorities acknowledged that as a result of the works performed by the working group, no legislative amendments will be considered.

1139. The risk analysis concerning the NPOs was conducted by FID-SANS and the identification of threats for TF abuse is a part of that assessment.

1140. A number of indicators have been primarily considered as risky according to the Methodological Guidelines for Conducting Risk Analysis of Non-profit legal entities in Bulgaria (in connection with the geopolitical indicators and with a view of the international practice in the field). One of such indicators is the religious orientation of the NPOs activity. The so-called radical religious sects and movements are perceived as potentially risky coupled with socio-economic factors.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1141. In order to raise awareness in the NPO sector about the risks of terrorist abuse meetings with the representatives of the sector were held in 2011 and 6 trainings were conducted for 213 representatives of NPOs in 2012.

1142. The NPOs are obliged to provide annual financial reports on their activities to the Tax and other responsible authorities.

1143. The accountability and transparency of NPOs – both for public and for private benefit, is ensured by three main laws: the Law on NPOs, the Law on accountancy and the Law on statistics.

1144. The Law on statistics, which stipulates the obligation to present to the National Statistic Institute an annual activity report containing statistical summaries and accounting documents, is applicable to all NPOs, regardless whether they carry out economic activity or not.

1145. According to the Law on NPOs (Art. 46) by 31 of May each year, the non-profit legal persons conducting activities for public benefit are obliged to submit to the central register information about their activities of the preceding year. The NPOs must declare for registration and submit transcripts of court decisions for registration of changes; list of persons who have been members of the managing bodies; information about the activities pursuant to Art. 38; an annual financial report, including a certified one if subject to an independent financial audit; the annual report; declaration for payable taxes, charges, custom duties and other public receivables and amendments to the statute or the articles of association.

1146. All NPOs have to elaborate, submit for endorsement to the FIU and apply internal rules for control and prevention of money laundering and terrorist financing which should ensure the application of all measures as stipulated under Article 16 of the LMML.

1147. In addition, the FIU adopted specific guidance for the NPOs on criteria for suspicious deals, transactions and clients which include terrorism and TF elements. These are published on the SANS web page.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

1148. Article 17 of the LMML prescribes the authority for the supervisory department of the FIDS-SANS to inspect on-site the NPOs (inter alia of other reporting entities) on the application of measures on the prevention of the use of the financial system for the purpose of money laundering, as well as where a suspicion for money laundering arises. Off-site and on-site supervision is performed in practice by the FIU.

1149. No such power is prescribed under the LMFT. However, another mechanism of supervision is prescribed under Article 9a of the LMFT, which defines that the bodies designated to supervise the activities of the reporting entities shall inform the minister of interior and the State Agency for National Security if, in the course of performing their supervision activities, they find out the presence of operations or deals wherein suspicion of financing of terrorism is involved. The inspections carried out by the supervisory bodies shall include verification of whether the inspected persons satisfy the requirements of the LMFT. If any infringements are found out, the supervisory bodies shall inform the State Agency for National Security by sending an excerpt from the relevant part of the statement of ascertainment.

1150. The off-site supervision performed by the FIU is based on the Methodological guidelines for conducting risk analysis of the non-profit legal entities in Bulgaria. The document provides an extensive and detailed description of the risks associated with each type non-profit legal entity and provides that the analysis shall be done individually or on groups of NPOs. Such groups can be designated based on different criteria (i.e. purpose of fund spending; religious orientation etc.).

1151. The risk assessment is carried out taking into consideration the following criteria: the source of financing; the manner of management; the existence of suspicion on the purpose of spending the accumulated funds and the possibility of radicalisation. The degree of the threat is classified as low, middle and high, determined on the basis of criteria which includes presence of nationals from countries included in the FATF lists or persons related to terrorism or its financing, including persons designated by different countries in the NPO management or any other information that indirectly links the management to such persons.

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

1152. As provided for under the Law on NPOs, the following data should be inputted into the register of NPOs: required contents of the articles of association or the statute; address; names and positions of persons representing the non-profit legal person; definition for conducting activities to the public benefit; total number of initial property contributions, if there are provisions to that effect; dissolution of the non-profit legal person; transformation; names, company name, respectively, and addresses of liquidators; deletion of the non-profit legal person. The data is available publicly in the Bulstat register and fully searchable.

1153. For branch offices of foreign non-profit legal persons subject to entry to the register of NPOs, the details of objectives of the foreign non-profit legal person and the designation of the branch office for conducting activities to the public benefit should be included.

1154. The non-profit legal person conducting activities to the public benefit shall prepare annual report on its activities, which should include data about:

- substantial activities, funds spent for such purposes, their relevance to the objectives and the programs of the organisation and the results attained;
- amount of properties received in grant and revenues from other activities conducted for the purpose of raising funds;
- the type, the size, the value and the purposes of any donations received or given, as well as data about the donors;
- financial results.

1155. The annual report on the activities and the financial report of the non-profit legal person conducting activities to the public benefit shall be submitted on paper or electronically. They shall be public and shall be published in the bulletin and on the website of the central register.

1156. NPOs conducting activities to the private benefit are obliged to draw up annual activity reports and annual financial reports under the Law on Statistics and the Law on accountancy. By 31 March each year both NPOs for public and for private benefit, regardless whether they carry out economic activity or not, are obliged to present to the National Statistical Institute an annual activity report containing statistical summaries and accounting documents.

1157. Information on persons, who own, control or direct the activities, is not fully maintained and made publicly available for none of the types of the NPOs. The only information provided and maintained is the information about the activities through the preceding year of non-profit legal persons conducting activities to the public benefit, which should be submitted to the central register by 31st of May each year. According to Article 46 paragraph 2 the information should include the list of persons who have been members of the managing bodies. This information is publicly available as provided under Article 45 paragraph 9 of the Law on NPOs. For non-profit legal persons conducting activities to the private benefit no such requirement is prescribed. According to Art. 18 paragraph 2 part 3 of the Law on NPOs, branch office managers of NPOs should be subject to entry in the register of NPOs at the seat of the branch office.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

1158. Pursuant to the Article 13 of the Law on NPOs, a NPO shall be dissolved by decision of the district court at the seat of the non-profit legal person, where it pursues activities contrary to the Constitution, the laws and good morals.

1159. Accordance to Art. 37 (2) of the Law on NPOs, the judicial and administrative bodies in charge of registration of non-profit legal persons shall refuse to register organisations designated to conduct activities for public benefit in the cases where the provisions of their statute or articles of association are not in compliance with the provisions of Law on "Non-profit Legal Persons Pursuing Activities for the Public Benefit".

1160. Pursuant to Article 45 (4) of the Law on NPOs registration in the Central Register shall be refused, if the non-profit legal person for conducting activities for public benefit has not been registered by the court of competent jurisdiction as non-profit legal person for conducting activities for the public benefit, or if its activities are contrary to the law.

1161. Under Article 48 (1) of the Law on NPOs the registration shall be deleted ex officio by the Minister of Justice or an official authorised by the Minister, upon request of a prosecutor or the competent control state bodies, where the non-profit legal person conducting activities for public benefit: systematically fails to submit the information about circumstances subject to entry within the specified time limits; fails to submit information about operations during two consecutive years; pursues activities contrary to the Constitution, the laws and good morals; systematically fails to pay any outstanding public debts; the number of its members has become lesser than the minimum required by law for a period of more than 6 months.

1162. The court decision under shall be issued following a claim of any interested party or the public prosecutor. The court shall set a term of up to 6 months for the removal of the reason for dissolution and the consequences thereof.

1163. Other sanctions are not prescribed for NPOs specifically for breaches of CFT legislation. All the sanctions applicable in relation to non-compliance do not relate to TF and relate to non-provision or late provision of reports, or other obligations of NPOs under specific legislation governing their activities.

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

1164. The NPOs are subject to registration within the jurisdiction of the district court at the seat of the legal person. This information is also available in a centralized public register (Bulstat register).

1165. NPOs acting for public benefit are subject to registration upon their establishment in a special register within the Ministry of Justice.

1166. The central register is public and any person may request information or transcript containing information subject to notification. The Register of NPOs maintains a bulletin on the website of the Ministry of Justice, in which information is available about all the registered NPOs since the establishment of the register.

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

1167. The NPOs are considered as obliged entities under LMML and accordingly all the requirements for obliged entities are applicable to the NPOs, including storage of information on CDD and transactions for 5 years.

1168. The data and documents stored shall be provided to the Financial Intelligence Directorate of the State Agency for National Security upon request, in the original or a transcript certified ex officio, as specified under Article 9 of the LMML.

1169. There is, however, no requirement for the NPOs to maintain information on persons who own, control or direct the activities of NPOs.

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)

1170. The SANS may request information on clients, deals or transactions subject to STRs from state and municipal authorities, and provision of information cannot be denied, as provided for under Article 13 of the LMML.

1171. Article 17, Part 7 of the LMML defines that the state authorities, the local government bodies and their employees shall be obliged to cooperate with the bodies of supervision of the FID of the SANS in performing their functions.

1172. In addition, Art. 9 of the LMFT defines that any person, who knows that given financial operations or transactions are intended to finance terrorism, must immediately notify the Minister of Interior and the Chairperson of the State Agency for National Security.

1173. The leading coordination role in countering terrorism (and TF) has the Counter-terrorism Coordination Centre (CTCC), established within the SANS. The CTCC fulfils the following activities:

- gathering, processing, storing and analysing the information in regard to the international terrorism and extremism, including their financing, provided by all the competent bodies and services or by other national institutions and partners specialised services;
- drawing up the analysis, assessment and other organisation documents related to the international terrorism and extremism which are destined to the Agency's government bodies and to the State Government;
- interaction with the national bodies and with the specialised services of the other while undertake the concrete operations related to the international terrorism and extremism;
- organising of the complete information assurance connected to the international terrorism and extremism;
- coordination and control of the implication of restrictive measures undertaken against the individuals and organisations suspected of terrorist activities foreseen in the EU lists, UN Consolidated list, other counterterrorism documents of the EU and UN (such as S/RES/1267(1999) and S/RES/1373(2001)) connected with the international engagements of Bulgaria;
- methodical and control functions over the counterterrorism activities of the territorial SANS directorates;
- participation in the working groups on national and international level and on the forums aiming the strengthening the terrorism counteraction.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

1174. The request on NPO abuse for TF purposes can be processed via FID in case of FIU type of analysis and through the MoJ, in case the request is provided under MLA procedures.

Effectiveness and efficiency

1175. The examination team noted the progress achieved by the Bulgarian authorities in reviewing the NPOs sector, in undertaking the risk assessment associated to the sector and in adopting a comprehensive methodology of risk assessment on NPOs recommended in MONEYVAL 3rd round report.

1176. The supervision of the NPOs is made upon the risk assessment which takes into consideration the following criteria: the source of financing; the manner of management; the existence of suspicion on the purpose of spending the accumulated funds and the possibility of penetration of radical religious.

1177. The FIU supervises off-site and on-site the NPOs' compliance in AML/CFT area, even if the supervisory powers are provided only in the LMML and not in LMFT. According to data provided by the authorities, there were 1023 off-site evaluations of NPOs between 2008 and 2012 and 8 on-site visits in the same interval.

1178. Fines and written warning were the main sanctions imposed to the NPOs following the supervisory activity.

Table 53: Sanctions imposed to NPOs (BGN)

	2008	2009	2010	2011	2012
Number of AML/CFT violations identified by the supervisor	0	3	1	2	0
Type of measure/sanction*					
Written warnings and/or recommendations	0	2	0	1	0
Fines	0	1	2	0	2
Withdrawal of license	-	-	-	-	
Total amount of fines	0	5,000	8,000	0	4,000
Number of sanctions taken to the court (where applicable)	0	1	2	0	2
Number of final court orders	0	1	0	0	0

1179. The following violations of the AML/CTF legislation were found during on-site inspections: lack of internal rules (Art. 16 LMML); no declaration for the origin of funds (Art. 4, Para. 7 LMML) and lack of identification of the beneficial owner (Art. 6, Para. 2 LMML).

1180. The obligation to keep records on the international and domestic transfers as well identification documents derives from the LMML as the NPOs are one of the listed reporting entities and therefore all the requirements apply. It appears that no record keeping breaches were identified in the course of the on-site supervision visits.

1181. However, detailed information is collected only with regard to the NPOs acting for public benefit, and according to the results of the discussion held within the Working group established under MoJ, no changes are envisaged for addressing this issue.

5.2.2 Recommendations and comments

1182. The Bulgarian authorities are recommended to continue supervising the NPO sector to detect and properly monitor the possible vulnerabilities for TF abuse.

1183. The obligation for all the types of the NPOs to maintain and to make publicly available information on persons, who own, control or direct the activities, including senior officers, board member and trustees should be clearly provided.

5.2.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**LC**	• No obligation for keeping information on persons who own, control or direct the activities of NPOs.

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 C in the 3rd round report)

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

1184. Cooperation and coordination between the FIU, law enforcement authorities and supervision authorities are carried out pursuant to the LMML and LMFT as well as through the various permanent and ad hoc groups pursuant to the instructions for cooperation between the institutions involved in the prevention and fight against money laundering and terrorist financing.

1185. The operational cooperation is carried out on the basis of Art. 3a, Para. 3 (exchange between FIU and other supervision authorities), Art. 18 and Art. 12, Para. 4 of the LMML, Art. 32e, Para. 6 and Para. 7, Item 2 (exchange between FIU and law enforcement) of the RILSANS, as well as Art. 9a (exchange between law enforcement, incl. FIU and supervision authorities) and Art. 13 of the LMFT (exchange between law enforcement). Customs authorities are obliged persons under the LMML and also required to provide information to the FIU under Art. 11b of the LMML.

1186. Instructions for cooperation between different institutions involved in the prevention and fight against money laundering and terrorist financing is the mechanism generally accepted by all state bodies. "Instructions" is an agreement between two or more state bodies, regulating specific tools and mechanisms of cooperation and information exchange. It is signed and issued by the heads of respective authorities. It is furnished with the official reference number of these authorities and it is considered as subordinate legal act to respective sectoral laws regulating cooperation on national level.

1187. Instructions for cooperation have been signed by almost all stakeholders with their respective counterparts, thus creating very dense network of mutual relationships which are strictly legally defined. According to the documents provided to the evaluation team SANS, organisation part of which is the FIU has concluded 7 (seven), the Ministry of Interior provided a list of 11 (eleven) signed instructions etc. Not going into details of all of these documents, it can be concluded that all of them usually follow one similar pattern of regulation. After the common chapter on general principles, specific organisation or forms of interaction is addressed, followed by procedural issues and concluding remarks.

1188. Following the interviews held onsite, evaluators had the impression that these rules or instructions are widely used by competent authorities. Every interlocutor met on-site had a copy of Instructions signed by his/her institution to refer to when asked about national cooperation.

1189. Although one can argue that issuing such a large number of documents can be interpreted as over-regulation of national cooperation issue, it seems that in practice, Bulgarian authorities and the system itself benefit very much from the formal Instructions for Cooperation documents.

1190. Typical mechanisms of national cooperation mentioned and regulated by the Instructions for Cooperation are:

a) appointment of contact points,
b) establishment of joint working groups for both operative cases and policy issues like drafting legislation, both permanent and ad hoc groups
c) rendering expert assistance
d) channels for information exchange like direct access to relevant databases, specifying database to be exchanged and authorised persons for access to these databases
e) joint training activities etc.

1191. The National Strategy for Combating Money Laundering (2011) was enacted through the establishment of an interagency group that developed the action plan pursuant to the strategy. This group was established by the order of the Prime Minister.

1192. The authorities informed the evaluators that various examples of ad hoc cooperation between the authorities have taken place. Some of those examples will be mentioned here.

1193. One of those is the participation of the FIU in the ***Athena program*** of cooperation with the customs authorities in 2009, 2010 and again in 2012, as well as the cooperation of the FIU through working groups with the National Investigation Service on cases of extreme significance. Such cooperation took place in 2011 as well as in 2012.

1194. Also, as advised by the authorities, the cooperation between the institutions at the policy level contributed significantly to the development of the major elements of the National Strategy for Combating Money Laundering, e.g. through the project and conference that took place in 2008 with the cooperation of the private sector and the international partners (the Netherlands).

1195. FID-SANS informed the evaluators that currently 4 joint investigations are carried out in cooperation with various bodies of the Ministry of Interior (mainly the General Directorate Combating Organised Crime, General Directorate National Police and Investigation Service) providing tangible results in terms of investigation of predicate offences and money laundering.

1196. The newly established specialised prosecutor's office for organised crime has established cooperation with the FID-SANS which has started with three cases in 2012 that helped to discover predicate offences of organised criminal which were the basis for money laundering offences.

1197. Three agents of FID-SANS have been designated to work on the implementation of Council Regulations No. 961/2010 (now repealed) and No. 267/2012 concerning the restrictive measures against Iran. This is done in close cooperation with the respective directorates of SANS.

1198. The Bulgarian authorities maintain statistics on the domestic information exchange on STRs

Table 54: Number of requests from law enforcement and other structures of SANS

Year	Requests from law enforcement and other structures of SANS
2008	57
2009	260
2010	405
2011	374
2012*	148

* To 15 June 2012

Table 55: Number of requests from LEAs connected to suspicions of FT

Year	Number of requests	Number of persons
2008	0	0
2009	1	6
2010	4	6
2011	18	69
2012*	13	38
Total:	36	119

* To July 2012

Supervisory authorities

1199. In order to guarantee the security and the stability of the financial markets in Bulgaria and the possibility for adequate strategic planning of the industry's development, Consultative Council on Financial Stability was established in 2010. The Chairman of the FSC, the Deputy Governor of the BNB and the Minister of Finance participate in the said Council.

1200. FID-SANS is exchanging information with the supervisory authorities for prudential supervision of the financial institutions on a regular basis and pursuant to the provisions of Art. 3a, Para. 3 of the LMML. This includes exchange of information concerning the licensing of financial institutions as well as in regard to changes that occur to the ownership and management of these entities. In addition, the supervisory authorities are reporting also cases of suspicion of money laundering.

1201. Cooperation agreements under the form of "Instructions" were concluded between the FIU and the FSC and NRA.

1202. FID-SANS keeps statistics on the requests for assistance from other supervisory authorities (BNB, FSC, NRA) on potential breach of LMML (in all cases information was provided or further action was taken):

Table 56: Assistance requests

Year	Requests from other supervisory authorities
2008	13
2009	11
2010	10
2011	9
2012*	10

* To 28 June 2012

1203. The mutual legal co-operation between supervisory authorities allows the sharing of supervisory information and the co-ordination of activities including joint on-site examinations of the obligated persons. There are no secrecy provisions or other restrictions in legislation to prevent competent authorities to exchange of information that could have a sensitive nature.

1204. According to Bulgarian authorities, there is efficient cooperation mechanism between BNB and the competent authorities – prosecutor's office, national investigative authorities, special units for investigation, police authorities. BNB is constantly involved in providing expert assistance and analysis in complex and important cases for embezzlement with EU funds, money laundering, financial fraud, cross border complex financial transactions.

1205. With a view to the powers of the FSC to exercise control only over the non-banking financial sector, in order to broaden and improve the efficiency of the control over the financial market in 2003, a Memorandum on Co-operation and Interaction with the Bulgarian National Bank was concluded. The objective of the agreement was enhancement of the co-ordination between the two institutions on issues of mutual interest in the field of the financial services. An important detail in the agreements concluded by the FSC is the possibility to carry out joint inspections with other supervisory agencies. The MoU between BNB and FSC was updated in 2012.

1206. Based on the above mentioned Memorandum on Co-operation, task forces for joint examination were formed comprising experts representing the different organisations. However, it remains unclear to what extent the joint examinations address the specific risks within the various sectors and how it promotes the implementation of compliance measures.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS) (c. 31.2)

1207. The LMML and RILMML provide for a mechanism of ensuring feedback by FID-SANS to the reporting persons under the LMML (Art. 11 of LMML). The mentioned legislation also guarantees the provision of a wide methodological assistance to the obliged persons.

1208. As part of the efforts of FID-SANS to ensure the awareness of the obliged persons and the application of all required measures under the AML/CTF legislation, the FIU is cooperating with the professional organisations. This cooperation is related to the organisation of training activities, the

elaboration of uniform internal rules of the specific sectors, the regular annual meetings with the credit institutions.

1209. Consultation is also ensured through the assistance that FID-SANS provides to the obliged entities on the elaboration and adoption of their internal rules and the instructions further provided in relation to them. The system ensures the uniform interpretation of the measures under the AML/CTF legislation by the various obliged persons. Such uniform rules have been elaborated by the Chamber of Notaries, the National Association for Real Estates, the Chamber of Private Enforcement Agents, the Institute of Certified Accounts and the Association of Pawnshops.

1210. The FIU provides support in setting up of effective systems in relation to new legal requirements of newly identified threats (e.g. payment methods or new technologies). The private sector was involved through consultations in the process of drafting new legal acts.

Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)

1211. The National Strategy for Combating Money Laundering is the main policy making document in the area of combating money laundering. The strategy is constructed on the premise that national security is directly dependent on the economic and financial security.

1212. As explicitly stated by this Strategy: *"A fundamental mechanism for the counteraction of money laundering is the constant monitoring, information gathering, analysis and elaboration of recommendations. The information gathering and analytical work will encompass not only the process of money laundering but also the comprehensive monitoring of the movement of criminal funds and their impact on the economy and its dynamics. It will provide data of the risks of the ML and terrorist financing in the economy as a whole and the financial system, allowing the elaboration of proposals and recommendations for the improvement of the work."*

1213. To this end, an Interagency Coordination Council for the counteraction of ML and terrorist financing will be developed to include the representatives of the institutions responsible for the prevention, control and counteraction against these crimes. The council is supposed to turn into a mechanism for comprehensive monitoring and application of the required decisions. Through this council the competent authorities will decide on the way of coordination and fulfilment of the monitoring and the analytical work. Based on the conclusions of the work, proposals for legislative and institutional changes will be elaborated and the current policies in the field will be adjusted.

1214. The competences of this body are also elaborated in the text of the Strategy. Namely, The body performing the monitoring:

- shall receive information and analyses from various sources (state institutions, public and non-governmental organisations, professional associations, external experts, etc.)
- shall compare the information and request additional specialised analyses of the environment (high-risk sectors) where the criminal proceeds are generated and the legalization processes take place
- shall create and disseminate knowledge in regard to the ML process
- shall constantly analyse the legal framework
- shall prepare an assessment of the system of counteraction and investigation of ML and the institutions involved.

1215. Although the evaluation team welcomes the project of the Interagency Council, envisaged as the main policy making body, at the time of the on-site visit it has not been created yet. The evaluators recognise the implicit key role played by the FIU in coordinating the AML/CFT system on policy level.

1216. A systematic review of the effectiveness of the AML/CFT system on a regular basis, as required by the standard still does not exist. The National Strategy for Combating Money Laundering which contains a chapter "National assessment" is an important document given to

decision makers in order to create concrete measures for improvement of effectiveness of the system. However, it must be said that it is still an ad hoc effort.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1217. While interagency council, which is envisaged to be the main policy making body in this field, has not been created yet, the evaluators recognise the key role played by the FIU in coordinating the system on policy level.

1218. Therefore, all concerns regarding insufficiency of resources provided to the FIU with comparison to tasks assigned are valid in this particular sense.

Effectiveness and efficiency

1219. Bilateral cooperation in exchanging relevant information and coordination of activities between various stakeholders in the system seems to be formalized and enforced efficiently.

1220. Coordination of the system as whole is still in the hands of the FIU. Although, the FIU invest a lot of its resources in this task, more efficient coordination of the overall system, especially at a policy making level is to be expected only after creation and effectively organised work of the Interagency Council, envisaged by the AML Strategy.

6.1.2. Recommendations and Comments

Recommendation 31

1221. A very comprehensive network of mutual bilateral and multilateral agreements (instructions for Cooperation) gives the Bulgarian authorities a sound basis for effective cooperation. However, the MOU between FID-SANS and BNB was not renewed since 2003. Taking into account the structural changes that occurred in the FIU organisation and the importance of the banking sector in the entire AML/CFT system, the evaluators strongly recommend the revision of that particular MOU which will enhance cooperation between the two authorities.

1222. The Bulgarian authorities should, as quickly as possible, create the framework for the policy makers to review of the effectiveness (the Interagency Council for Monitoring of Implementation of the National Strategy for Combating Money Laundering as envisaged by the National Strategy) and enforce its work in improving the system for decision makers.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

1223. The Bulgarian authorities are very much encouraged to create the abovementioned interagency council, so as to make the review of results and outputs of the AML/CFT systems (and the effectiveness of the systems as a whole) a regular and systematic process. This may require some adjusting of the terms of reference to ensure that the results (in terms of prosecuting, convicting and confiscation), are collectively reviewed both for their policy implications and to solve practical problem revealed.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1224. In order for the future Interagency Council to be functional and effective, it is necessary to adequately organise its work by providing it with adequate resources. Authorities are encouraged to consider creating a permanent secretariat which would deal with organisational and other issues or to allocate additional resources to the FIU, if the FIU will serve as a secretariat.

1225. Currently, the FIU is seen informally as a main policy making body or to be more accurate, coordinator of policy makers. The resources allocated to the FIU appear not to be fully adequate as described in R30 under R26.

6.1.3 Compliance with Recommendations 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**LC**	• Interagency council for monitoring National Strategy, review the system, and coordination of the system as a whole not yet created.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1. Description and analysis

Summary of reasons for the rating in the MER of 2008

1226. Bulgaria was rated largely compliant for Recommendation 35 and Special Recommendation I. The lack of criminal liability of legal entities and unclear understanding of the confiscation regime were noted as shortcomings under Recommendation 35. As for the underlying factors of the Special Recommendation I, there were concerns about the awareness among some reporting entities on SRIII related requirements and the lack of a specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism.

Recommendation 35 (rated LC in the 3rd round report) & Special Recommendation I (rated LC in the 3rd round report)

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1227. Bulgaria is a party to 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), UN Convention against Transnational Organised Crime (the Palermo Convention), United Nations Convention for the Suppression of the Financing of Terrorism and 12 (sectorial) conventions of the United Nations on terrorism.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1)

1228. Bulgaria has implemented most of the provisions of Vienna Convention. However, as noted under the analysis of the relevant recommendations, there are some deficiencies affecting the application and implementation of R.1 (uneaven understanding of "property"), R.3 as regards implementation of Article 5 (*the seizure and confiscation could not be extended to the instrumentalities used and intended for use in the commission of ML and FT and to the object of the crime in cases where the property is held by a third party, as well as legitimate property intermingled with the illegally obtained property*) and as regards implementation of Article 7 (*The shortcomings identified with respect to the provisional and confiscation measures may have a negative impact on MLA requests. The practical application of dual criminality may limit Bulgaria's ability to provide assistance due to the shortcomings identified with respect to the ML offences*).

1229. Special investigation techniques, including controlled delivery can be used, according to art. 172 of the CPC. This article provides for an explicit limited list of serious offences for which special means of investigation can be used. The list includes trafficking in drugs and other offences related to drugs and psychotropic substances.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c.35.1)

1230. While Bulgaria has mostly implemented the provisions of Palermo Convention, the detailed analysis of the relevant recommendations revealed the deficiencies in the application of the Palermo Convention, mainly R. 1 implementation of Article 6 (*no clear definition of "property", not all the designated categories of predicate offences are covered by the CC*), R. 3 implementation of Article 12 (*the seizure and confiscation could not be extended to the proceeds, instrumentalities used and intended for use in the commission of ML and FT, as well as legitimate property intermingled with the illegally obtained property*) and the implementation of Article 18

(*The shortcomings identified with respect to the provisional and the confiscation measures may have a negative impact on MLA requests. The practical application of dual criminality may limit Bulgaria's ability to provide assistance due to the shortcomings identified with respect to the ML offences*).

1231. According to the Bulgarian Criminal Code, criminal liability could only be imposed on a natural person who has committed a crime. Art. 83a[61] (amended) of the Law on Administrative Offences and Sanctions provides for administrative liability of legal persons for criminal offences.

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1232. Bulgaria has criminalised terrorist financing as required under Terrorist Financing Convention, however as described in the analysis under SR. II, R. 3, SR. III and R. 36 the following shortcomings need to be addressed with respect to the full implementation of the Terrorist Financing Convention:

- Article 108a does not seem to cover all the acts as mentioned in the nine Conventions and Protocols listed in the Annex to the TF Convention.
- The purposive element of the TF offence should cover the threatening/forcing a competent authority, a member of the public or a foreign state or international organisation to perform or omit from doing any act as defined under the TF Convention. The TF offence should be extended to the provision or collection of funds or other property for use by an individual terrorist or a terrorist organisation without intention or knowledge that the funds or property will be used in the commission of a terrorist act. The TF offence should extend to funds, which are to be used in full or in part. The term "fund" should be defined in line the TF Convention. The shortcomings identified with respect to the provisional and confiscation measures may impact the efficient execution of MLA requests. The dual criminality required for the provision of mutual legal assistance may have negative impact on execution of MLA requests, especially in the cases when requests concern legal entities.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1233. The implementation of UNSCRs is affected by the number of deficiencies identified under SR. III, namely complicated procedures of adopting, supplementing and modifying the lists of designated persons and unclear application of the term funds, which limits the application of freezing measures to funds controlled, directly or indirectly by designated persons.

Additional element – Ratification or Implementation of other relevant international conventions

1234. Bulgaria has signed and ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and signed the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism[62].

[61] A legal person, which has enriched itself or would enrich itself from a crime under Articles 108a, 109, 110 (preparations for terrorism), Articles 142-143a, 152(3) item 4, Articles 153, 154a, 155, 155a, 156, 158a, 159 - 159d, 162 (1) and (2), 172a-174, 209-212a, 213a, 214 , 215, 225c, 227 (1) - (5), 242, 250, 252, 253, 254, 254b, 255, 256, 257, 278c-278e, 280, 283, 301-307 , 307b, 307c, 307d, 308 (3), 319a-319f, 320-321a, 327, 352, 352a, 353b-353f, 354a-354c, 356j and 419a of the Criminal Code , as well as from all crimes, committed under orders of or for implementation of a decision of an organised criminal group, when they have been committed by:
1. an individual, authorised to formulate the will of the legal person;
2. an individual, representing the legal person;
3. an individual, elected to a control or supervisory body of the legal person, or
4. an employee, to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of this task, shall be punishable by a property sanction of up to BGN 1,000,000, but not less than the equivalent of the benefit, where the same is of a property nature; where the benefit is no of a property nature or its amount cannot be established, the sanction shall be from BGN 5,000 to 100,000.

[62] Bulgaria ratified the Warsaw Convention on 25.2.2013

6.2.2. Recommendations and comments

1235. Bulgaria has ratified the Vienna, Palermo and Terrorism Financing Conventions, however the current text of the CC does not cover the full scope of these Conventions, therefore it is recommended to amend the legislation covering ML and TF offences so that it is fully in line with the Vienna, Palermo and Terrorism Financing Conventions. See the discussion under Recommendations 1 and Special Recommendation II.

1236. Bulgarian authorities should take steps to ensure full implementation of relevant provisions on confiscation and preventive measures.

1237. The shortcomings identified in relation to the listing and freezing procedures for implementation of UNSCR 1373 and 1267 should be addressed.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• The implementation of Vienna and Palermo Conventions are not fully observed; • The TF offence is not fully compliant with the TF Convention; • Limitations for application of confiscation do exist.
SR.I	**PC**	• The FT offence is not fully in line with FT Convention; • UNSCR 1267 and 1373 are not fully implemented.

6.3 Mutual legal assistance (R. 36, SR. V)

6.3.1. Description and analysis

Recommendation 36 (rated C in the 3rd round report)

Legal framework

1238. There are no substantive changes in the legal framework since the last evaluation report. The main law governing mutual legal assistance matters continues to be Chapter 36 of the CPC.

1239. In addition, Bulgaria is party to the 1959 Council of Europe Convention on Mutual Legal Assistance in Criminal Cases and its additional protocols.

1240. The assistance for other EU Member States, the Law on Recognition, Enforcement and Issuance of Writs for Securing of Assets or Evidence (published in State Gazette No. 59/21.07.2006, effective from 1.01.2007) is applicable.

1241. Bulgaria is also party to 1990 Strasbourg Convention and has recently signed and ratified the 2005 Warsaw Convention.

1242. Bulgaria has signed bilateral agreements for the provision of mutual legal assistance in criminal matters with Austria, Azerbaijan, Albania, Algeria, Armenia, Belarus, Belgium, Vietnam, Georgia, Greece, Italy, India, Spain, Yemen, Cyprus, China, DPR of Korea, Kuwait, Cuba, Republic of Korea, Lebanon, Libya, "the former Yugoslav Republic of Macedonia", Mongolia, Poland, Romania and USA.

Widest possible range of mutual assistance (c.36.1)

(a) the production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons;

1243. Pursuant to the Article 471 of the CPC international legal assistance in criminal matters shall be rendered to another state under the provisions of an international treaty executed to this effect, to which the Republic of Bulgaria is a party, or based on the principle of reciprocity. International legal assistance in criminal cases shall also be made available to international courts whose jurisdiction has been recognised by the Republic of Bulgaria.

1244. International legal assistance shall comprise the following: service of process; acts of investigation; collection of evidence; provision of information; all other forms of legal assistance, if they are provided for in an international treaty to which the Republic of Bulgaria is a party, or if they are provided for on the basis of reciprocity.

(b) the taking of evidence or statements from persons;

1245. Article 473 of the CPC specifies appearance of a witness and an expert before a foreign court. The appearance of a witness and an expert before foreign court authorities shall only be allowed if assurance is given that the summoned persons, irrespective of their citizenship, would not bear criminal liability for acts committed prior to summoning them. In the event of a refusal to appear, no coercive measures may be applied to them.

1246. Turning over persons detained in custody, in order to be interrogated as witnesses or experts, shall only be allowed in exceptional cases at the discretion of the respective district court on the grounds of papers submitted by the other state or the international court of justice, provided that the person gives his/her consent for being turned over and provided that his/her stay in the other state will not extend the term of his/her detention in custody.

1247. The interrogation shall be held directly by the court authority of the requesting state or under its direction in accordance with its legislation.

(c) providing originals or copies of relevant documents and records as well as any other information and evidentiary items

1248. While the submission of documents, evidence and records to foreign countries is not regulated under the CPC, the representatives of the MoJ stated that acts of investigation mentioned under Article 471 include compelling production of documents.

(d) effecting service of judicial documents

1249. As prescribed under Article 471 of the CPC international legal assistance includes service of process.

(e) facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country

1250. As mentioned above, Art. 473 of the CPC specifies the appearance of a witness and an expert before a foreign court.

(f) identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences, and assets of corresponding value

1251. Although there are no specific provisions in the CPC regarding the identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences, and assets of corresponding value, Art. 471, paragraph 2, point 5 of the CPC provides that all forms of legal assistance is provided on the basis of an international agreement to which the Republic of

Bulgaria is a party upon the request of foreign counterparts on the basis of reciprocity. The Bulgarian authorities stated that there were confiscations conducted on the basis of MLA request.

1252. However, as outlined under Recommendation 3, property held or owned by third parties are not subject to confiscation in all cases.

1253. The writs for securing of assets subject to seizure on the basis of a request from other EU countries is regulated by the Law on Recognition, Enforcement and Issuance of Writs for Securing of Assets or Evidence, which prescribes that the court cannot reject a motion for handover of evidence on the grounds of lack of dual criminality for the specified list of crimes (ML and TF are included in the list). However in other cases dual criminality will be applied. On this particular issue, the Bulgarian authorities mentioned that in practice, dual criminality is not applied and there have been no case of refusal of assistance based on dual criminality grounds so far.

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1254. Under the CPC no timeframes are provided for conducting MLA requests but the representatives of the MoJ informed the evaluation team that the requests for MLA will be handled in due timeframes and the TF requests will be handled on priority basis.

1255. As specified under Article 474 of the CPC, the interrogation of a person who is a witness or an expert in penal procedure and is in the Republic of Bulgaria may be carried out by a court authority of another state through a video conference or a telephone conference, when this is stipulated in an international treaty to which the Republic of Bulgaria is a party. An interrogation through video conference with the participation of a defendant may only be carried out with his/her consent and after the Bulgarian court authorities and the court authorities of the other state agree on the manner of holding the video conference.

1256. The Bulgarian competent authorities in penal procedure shall execute requests for interrogation through video conference or telephone conference. For the needs of a pre-trial procedure, a request for interrogation through video conference or telephone conference shall be executed by the National Investigation Service. For the needs of a court procedure, a request for interrogation through telephone conference shall be executed by a court of equal degree at the place of residence of the person, and for interrogation through video conference – by the court of appeal at the place of residence of the person. The competent Bulgarian authority may require the requesting state to ensure the technical means of interrogation.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2)

1257. Pursuant to the Article 472 of the CPC, international legal assistance may be refused if the implementation of the request could threaten the sovereignty, the national security, the public order and other interests, protected by law.

1258. The authorities also informed that dual criminality will be applied in the case of MLA requests.

1259. The procedures defined under the Bulgarian legislation do not seem unreasonable or unduly restrictive.

Clear and efficient processes (c. 36.3)

1260. According to Article 475 of the Criminal Procedures Code a letter rogatory for international legal assistance shall be forwarded to the Ministry of Justice, unless another procedure is provided by international treaty to which the Republic of Bulgaria is a party.

1261. Depending on the type of the act requested and the stage of criminal proceedings (pre-trial or court stage), the MoJ refers the request either to the Supreme Prosecution Office of Cassation or to the competent court for execution (which are the competent bodies for execution of the requests).

1262. As for the request for the transfer of criminal proceeding, as specified under Article 478 of the Criminal Procedure Code, it should be sent to the Supreme Prosecution Office of Cassation - in respect of pre-trial proceedings the Ministry of Justice - in respect of trial proceedings.

1263. As stated by the representatives of MoJ, the MLA requests should be executed in a period ranging from two weeks to 50 days, except in cases of:

- change in address of registration of a person and subsequent search for him;
- transmission of requests for legal assistance for execution in another judicial district; or
- requests for conducting investigative actions (most of them need a longer implementation).

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1264. The possible involvement of fiscal matters is not indicated as a ground for refusal under CPC.

1265. The authorities interviewed confirmed that the request would not be refused because of involvement of fiscal matters.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1266. While there are no specific provisions prescribing that under MLA information containing secrecy or confidentiality provisions may be provided to the requesting party, the Bulgarian authorities state that such information may be provided based on the court decision.

1267. For the access to information covered by banking and professional secrecy see analysis under Recommendations 4 and 26. For the period 2008-2012 the Bulgarian judicial authorities have refused only one MLA request on bank secrecy grounds.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1268. The actions described under Article 471 of the CPC provide possibility to use the powers of competent authorities.

Avoiding conflicts of jurisdiction (c. 36.7)

1269. The provisions of the CPC governing MLA matters (Article 476), prescribe the possibility for formation of joint investigation teams, in which Bulgarian prosecutors and investigative bodies will take part. The CPC also provides for cases of transfer of criminal proceedings to other states.

1270. According to Article 478 of the CPC, the request for the transfer of criminal proceedings by another state shall be admitted by the authority entrusted with criminal proceedings where several of the following grounds have occurred:

1. The act in respect of which the request has been made constitutes a criminal offence under Bulgarian law;
2. The offender is criminally responsible under Bulgarian law;
3. The offender has his or her permanent residence on the territory of the Republic of Bulgaria;
4. The offender is a national of the Republic of Bulgaria;
5. The offence in respect of which a request has been made is not considered a political or politically associated, nor a military offence;
6. The request does not aim at prosecuting or punishing the person due to his or her race, religion, nationality, ethnic origin, sex, civil status or political affiliations;
7. Criminal proceedings in respect of the same or another offence have been also initiated against the offender in the Republic of Bulgaria;
8. The transfer of proceedings is in the interest of discovering the truth and the most important pieces of evidence are located on the territory of the Republic of Bulgaria;
9. The enforcement of the sentence, should one be issued, will improve the chances of the sentenced person for re-socialisation;

10. The personal appearance of the offender may not be ensured in proceedings in the Republic of Bulgaria;
11. The sentence, if one is issued, may be enforced in the Republic of Bulgaria;
12. The request does not contradict international obligations of the Republic of Bulgaria;
13. The request does not stand in contradiction to the fundamental principles of Bulgarian criminal and criminal procedural law.

1271. Where the individual against whom criminal proceedings have been instituted in the Republic of Bulgaria is the national of another state or has his or her permanent residence in another state, the authorities may file a request for the transfer of criminal proceedings to the said state.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1272. The relevant legislation in force does not prescribe any possibility for Bulgarian authorities to receive and to execute formal direct requests from their foreign counterparts. The Bulgarian authorities stated that the cases of direct execution of requests can be provided under international treaties.

Special Recommendation V (rated C in the 3rd round report)

1273. The provisions regulating MLA described under Recommendation 36 apply to all categories of crimes, including TF offence.

Additional element under SR V (applying c. 36.7 & 36.8 in R. 36, c.V.6)

1274. The provisions regulating MLA described under Recommendation 36 apply to all categories of crimes, including TF offence.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1275. There is a special department *"International Cooperation and Legal Assistance in Criminal Matters"* within the Ministry of Justice dealing with mutual legal assistance and extradition requests. The number of the experts in the Department dealing with international cooperation and legal assistance is 25. The authorities informed the evaluation team that the employees undergo regular trainings and attend exchange of experience seminars, conferences and study visits with colleagues from relevant foreign authorities.

Recommendation 32 (Statistics – c. 32.2)

1276. The Bulgarian authorities provided the following statistics concerning mutual legal assistance:

Table 57: Money laundering MLA requests sent/received

Year	Mutual Legal Assistance requests sent by Bulgaria	Mutual Legal Assistance requests received by Bulgaria
2008	22	2
2009	20	6
2010	32	3
2011	10	2
2012*	5	-
Total	**89** MLA requests for Money Laundering	**13** MLA requests for Money Laundering

* To 26 June 2012

Table 58: MLA requests under Art. 253 of the CC

Year	Mutual Legal Assistance requests sent by Bulgaria	Mutual Legal Assistance requests received by Bulgaria
2008	17	
2009	74	

2010	52	
2011	54	
2012*	36	

* To 26 June 2012

Table 59: Received MLA requests and number of refusals

Year	Mutual Legal Assistance requests received by Bulgaria	Refusals
2008	1,139	30
2009	1,066	40
2010	1,324	63
2011	1,261	38
2012*	1,178	45

* To October 2012

1277. The Bulgarian authorities informed the evaluation team that the most frequent grounds for refusal of the requests for mutual legal assistance are as follows:

- The requests are inconsistent with the declarations of the Republic of Bulgaria to the European Convention on Legal Assistance in Criminal Matters: the documents are sent without a duly certified translation into Bulgarian language or one of the official languages of the Council of Europe;
- The addresses of summoned persons are not listed or there's no full identification data of the person to perform the search within the territory of the Republic of Bulgaria;
- The requests for legal assistance does not indicate precisely what is required by the Bulgarian Court/what actions shall the Bulgarian Court take;
- The requests for legal assistance are sent to the Republic of Bulgaria in error;
- In cases of summons, where the request for legal assistance is too close to the date of the court proceedings; and
- The requests for legal assistance (mostly requests for transfer of proceedings) are inconsistent with the grounds on which they are sent.

1278. The authorities do not maintain statistics on the delay of execution of the MLA requests.

Effectiveness and efficiency

1279. The MLA system seems largely in place in Bulgaria.

1280. Even if the legislation does not provide a precise time frame for the execution of the MLA requests, the representatives of the Prosecutors office explained to the evaluation team that usually the execution of a MLA request will take two months, and only in complex cases it might take up to six months.

1281. As it can be seen above, the MoJ sent 89 MLA requests and received 13 MLA requests from abroad in ML cases in the period under evaluation. This confirms the international component of ML emphasised in the national risk assessment conducted by the authorities.

1282. In respect of the MLA requests refusals, the evaluation team was informed that many of those are sent back to the Requesting Party as they are not accompanied by translation into Bulgarian language. Subsequently they are sent again in good condition and fulfilled by the Bulgarian authorities.

1283. For the period 2008-2012 the Bulgarian judicial authorities has refused only one request for legal assistance for disclosure of bank secrecy reasons.

6.3.2. Recommendations and comments

Recommendation 36

1284. The Bulgarian authorities are recommended to include a clear timeframe for the execution of MLA requests.

Special Recommendation V

1285. The Bulgarian authorities are recommended to include a clear timeframe for the execution of MLA requests.

Recommendation 30

1286. N/A

Recommendation 32

1287. Statistics should include the time periods for execution of requests.

6.3.3. Compliance with Recommendation 36 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**LC**	• The shortcomings identified with respect to the provisional and confiscation measures may have a negative impact on MLA requests; • The application of dual criminality may limit Bulgaria's ability to provide assistance due to the shortcomings identified with respect of R1.
SR.V	**LC**	• The shortcomings identified with respect to the provisional and confiscation measures may have a negative impact on MLA requests; • The practical application of dual criminality may limit Bulgaria's ability to provide assistance due to the shortcomings identified with respect to the TF offence; • No timeframes which would enable to determine whether the requests are being dealt in a timely manner.

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1. Description and analysis

Recommendation 40 (rated C in the 3rd round report)

Legal framework

1288. Legal basis for international cooperation of the FIU, supervisory bodies and law enforcement is contained in the Law on Measures against Money Laundering, Law on Measures against Financing of Terrorism, Law on SANS, Rules on Implementation of the Law on SANS, Penal Procedure Code, Law on the Ministry of Interior and other sectoral laws.

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)

FID-SANS

1289. Art. 18 of the LMML empowers FID-SANS to exchange information internationally with its counterparts, as well as with other organisations. Art. 32e Para. 7 Item 8 of RILSANS further stipulates the competence of FID-SANS to exchange information on cases of suspicion of money

laundering and financing of terrorism with the financial intelligence units and with other state bodies with relevant competence, under the terms and order established under the LMML.

1290. According to the authorities, the Bulgarian FIU is able to provide the requested assistance in a rapid, constructive and effective manner. In urgent cases it is possible for the reply to be sent within 1 hour or less, depending on the nature of the case and the requested information. This statement has been endorsed by the feedback received from FIUs from other countries.

1291. FID-SANS has been a member of the Egmont Group of FIUs since 1999. FID-SANS has never refused a request for information and checks were carried out even in regard to requests where some of the principles of information exchange had not been observed by its counterpart (e.g. no specific link demonstrated to Bulgaria). FID-SANS is also participating in the FIU.Net project.

1292. The main gateways for the FID-SANS to exchange information directly with its counterparts is the Egmont Group network and FIU.Net. Information exchange is also possible for exchange of information with an FIU outside the Egmont Group. Information exchange is conducted entirely through the electronic channels. No memorandum of understanding is necessary for the exchange of information.

1293. The foreign requests for information are considered as generating the same level of information gathering powers as the domestic STRs. There is no authorisation required of any external (for FID-SANS) authority for the provision of the full scope of information (including bank secrecy).

1294. Art. 18 of the LMML stipulates that FID-SANS on its own initiative (spontaneous exchange of information) and if requested shall exchange information with its foreign counterparts. The definition of the same article is broad enough and allows exchange of information also for the predicate offences *("related to ML suspicions")*. This was demonstrated in practice by information exchange carried out by the FIU *i.a.* in relation to corruption cases and PEPs linked to the situation in North African region in 2010 and onwards, and in relation to volatile situations in other regions that pose risks of potential money laundering.

1295. The FIU also exchanges information with regard to possible cases of proliferation financing. In those cases, relevant information is regularly provided to foreign counterparts, when in the course of its analysis, FID-SANS detects links to specific countries, or if the information is considered important for the designation mechanisms under the international sanctions regime.

Supervisory authorities

BNB

1296. Art. 64 of the LCI sets up the provisions related to the BNB powers to provide information which is professional secrecy. According to it, the employees of the BNB may provide information which is professional secrecy to the authorities of other Member States, responsible for the legislation on the supervision of credit and financial institutions, investment intermediaries and insurance companies, where this information is relevant for the exercise of their tasks. The evaluators were informed that since the LCI does not specify, the provisions are valid for both spontaneous and upon request information.

1297. Similar information protection provision shall apply to the information received by the BNB from the Member States' competent supervisory authorities. This information may be used only for the performance of the BNB supervisory responsibilities.

1298. Gateways for the exchange of information are also provided in Art. 66 of the LCI that specifies the manner to co-operate with competent authorities from third countries (non-EU MS). Any information that involves professional secrecy may be provided to a third-country competent supervisory authority on the basis of an agreement provided that: the recipient ensures at least the same level of protection of the information as provided for in this Law; the recipient is authorised

and agrees to provide information of the same type where demanded by the BNB; the information exchange is intended for the performance of the supervisory functions of the said supervisory authority; the recipient has justified needs of the requested information.

1299. The Bulgarian authorities informed the evaluation team that in case of absence of an MoU with a third non-EU country, the disclosure of information shall follow the procedure under Art. 62, which requires that the information will be disclosed on individual customers only with their consent or pursuant to a court ruling.

1300. Currently, BNB has signed 19 MoUs with EU MS and Non EU MS supervisory authorities. BNB has also approved the Supervisory Cooperation Protocol between "Home Supervisor" and "Host Supervisor(s) of Agents and Branches of Payment Institutions in Host Member State drafted by AMLC to JC ESAs.

1301. The Bulgarian authorities informed the evaluation team that joint inspections with foreign supervisory authorities and the foreign law enforcement authorities were performed. A Twinning Project on Strengthening the Regulatory and Supervisory Capacity of the Financial Regulators of the Montenegrin authorities was carried out in 2009-2011. It was realized by a consortium of the BNB, the Netherlands Central Bank and the FSC. BNB experts took part in a Twinning Project with the Central Bank of Albania by hosting a study visit on issues related to coordination and preparation for EU accession in 2011. The BNB provided technical assistance to the Central Bank of Bosnia and Herzegovina on the Treaty on the Functioning of the European Union in a country with a currency board and central banking law. The BNB participates in Technical Cooperation Programme for the National Bank of Serbia, managed by the ECB. During the implementation of the Programme, several experts' missions and study visits were carried out in 2011 and 2012.

Financial Supervision Commission

1302. Article 25 (5, 6) of the FSC Act stipulates that information involving professional secrecy may be provided to a foreign body from a third country, exercising financial supervision, on the grounds of an agreement for cooperation and information exchange and provided that the body to which the information is delivered ensures at least the same level of confidentiality of the provided information; has a power and agrees to provide information of the same nature upon request by the FSC, and needs the required information for performance of its supervision functions.

1303. As information exchange gateways, the FSC has agreements that have entered into force with 19 foreign counter-parts out of which 10 are with non-EU countries.

1304. In 2009 the FSC became a full signatory of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO Multilateral MoU signed by more than 100 countries worldwide) which is the international standard for information exchange in the field of securities. It establishes a relaxed regime of information exchange, frequently representing professional secret in order to achieve more efficient supervision over the companies; provision of financial services on a global scale; interception of cross-border abuse through the capital market and maintenance of the stability of the world's financial system. The agreement's main principles state that the co-operation shall only take place for the purpose of fulfilment of its members' supervisory functions and powers, to promote reciprocity of the commitments undertaken and to guarantee safekeeping of the confidentiality of the information exchanged.

1305. After the accession of Bulgaria in the EU the FSC became a member of the Committee of European Securities Regulators (CESR) and of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS). Respectively after the reform in the European financial supervision sector the FSC became member of the newly established European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA). This membership additionally facilitates the co-ordination and cooperation

among FSC and the other European securities, insurance and social insurance regulators members in discharging its powers.

1306. The 3rd round report list a number of bilateral MoUs and Memorandum for Cooperation that the FSC has entered into. In the period 2009-2011 the FSC concluded Memoranda of Cooperation and Exchange of information with the supervisory authorities in field of securities of Serbia, Kosovo and Montenegro and the supervisory authority in field of insurance of "the former Yugoslav Republic of Macedonia".

1307. However, no statistics on ML/TF information exchange were available (including the timeliness of replies) as the FSC has no information about the purpose of the requested information.

1308. For the exchange bureaux, money and value transfer services and the DNFBPs the designated supervisory authority is the FIU, therefore, for R40 purposes the reader is referred to the analysis of FID-SANS. Art. 32d (7) 8 of RILSANS expressly provides that FID-SANS may exchange information not only with foreign financial intelligence services but also other states' bodies competent in the field (which include AML/CFT supervisors), on cases and suspicion of money laundering and financing of terrorism.

Law enforcement authorities

1309. In its work to combat money laundering the General Directorate "Combating Organised Crime" cooperates with Interpol, Europol, the Member States of the EU, SELEC and others.

1310. A "Success story" illustrating good international cooperation were presented in connection with a Joint Investigation Team (JIT) set up between Bulgaria and the Netherlands, which established a pre-trial proceeding for money laundering against Bulgarian citizen sentenced for human trafficking for sexual exploitation, who is serving the sentence imposed in the Netherlands.

1311. Taking into consideration that money laundering and financing of terrorism are predominantly international offences, the Financial Security Directorate of SANS (money laundering department for operative checks) is actively exchanging information and cooperating with foreign authorities. The department is contact point for SANS with Europol's AWF SUSTRANS. Information concerning money laundering investigations is being exchanged with Europol on a regular basis. Together with the prosecutor's office the department participates in the international network of the money laundering experts – AMON. Bulgaria will join the steering group of the initiative. Bilateral cooperation is also a working tool for certain cases. Most current example is parallel investigations carried in Bulgaria and the USA.

1312. There are respective channels of communication established between the judicial authorities of the EU member states such as EJN (European Judicial Network) contact points and the National network of prosecutors involved in international legal co-operation. The SIS network is also an example of effective co-operation between the judicial authorities and the law-enforcement organs involved in the application of the EAW (European Arrest Warrant) instrument authorities please elaborate on this (for EU MS only). In the co-operation with the "third" countries there is a possibility for conclusion of different arrangements (bilateral/multilateral) such as Memorandums of Understanding etc.

1313. The Bulgarian Customs Agency exchanges information internationally in accordance with particular mechanisms laid down in: the Treaty on the functioning of the EU (art. 33); Regulation (EC) No.1889/2005 (art. 6 and 7); The Convention on mutual assistance and cooperation between customs administrations, so called Naples II Convention; Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters as last amended by Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008; bilateral and multilateral agreements on

mutual assistance and cooperation. For more information the reader is referred to the analysis under SRIX.7.

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)

FID-SANS

1314. Pursuant to Art 18 of the LMML, FID-SANS may receive information on suspicions for money laundering, from government authorities through international exchange. The Bulgarian authorities advised the evaluation team that based on the above mentioned provision, an international request for information is treated in the same manner as an internal STR, giving the authorisation to search FIU's own databases (which includes the STRs database) and the databases the FIU has access to.

1315. In addition, FID-SANS is empowered to make inquiries to the reporting entities, demanding information about suspicious operations, transactions or customers (including bank or professional secrecy information). The FIU may also request the information from the government and municipal authorities which information can be provided as well. The requested information shall be delivered within the defined by FID-SANS timeframe.

1316. Moreover, Bulgarian FIU is entitled to initiate suspension of financial operations/transactions on the basis of request from foreign FIU, under Art. 18. of the LMML. The provisions of Art. 12 of LMML stipulate the mechanism for the postponement of operations.

Supervisory authorities

1317. There are no legal provisions in existence in Bulgaria that would prevent or unduly restrict exchange of information by the Supervisory authorities. However, making inquiries on behalf of foreign counter-parts is not specifically provided. The Supervisory authorities shall use the received information only for the purposes for which it has been provided and shall not disclose or provide it to third parties, unless the obligation is provided by the law.

Bulgarian National Bank

1318. Any foreign request related to ML/TF case could be addressed to the BNB following the procedure as defined in the LMML or the CPC. If the request is channelled through the LMML, based on Art.18, the inquiry on behalf of the foreign counter-part shall be done through the FIU who has the authority to ask the BNB to provide the necessary information that represents professional/bank secrecy.

1319. Bulgarian authorities explained to evaluation team that in practice an inquiry was made in relation to a case initiated by the Austrian authorities.

Financial Supervision Commission

1320. There is no explicit provision in the FSC Act relating to the ability of the Commission to perform inquiries on behalf of foreign counterparts. In cases of ML/TF suspicions, the respective foreign request shall be channelled through the FIU as in the case explained above.

1321. There were no cases where such information was provided via the FIU.

Law enforcement authorities

1322. The Ministry of Interior has competence to conduct investigative work based on requests made by foreign law enforcement services under Article 144, Item 7 of the Law on the Ministry of Interior. Article 140 of the Law on the Ministry of Interior identifies the specific grounds for initiating investigative work, among which is the fulfilment of international treaties, to which the Republic of Bulgaria is party.

1323. The State Agency for National Security is empowered under Art. 24, Item 4. of the LSANS, to conduct operative search activities in implementation of international treaties to which the Republic of Bulgaria is a party.

1324. The Customs Authority shall make inquiries on behalf of foreign counter-parts based on Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters and Naples II Convention.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

FID-SANS

1325. Art 18 Para 2 states that FID-SANS shall exchange information on cases related to suspicion for money laundering with the respective international authorities, authorities of the European Union and authorities of other states, based on international treaties and conditions of reciprocity, thus not prescribing any unreasonable or unduly restrictive conditions on exchange of information.

1326. FID-SANS has never refused a request for information and checks were carried out even in regard to requests where some of the principles of information exchange had not been observed by its counterpart.

Supervisory authorities

1327. The evaluation team did not identify any restrictive conditions on exchange of information for competent authorities to exchange the information.

Law enforcement authorities

1328. Art. 161c. Para (1) Of the Law on Ministry of Interior, in its section that deals with cooperation with countries members of the EU states that the provision of the required information or data may be withdrawn where there are sufficient grounds to reckon that there is danger of:

- establishment of conditions threatening national security and public order;
- hindering actions of investigation or gathering data for initiation of penal proceedings;
- endangering a natural person's safety.

1329. In addition to the cases under par. 1, the provision of required information or data may be refused where they:

- do not correspond to the objectives, for which they have been requested;
- are related to a crime, for which the law provides a penalty of imprisonment for a period of up to one year or another less grave penalty.

1330. The requested information or data shall be provided only if permission by the competent judicial body for access to them has been obtained.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

FID-SANS and Law enforcement authorities

1331. Bulgaria adopted the all-crime approach with regard to predicate offences to money laundering. As explained above, the international exchange of information is done with regard to money laundering and all predicate offences, thus no restriction to international cooperation has been in place regarding fiscal matters.

Supervisory authorities

1332. No such restrictions are applicable with regard to the supervisory authorities.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

FID-SANS

1333. There are no prohibitions with respect to the provision of assistance relating to secrecy or confidentiality requirements on financial institutions or DNFPBs.

Supervisory authorities

1334. Information could also be exchanged by law enforcement officers pursuant to the provisions of the respective sectorial legislation (through authorisation by a court).

Law enforcement authorities

1335. Information is also exchanged by law enforcement pursuant to the provisions of the respective sectoral legislation (through authorisation by a court).

Safeguards in use of exchanged information (c.40.9)

FID-SANS

1336. Information received by the FIU from foreign counterparts is treated with the same level of confidentiality as other information collected by the FIU.

1337. The FID SANS may use information constituting of official, banking or commercial secrets, and protected private information obtained under the terms and following the procedure set in Articles 9 (providing FIU with info collected through CDD mechanism), 11 (STR reporting), 11a (CTR reporting), 13 (requesting additional info from reporting entities) and 18 (requests to and from foreign FIUs) solely for the purposes of the LMML.

1338. Officers of the Financial Intelligence Directorate of the State Agency for National Security shall not disclose or use to their own benefit or to the benefit of any persons related to themselves any information or facts constituting official, banking or commercial secrets that they have become aware of in the performance of their duties.

1339. The employees of the Directorate shall sign a declaration of confidentiality which obligation apply to cases where the said persons are no longer employees of the FIU.

Supervisory authorities

1340. The supervisory authorities (BNB, FSC) according to the nature of the intrinsic laws are bound to keep the professional secrecy.

1341. The general safeguards are provided by Art. 63 of LCI stipulating that the professional secrecy shall be the information which the BNB obtains or generates for banking supervision purposes or in relation thereto, and whose disclosure could damage the commercial interest or reputation of a bank or its shareholders. The members of the Governing Council, employees, external auditors, experts and other persons working for the BNB shall keep the professional secrecy even after the termination of their relations with the BNB. According to Art. 65 of the LCI, the provisions of Art. 63 shall apply to information received by the BNB from the Member States' competent supervisory authorities and may be used only for the performance of the BNB supervisory responsibilities.

1342. Art. 24 of the FSC Act stipulates that the information created and obtained by the FSC in connection with performance of its functions and which represents a trading, bank or other secrecy protected by law or whose disclosure would injure the trading interest of supervised persons, shall be a professional secrecy. The members of the FSC and employees from its administration shall be under the obligation to keep the professional secrecy also after their dismissal form position, respectively termination of their labour relations.

Law enforcement authorities

1343. When executing their official duties, the officials within MoI are obliged to comply with the national and international legislation, regulating the use, processing, dissemination and protection of information, including such information that has been subject of international exchange. Such regulations are stipulated in the Ministry of Interior Act (Section IIIA - Exchange of Information or Data with the Competent Bodies of the European Union Member States for Prevention, Discovery and Investigation of Crimes), Law for Protection of Classified Information, Law for Protection of Personal Data, Council Decision of 6 April 2009 establishing the European Police Office (2009/371/JHA – Chapter III - Common provisions on information processing).

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)

FID SANS

1344. Art. 18, Para. 2 of the LMML states that the FID SANS, on its own initiative and if requested shall exchange information on cases related to suspicion for money laundering with the respective international authorities, authorities of the European Union and (any) authorities of other states, based on international treaties and conditions of reciprocity. The term "authority" used under the LMML is not limited to counterparts. Exchange of information in practice has been conducted by the FIU with foreign authorities other than FIUs. Such requests have been received in relation to potential ML from foreign tax authorities, foreign law enforcement authorities (not FIUs), Interpol and Europol. No requests have been received from foreign supervisory authorities.

1345. All information pursuant to the LMML can be obtained and be used for the purposes of the international information exchange (Art. 13 of the LMML).

Supervisory authorities

1346. Indirect exchange of information is possible to be carried out through the FIU.

Law enforcement authorities

1347. When executing their official duties, the officials within MoI are obliged to comply with the national and international legislation, regulating the use, processing, dissemination and protection of information, including such information that has been subject of international exchange. Such regulations are stipulated in the Ministry of Interior Act (Section IIIA - Exchange of Information or Data with the Competent Bodies of the European Union Member States for Prevention, Discovery and Investigation of Crimes), Law for Protection of Classified Information, Law for Protection of Personal Data, Council Decision of 6 April 2009 establishing the European Police Office (2009/371/JHA – Chapter III - Common provisions on information processing).

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5) (rated C in the 3rd round report)

1348. The same provisions described above apply to TF information exchange.

1349. In addition, according to Art. 13 the LMFT the Minister of Interior and the Chairperson of SANS are authorised to exchange information on possible terrorist financing with the competent authorities of other countries and international organisations.

1350. According to Art 14 of the same Law, SANS is also authorised to exchange information internationally as per the same provisions of the LMFT. This Art reads as follows: *"The State Agency for National Security shall, acting on its own initiative or if requested to so, exchange information under this Law with the corresponding international bodies and with the authorities of other countries on the basis of international treaties and bilateral agreements or under conditions of reciprocity."*

1351. In addition, the RILSANS stipulates explicitly the responsibilities of FID-SANS in regard to the exchange of information. Art. 32e, Para. 7, Item 8 provides for the exchange of information on cases and suspicion of money laundering and financing of terrorism with the financial intelligence units and with other states' bodies with relevant competence, under the terms and order established under Art.18 of the LMML and Art.14 of the LMFT.

1352. Although RILSANS provides for details of internal organisation of competencies inside the SANS, providing for the competence of FID-SANS to exchange information internationally, it is unclear whether there is a legal basis in the LMFT for the adoption of relevant provisions in RILSANS regarding international exchange of information.

1353. Although it seems that in practice the provisions of RILSANS are implemented, still there is an issue of impossibility to see these provisions as regulation or other enforceable means. While Criterion 40 is not asterisked one, this should not be read as a major deficiency; still Bulgarian authorities may consider strengthening the legal basis for the FID-SANS to independently exchange information with foreign counterparts.

1354. Art 9 (3) of the LMFT (in conjunction with Art. 18 and 13 of the LMML) provides for the competence of the FIU to collect all available information on transactions and clients on the basis of a request from foreign counterpart.

1355. Law enforcement agencies can initiate respective procedures as described above in R 40.

1356. Art. 10 Para 2 of the LMFT provides the necessary safeguards in use of exchanged information, as follows: *"(2) The information collected under this Law may only be used for the purposes of this Law or to counter crime."*

Supervisory authorities

1357. The same international co-operation mechanism applies in cases of TF suspicions.

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

1358. Please note the analysis under criteria *40.10 - 40.11* is relevant. The term authorities used in Art. 14 of the LMFT is wide enough to ensure exchange of information with any foreign authority that might be related to financing of terrorism.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1359. Authorities provided the evaluation team comprehensive set of statistics on the FIU and law enforcement agencies international cooperation.

1360. FSC is encouraged to keep statistics on the scope of international requests for information.

Effectiveness and efficiency

FID-SANS

1361. The FID-SANS plays an active role in the field of international information exchange. The statistics elaborated by FID-SANS show a good level of cooperation. The responses received to MONEYVAL's standard feedback requests on international cooperation express no indications of deficiencies.

Table 60: Information on all requests processed by the FID-SANS.

Year	Requests from foreign FIUs	Requests to foreign FIUs
2008	75	345
2009	129	414
2010	118	274
2011	150	70
2012*	92	31

Total	564	1,134

* To 30 June 2012

Table 61: Checks by the FID-SANS and exchange of information including potential TF:

Year	Number of requests	Number of persons
2008	2	5
2009	1	43
2010	5	46
2011	9	175
2012*	1	5
Total:	18	274

* To July 2012

Supervisory authorities

1362. BNB has received 16 international requests for cooperation and exchange of information (all related to criminal proceedings) during the last 3 years. All the requests were responded to. Some of the requests were related to citizens from Afghanistan, Libya, Iran and Syria.

1363. FSC has received 5 international requests for cooperation and exchange of information during the last three years (all requests were answered). Most of these requests were related to the fit and proper tests performed by the other National competent authorities. The FSC has no information about the purpose of the requested information.

Law enforcement authorities

1364. The cooperation on ML cases between Bulgarian LEA General Directorate Combating Organised Crime and its territorial units - Regional Units Combating Organised Crime, State Agency for National Security and Customs Agency) through the Europol channel is illustrated by the statistics below:

Table 62: Cooperation through INTERPOL channels

Year	Outgoing Messages	Incoming messages	AWF SUSTRANS outgoing	AWF SUSTRANS incoming
2009	144	112	33	31
2010	294	261	39	52
2011	487	469	45	57
2012*	319	318	45	

* To September 2012

1365. In 2009 the most intensive exchange of information with: France (26 messages), United Kingdom (13), Ireland (11), Spain (10) and Greece (10). In 2010 the most intensive exchange of information was with Germany (40 messages), Spain (32), France (31), the United Kingdom (27) and the Netherlands (20). In 2011 the most intensive exchange of information was with the United Kingdom (59), the Netherlands (54), Germany (51), Spain (50) and Lithuania (42). In 2012 the most intensive exchange of information was with Germany (45), the Netherlands (35), Belgium (29), the United Kingdom (28), Italy (26) and Spain (21).

Table 63: Number of ML cases subject to information exchange through Interpol[63]

Total number of cases related to money laundering	48
Total number of exchanged messages related to money laundering	87
Number of cases with Russia	6
Number of cases with Germany	4
Number of cases with Spain	3
Number of cases with Italy	3

[63] MoI cases

Number of cases with Romania:	2
Number of cases with Switzerland, Belgium, Estonia, Greece, United States, Cyprus, Ireland, Ecuador, Guatemala, Chile, Venezuela, United Kingdom, Liechtenstein, Latvia, Georgia, "the former Yugoslav Republic of Macedonia", UN Mission to Kosovo, San Marino	30

Table 64: Number of ML cases subject to information exchange through other channels[64]:

Number of cases for the period 2008 – 2011 related to money laundering and terrorist financing	175
Germany	17
United States	5
Czech Republic	7
Italy	9
Romania	4
Russia	10
Pakistan	4
India	2
Turkey	8
Cyprus	2
Greece	5
Serbia	2
France	10
United Kingdom	7
Austria	11
Afghanistan	5
Iraq	4
Libya	5
Morocco	7
Egypt	1
Syria	4
Belgium	6
Spain	5
The Netherlands	5
Belarus	1
Luxembourg	2
Ukraine	1
Croatia	1
Hungary	1
Poland	1
Switzerland	1
Israel	1
Belgium	1

6.4.2. Recommendation and comments

FIU and Law enforcement authorities

1366. According to the statistics provided by the Bulgarian authorities and from the legal basis for the international cooperation, it seems that Bulgaria pays a lot of attention to international cooperation. This was also confirmed by all countries that responded to the Moneyval questionnaire on the matter.

[64] MoI data

1367. International cooperation of the FID-SANS and law enforcement agencies can be assessed as effective, efficient and in many cases more advanced in comparison with minimum standards required by the FATF Recommendations.

Supervisory authorities

1368. BNB and FSC appear to have the broad powers to exchange information with foreign counter-parts based on domestic law, international treaties and MoUs. However, the BNB cannot exchange information with foreign non-EU counter-parts without the consent of the customer involved in the potential request. Similarly, FSC cannot exchange information with foreign counter-parts in the absence of an MoU. Although this shortcoming seems to be mitigated by adhering to MMoU, the authorities might consider removing this condition for cooperation.

1369. There are no provisions enabling FSC and BNB to perform enquiries on behalf of foreign counter-parts. In practice, such inquiries shall be done through the FIU, but there is no provision in law or regulations in this regard. One request was made by a foreign authority for the BNB via FID-SANS. The practical application of such option could not be demonstrated in case of FSC. The Bulgarian authorities are encouraged to take measures to permit BNB and FSC to make direct inquiries on behalf of foreign counterparts, or at a minimum, to provide for such enquiries to be performed through the FIU.

1370. In the absence of relevant statistics, FSC's ability to exchange information with foreign counter-parts on AML/CFT matters was not demonstrated. Therefore, FSC is encouraged to keep statistics on the scope of international requests.

1371. For the exchange bureaux, money and value transfer services and the DNFBPs the designated supervisory authority is the FIU, therefore, the analysis made for FID-SANS apply.

6.4.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.40	**LC**	• BNB cannot exchange information with non-EU counter-parts in the absence of an MoU; • FSC cannot exchange information with foreign counter-parts in the absence of an MoU; • No provisions enabling BNB and FSC to perform direct enquiries on behalf of foreign counter-parts; **Effectiveness** • FSC ability to exchange information with foreign counter-parts not demonstrated.
SR.V	**LC**	• 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

1372. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains only the box showing the ratings and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	**LC**	• FID-SANS (in its capacity as FIU) material resources insufficient; • Not all the positions of the FID-SANS are competed with employees; • The supervisory resources of the Financial Supervision Commission (FSC) appear to be more focused on prudential issues. There are no targeted inspections on AML/CFT issues. • Resources provided to the FIU, as currently the main policy coordinator, are not sufficient.
R.32	**LC**	• Interagency council for monitoring National Strategy, review the system, and coordination of the system as a whole not yet created; • The review of results and outputs of the AML/CFT systems (and the effectiveness of the systems as a whole) is not a regular and systematic process.

7.2 Other Relevant AML/CFT Measures or Issues

1373. N/A

7.3 General Framework for AML/CFT System (see also section 1.1)

1374. See section 1.1

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 Bulgaria. *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[65]
Legal systems		
1. Money laundering offence	**Largely Compliant**	• The definition of *"property"* does not include indirect proceeds; • Not all the designated categories of predicate offences are covered by the CC (piracy, insider trading and market manipulation) and some aspects of terrorist financing; **Effectiveness** • The results with regard to number of investigations, versus cases resulted in convictions does not seem proportionate; low number of ML investigations compared with the number of investigations instigated for the predicate offences; • Uneven understanding of *"property"* among the various authorities
2. Money laundering offence Mental element and corporate liability	***Largely Compliant***	• *Liability of the legal persons remains limited to administrative liability.* • *Almost half of the final convictions on money laundering were dealt with suspended sentences of imprisonment, fact which raises questions with respect to the compliance with the requirements of "effective and dissuasive sanctions".* • *Difficulties of proof of intention need further*

[65] These factors are only required to be set out when the rating is less than Compliant.

		addressing in guidance or legislation to address effectiveness issues.
3. Confiscation and provisional measures	**Partially Compliant**	• The deficiencies in criminalisation of ML, predicate offences to ML, as well as TF may limit the ability to seize and to confiscate; • Confiscation of property held or owned by third parties is restrictive (in case of instrumentalities and object of crime); • Property subject to security measures is not explicitly defined under the relevant legislation; • The rights of bona fide third parties are not protected in all circumstances; **Effectiveness** • Limited effectiveness of the general confiscation regime.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**Compliant**	
5. Customer due diligence	**Largely Complaint**	• The definition of beneficial owner does not clearly comprise ultimate ownership although it covers indirect control; • In certain cases, the LMML requires no identification instead simplified due diligence measures; • No explicit prohibition for not applying simplified due diligence when suspicious of ML and FT arises; **Effectiveness** • Understanding of the BO in case of natural persons not fully demonstrated; • Information regarding profession only to be collected upon risk assessment may impact effectiveness of c.5.7; • Lack of sources for the verification of data of foreign customers and beneficial owners; • Concerns about implementation of enhanced customer due diligence, particularly in the non-banking financial sector.

6. Politically exposed persons	**Largely Compliant**	• Approval of an official at a senior managerial position before establishing, business relations with PEP's or related persons is not required; • Approval of an official at senior managerial position before continuing business relations of a client that has become a PEP is not required; • The concept of "clients" that are considered PEPs should also include beneficial owners of natural persons.
7. Correspondent banking	**Largely Compliant**	• The requirement to gather sufficient information about the respondent institution is not extended to all financial institutions to cover the similar to the correspondent banking relationships; • The special measures apply only to non-EU correspondent relationships; • Approval of an official at a senior managerial position before establishing a corresponding banking relationship is not required.
8. New technologies and non face-to-face business	**Compliant**	
9. Third parties and introducers	**Compliant**	
10. Record keeping	**Partially Compliant**	• The requirement to keep records of all the components of transaction records covers only banks transfers and money remittance payments and does not apply to other financial institutions; • No provision to ensure that transaction records should be sufficient to permit reconstruction of individual transactions; • There is no obligation to keep the documents for more than five years if requested by a competent authority for all FI.
11. Unusual transactions	**Partially Compliant**	• There is no specific requirement for financial institutions to pay special attention to all complex, unusual large transactions, or unusual pattern of transactions, that have no apparent or visible economic or lawful purpose; • There is no specific obligation to set forth the findings in writing and to keep them available for five years.

12. DNFBPS – R.5, 6, 8-11	**Partially Compliant**	***Applying Recommendation 5*** • Technical deficiencies detected under R.5 are applicable to DNFBPS; **Effectiveness** • Lack of full awareness regarding the obligations of verification of identification and of the source of funds, except accountants and auditors; • Concerns remain in regards ECDD; ***Applying Recommendation 6*** • Technical deficiencies identified under R.6 are applicable; **Effectiveness** • In practice, no managerial approval is required; • Some sectors have insufficient knowledge regarding PEPs and respective enhanced due diligence measures; ***Applying Recommendation 9*** • N/A ***Applying Recommendation 10*** • Deficiencies underlined under R.10 apply equally to DNFBPs; ***Applying Recommendation 11*** • Lack of requirement to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions, which have no apparent or visible economic or lawful purpose.
13. Suspicious transaction reporting	**Largely Compliant**	• Shortcomings identified in criminalisation of ML impact on reporting obligations; • Reporting obligation is restricted to proceeds from crime that are used only in order to conceal their unlawful origin; **Effectiveness** • Effectiveness of the reporting regime in case of the non-banking financial sector not fully demonstrated.
14. Protection and no tipping-off	***Largely Compliant***	• *Complete protection from all civil liability is missing for reporting entities.*
15. Internal controls, compliance and audit	***Largely Compliant***	• *There is an obligation to develop CFT internal procedures, policies and control programmes,*

		however, these programmes were not fully understood by some of the financial institutions. Further development and refining of these programmes are recommended (effectiveness). • *For non-bank financial institutions there is no enforceable requirement to screen all employees.* • *The AML/CFT audit function should be further developed and elaborated to include controls and testing.*
16. DNFBPS – R.13-15 & 21[66]	**Partially Compliant**	***Applying Recommendation 13*** • Weaknesses that applied to the financial sector regarding reporting obligation also apply to DNFBPs; • Effectiveness not demonstrated; ***Applying Recommendation 21*** **Effectiveness** • Low level of awareness across DNFBP sector concerning the jurisdictions that do not or insufficiently apply FATF Recommendations; • Not all of them seemed fully aware of the counter-measures they need to apply in case of countries that do not apply or insufficiently apply the FATF Recommendations.
17. Sanctions	**Largely Compliant**	• Maximum fine of BGN 50,000 not dissuasive enough.
18. Shell banks	***Compliant***	
19. Other forms of reporting	***Compliant***	
20. Other DNFBP and secure transaction techniques	***Compliant***	
21. Special attention for higher risk countries	**Largely Compliant**	**Effectiveness** • The FI were not fully clear what counter-measures applicable in case of countries that do not of not fully apply the FATF Recommendations.
22. Foreign branches and subsidiaries	**Largely Compliant**	• *Provision should be made that where minimum AML/CFT requirements of the home and host country differ, branches and subsidiaries in host*

[66] The review of Recommendation 16 has taken into account the findings from the 3rd round report on Recommendations 14 and 15.

		countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.
23. Regulation, supervision and monitoring	**Largely Compliant**	• The National Revenue Agency does not maintain adequate market entry procedures for the exchange bureau; **Effectiveness** • The National Revenue Agency, in its capacity of supervisory authority for exchange bureaux, demonstrated a marginal awareness and involvement in AML/CFT issues; • Effective supervision on Post Offices not fully demonstrated.
24. DNFBPS - Regulation, supervision and monitoring	**Partially Compliant**	• Lack of requirement to verify the source of funds and the veracity of the declarations given when licensing a casino; • The threshold concerning the legal requirement to prevent criminals from holding a significant or controlling interest in a casino seems high; **Effectiveness** • The requirements to verify the source of funds and the veracity of the declarations given when licensing a casino could not be assessed due to late adoption of the respective Ordinance; • Low awareness on AML/CFT matters of most of the general supervisors, negatively impact their ability to support the FID-SANS in their supervisory activity; • no monitoring of *"fit and proper"* criteria on managers or casino owners after the incorporation; • Advocates remain unsupervised in practice due to lack of involvement of the SROs.
25. Guidelines and Feedback	***Largely Compliant***	• *In some industries there seem to be a lack of awareness of the methodological guidelines available(efficiency issue).* • *Although useful, many of the guidelines appear to be generic and not tailored to the particular sector (efficiency issue).* • *Consideration should be given to more specific feedback outside the banking sector.* • *For DNFBP ongoing guidance on trends and typologies of AML//CFT should be considered*

		• *Further feedback should be considered for DNFBP – especially on a case-by-case basis for STRs filed*
Institutional and other measures		
26. The FIU	**C**	
27. Law enforcement authorities	***Largely Compliant***	• *The overall effectiveness of the law enforcement response to ML investigation is questionable.*
28. Powers of competent authorities	***Compliant***	
29. Supervisors	**Compliant**	
30. Resources, integrity and training[67]	**Largely Compliant** *(composite rating)*	• FID-SANS (in its capacity as FIU) material resources insufficient; • Not all the positions of the FID-SANS are competed with employees; • The supervisory resources of the Financial Supervision Commission (FSC) appear to be more focused on prudential issues. There are no targeted inspections on AML/CFT issues. • Resources provided to the FIU, as currently the main policy coordinator, are not sufficient.
31. National co-operation	**Largely Compliant**	• Interagency council for monitoring National Strategy, review the system, and coordination of the system as a whole not yet created.
32. Statistics[68]	**Largely Compliant** *(composite rating)*	• Interagency council for monitoring National Strategy, review the system, and coordination of the system as a whole not yet created • The review of results and outputs of the AML/CFT systems (and the effectiveness of the systems as a whole) is not a regular and systematic process • FSC is encouraged to keep statistics on the scope of international requests to identify AML/CFT requests

[67] 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.

[68] 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 27, 37, 38 and 39.

33. Legal persons – beneficial owners	***Largely Compliant***	• *Ownership of the bearer shares not verifiable at the Commercial Register or any other register.*
34. Legal arrangements – beneficial owners	**N/A**	
International Co-operation		
35. Conventions	**Largely Compliant**	• The implementation of Vienna and Palermo Conventions are not fully observed; • The TF offence is not fully compliant with the TF Convention; • Limitations for application of confiscation do exist.
36. Mutual legal assistance (MLA)	**Largely Compliant**	• The shortcomings identified with respect to the provisional and confiscation measures may have a negative impact on MLA requests; • The application of dual criminality may limit Bulgaria's ability to provide assistance due to the shortcomings identified with respect of R1.
37. Dual criminality	***Compliant***	
38. MLA on confiscation and freezing	***Largely Compliant***	• *Reservations remain with respect to enforcing foreign confiscation orders related to insider trading and market manipulation, as these offences are not properly criminalised in the national legislation.* • *Another issue is the lack of a special assets forfeiture fund.*
39. Extradition	***Compliant***	
40. Other forms of co-operation	**Largely Compliant**	• BNB cannot exchange information with non-EU counter-parts in the absence of an MoU; • FSC cannot exchange information with foreign counter-parts in the absence of an MoU; • No provisions enabling BNB and FSC to perform direct enquiries on behalf of foreign counter-parts; ***Effectiveness*** • FSC ability to exchange information with foreign counter-parts not demonstrated.
Nine Special Recommendations		

SR.I Implement UN instruments	**Partially Compliant**	• The FT offence is not fully in line with FT Convention; • UNSCR 1267 and 1373 are not fully implemented.
SR.II Criminalise terrorist financing	**Partially Compliant**	• Not all Acts defined in the treaties listed in the Annex to the Convention are criminalised; • Art. 108a para 1 of the CC prescribes the purposive element for the TF offence, for all the offences, including the ones specified under the Conventions and Protocols listed in the Annex to the TF Convention; • TF offence does not cover threatening/forcing a competent authority, a member of the public or a foreign state or international organisation to perform or omit from doing *any act*; • The term "fund" is not defined under the criminal legislation and here is still no explicit coverage of funds, which are to be used in full or in part; • No criminalisation of the act of providing or collecting funds for any purpose; • Criminal liability is not applied with regard to legal persons.
SR.III Freeze and confiscate terrorist assets	**Partially Compliant**	• The procedures for amending the lists of designated entities may impede timeliness; • The freezing do not extend to funds controlled, directly or indirectly by designated persons; • Deadlines for claiming the listing by third parties acting in good faith may impact the rights of bona fide third parties; • No specific guidance on freezing requirements available for the private sector; • Deficiencies identified under R3 cascade on c.III.11; **<u>Effectiveness</u>** • Communication to the private sector is deficient.
SR.IV Suspicious transaction reporting	**Largely Compliant**	**<u>Effectiveness</u>** • The effectiveness of the reporting regime has not been proven.
SR.V International co-operation	**Largely Compliant** *(composite*	• The shortcomings identified with respect to the provisional and confiscation measures may have a negative impact on MLA requests;

	rating)	• The practical application of dual criminality may limit Bulgaria's ability to provide assistance due to the shortcomings identified with respect to the TF offence; • No timeframes which would enable to determine whether the requests are being dealt in a timely manner; • Shortcomings in the terrorist financing offense described in SR.II may affect the implementation in terrorist financing cases; • Technical shortcomings under R40 apply.
SRVI	**Compliant**	
SRVII	**Largely Compliant**	• The implementation and effectiveness of the EU Regulation could not be assessed.
SR.VIII Non-profit organisations	**Largely Compliant**	• No obligation for keeping information on persons who own, control or direct the activities of NPOs.
SR.IX Cross Border declaration and disclosure	**Largely Compliant**	• No power to restrain assets in case of ML or TF suspicions; **<u>Effectiveness</u>** • Issues on the effective application of SRIII requirements; • Signs alerting travellers on obligation to declare cash on borders not visible enough negatively impact effectiveness of the declaration system.

9. TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1)	• The Bulgarian legislation needs to extend the list of predicate offences, to include all categories of piracy, market manipulation and insider trading, as well as to cover all the aspects of terrorism financing; • Although the evaluation team accepted that the Bulgarian word "prikrivam" might cover both "*concealment*" and "*disguise*", the opinion that the ML offence would benefit from clear mentioning of both term used in the translation in Bulgarian of the Vienna Convention remains; • a clear definition of "*property*" (including the referral to both direct and indirect proceeds) should be adopted in the legislation, or, at least, a clear indication should be provided as to what legal document is to be taken into consideration when defining "*property*" for ML purposes; • The authorities should continue the training programs to ensure that the prosecutors involved in ML cases are aware that prior conviction for the predicate offence is not required in order to bring a ML case to court.
2.2 Criminalisation of Terrorist Financing (SR.II)	• The authorities are invited to adopt legislation in order to criminalise all the offences listed in the Annex to the TF Convention; • The Bulgarian authorities are recommended to amend Art. 108a to ensure that all the offences under the nine Conventions and Protocols listed in the Annex to the TF Convention are covered, without any additional mental element required; • The purposive element of the TF offence should cover the threatening/forcing a competent authority, a foreign state or international organisation, to perform or omit from doing *any act* as defined under the TF Convention, in contrary to the present wording of the CC which is limited to acts in the *circle of his/her functions;* • The legislation should be amended to cover situations in which the property or funds are provided or collected generally for the use of an individual terrorist or a terrorist organisation without intention or knowledge that the funds or property will be used in the commission of a terrorist act; • Clearly define that TF offence extends to funds, which are to be used in full or in part; • Ensure full compliance with the term *"fund"* defined under the TF Convention; • Apply criminal liability to legal persons.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• The seizure and confiscation measures should be extended to the instrumentalities used and intended for use in the commission of ML and FT, and to the object of the ML crime, in cases where the assets do not belong to the culprit charged with the laundering offence; • The provisional measures should be applicable in case of assets are held or owned by third (not accused) party; • The authorities are recommended to take legislative measures in order to include a definition of property, which is subject to security measures and confiscation; • Distinct provisions and adequate procedures for protection of the rights of bona fide third parties should be included in the legislation; • Efforts should be made by the authorities to increase the number of provisional measures applied and the volume of forfeited assets and to make more use of the powers currently vested to them by the existing legislation which offers a relatively broad authority to seize/sequester and to confiscate.
2.4 Freezing of funds used for terrorist financing (SR.III)	• The legal framework should be amended to clarify to what extent the freezing mechanism will include funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations; • Additional efforts are necessary in order to raise awareness of all the national authorities on the freezing of terrorist fund obligations; • Communication of terrorist lists to the private sector should be enhanced; • Specific guidance should be provided to the private sector either by issuing a separate document or by amending the 2012 Guidance on reporting; • Ensure that all reporting entities bound by the freezing obligation to apply freezing measure immediately, are fully aware of their obligations, by providing guidance on the application of freezing mechanisms; • Definition of the term funds should be provided in line with the FATF Recommendations, to ensure that the application of freezing measures should extend to funds owned or controlled, directly or indirectly by designated persons; • The legal provisions specifying the right of third parties acting in good faith to claim applied freezing measure within a deadline specified under the LMFT, thus relevant legislative provisions should be revised to exclude restrictive time limits.
2.5 The Financial Intelligence Unit and its functions (R.26)	• Effectiveness would be enhanced by automated reporting systems • More direct access to LE databases would assist analysis
2.6. Cross border declarations	• The authorities are invited to take appropriate legislative

(SRIX)	measures to ensure that the competent authority has the power to freeze the currency or bearer instruments to ascertain whether evidence of ML or TF may be found. • Awareness raising programs for Border Police and Customs Authorities on SRIII obligations should be undertaken. • The Bulgarian authorities should take steps to heighten the reporting obligations at frontiers in order to make the travellers aware of it, by making the signage at ports of entry and exit more visible.
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)	***Recommendation 5*** • Although difficult to apply in practice, the wording of the LMML creates a blanket exemption for simplified due diligence measures. The authorities are encouraged to replace "no identification" by "simplified customer due diligence measures"; • Bulgarian legislation does not specifically prohibit simplified due diligence measures when suspicions of money laundering or financing of terrorism arises. Bulgarian authorities are strongly recommended to amend legislation in order to address this deficiency; • The definition of beneficial owner should clearly comprise the notion of ultimate owner of a legal body or arrangement, although indirect control is covered. • More awareness is required amongst the industry on the beneficial owner. The concept of beneficial owner for a natural person is unknown to the reporting entities; • The financial institutions should be required to gather data about the profession of their client at the earliest stages of the identification process in order to be able to make a correct risk profile; • Awareness raising programmes on enhanced due diligence for the non-banking financial institutions is necessary. ***Recommendation 6*** • The concept of "clients" that are considered PEPs should also include beneficial owners of natural persons, as currently only applies to customers, potential customers and beneficial owners of the clients that are legal entities. • Authorities should ensure that the requirement of approval of an official at a senior managerial position before establishing, or to continue, business relations with PEP's or related persons, is applied in practice by all financial institutions. ***Recommendation 7*** • The requirements on correspondent banking and other relationships should be extended to the whole of the financial sector and not limited merely to the credit

	institutions. • The special measures should apply to EU countries correspondent relationships • Authorities should include in Laws or regulations the requirement of approval of an official at a senior managerial position before establishing correspondent banking relations.
3.3. Third parties and introducers	This Recommendation is fully observed
3.4. Financial institution secrecy or confidentiality (R.4)	This Recommendation is fully observed
3.5. Record keeping and wire transfer rules (R.10)	• Financial institutions are only specifically obliged to keep the documents related to the identification data and business correspondence. Other files are not covered. The components of transaction records that are specified through Regulation No. 3 of the BNB only covers bank transfers and money remittance payments and does not apply to other financial institutions. It is therefore recommended that legislative amendments should be introduced to extend the requirement to all obliged entities; • A new requirement should be introduced to ensure that transactions records are sufficient to permit reconstruction of individual transactions as required in the FATF standards; • A new requirement should be introduced to require keeping of documents for more than five years when required by a competent authorities[69], especially the FIU;
3.6. Monitoring of transactions and relationship reporting (R.11 and R.21)	***Recommendation 11*** • The Bulgarian authorities should make the necessary legislative changes to implement R.11[70]: require the financial institutions to pay special attention to all complex, unusual large transactions, or unusual pattern of transactions, that have no apparent or visible economic or lawful purpose; and to set forth the findings in writing and to keep them available for five years. ***Recommendation 21*** • Specific guidance and awareness raising programs should be issued/undertaken by the authorities to assist FI on the measures that they could apply in the event of facing relations with the risky countries.
3.7 Suspicious transaction reports	• The Bulgarian authorities are invited to adopt necessary

[69] The new LMML, which entered into force on 25 December 2012, included a new Para. 2 under art 8: "(2) Under a written ordinance of the Director of the Financial Intelligence Directorate of the State Agency for National Security the term under Para. 1 for keeping the information can be prolonged to 7 years."

[70] In the new LMML, which entered into force on 25 December 2012 a new article has been introduced as follows

"Art. 7 b (1) The persons under Art. 3, Paras. 2 and 3 are required to apply special monitoring all complex or unusually large transactions or operations, as well as all deals and operations, which do not have visible economic or legal purpose, that could be determined on the basis of the information available to the person under Art. 3, Paras. 2 and 3, or do not correspond to the available information on the client.

(2) Whenever the persons under Art. 3, Paras. 2 and 3 detect deals or operations pursuant to Para. 1, they shall gather information on the significant elements and amounts of the operation or deal, the relevant documents and other identification data."

and other reporting (R.13 & SR.IV)	amendments to LMML to enable reporting entities to report *"funds"* that are suspected to be the proceeds of criminal activity, and all proceeds from crime, not only those which are intended to be disguised or the unlawful origin of such property to be concealed (eliminate the additional mental element required for reporting); • The necessary amendments to LMML should be adopted in order to create a solid legal basis for the Rules on Implementation of LMML in the part which regulates reporting obligation; • Bulgarian authorities should put more efforts to promote greater reporting of STRs by obliged entities by raising awareness on the reporting requirement for those sectors which have submitted few STRs; • More training and awareness raising programs are needed to assist reporting entities in distinguishing between TF and ML related STRs; • Since the criteria for reporting are very well elaborated and published, awareness raising campaign should concentrate on training on implementation of stated criteria;
3.8 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17)	***Recommendation 23*** • Taking into consideration the universal competences the FID-SANS has on the AML/CFT supervision over the financial institutions, the supervisory actions of the BNB, FSC and NRA should provide more targeted input on the assessment of the AML/CFT compliance measures taken by the entities under their supervision. Consideration should be given to thematic reviews. • The NRA should focus more on AML/CFT matters and develop its supervisory activities in the field, in order to be able to assist the FIU in its supervisory obligations. • The monitoring system for compliance of AML/CFT measures on financial services provided by Bulgarian Posts needs to be enhanced. ***Recommendation 17*** • Authorities should consider increasing the maximum level of fine for AML/CFT breaches. • The supervisory bodies should consider (where appropriate) extending the range of sanctions to directors and board members of supervised entities, in order to enhance the responsibility of the management in detecting AML/CFT deficiencies and shortcomings. ***Recommendation 29*** • This Recommendation is fully observed
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	***Recommendation 5*** • The recommendations made for the financial sector apply also for the DNFBP; • Although in general terms the sector was aware of their

	obligations, specially those related to the identification of the client, Bulgarian authorities must ensure that verification of identification and of the sources of funds is equally performed; • Although some sectors agreed that in some cases an enhanced due diligence was required, they were not sure about any enhanced measures to be taken. The authorities should continue the training and awareness raising programs. ***Recommendation 6*** • The same shortcomings as in R.6 are applicable for DNFBP's. Bulgarian authorities should ensure that in practice managerial approval is required when establishing business relations with a PEP or when the client becomes a PEP *a posteriori.* • Some sectors were not sure about the risk of establishing business relations with PEPs and regarding the enhanced due diligence measures. The authorities should continue the training and awareness raising programs on this matter. ***Recommendation 8*** • N/A ***Recommendation 9*** • N/A ***Recommendation 10*** • The recommendations made for the R.10 apply to DNFBP. ***Recommendation 11*** • The recommendations made for the R.11 applies to DNFBP.
4.2 Suspicious transaction reporting (R.16)	***Recommendation 13&SRIV*** • The country should adopt the necessary amendments to LMML and LMFT in order to remedy deficiencies regarding technical compliance with reporting obligation described in section 3.7 of this Report. • The authorities should encourage greater reporting of STRs by obliged entities by raising awareness of the reporting requirement of all DNFBPs. • Since the criteria for reporting are very well elaborated and published, awareness raising campaign should concentrate on training on implementation of stated criteria. ***Recommendation 21*** • Same recommendations made for R21 apply for DNFBP sector
4.3 Regulation, supervision and monitoring (R.24)	• The pro-active role of the general supervisors should be increased in order to assist the FIU in its supervisory activities. Awareness rising for the SROs and other general supervisory authorities is still necessary, in order to increase AML/CFT skills and to render them able to devote a part of their regular supervision to AML/CFT compliance. • Monitoring procedures for *"fit and proper"* criteria after the incorporation of the casino for managers or shareholders

	should be adopted and implemented. • Advocates remain unsupervised in practice due to lack of involvement of the SRO. Measures should be taken to involve the Supreme Bar Council in AML/CFT compliance monitoring of the advocates in order to support the FIU. • Clear obligation for the SCG to verify the accuracy of the declarations given according to Art. 8 of the GL should be provided. • There should be provisions in place to prevent criminals of being the partners or owning a significant or controlling interest in a casino, below the 33% threshold.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.3 Non-profit organisations (SR.VIII)	• The Bulgarian authorities are recommended to continue supervising the NPO sector to detect and properly monitor the possible vulnerabilities for TF abuse; • The obligation for all the types of the NPOs to maintain and to make publicly available information on persons, who own, control or direct the activities, including senior officers, board member and trustees should be clearly provided.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• Taking into account the structural changes that occurred in the FIU organisation and the importance of the banking sector in the entire AML/CFT system, the evaluators strongly recommend the revision of the MOU between the FID-SANS and BNB which will enhance cooperation between the two authorities. • Bulgarian authorities should, as quickly as possible, create the framework for the policy makers to review of the effectiveness (the Interagency Council for Monitoring of Implementation of the National Strategy for Combating Money Laundering as envisaged by the National Strategy) and enforce its work in improving the system to decision makers.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Bulgaria has ratified the Vienna, Palermo and Terrorism Financing Conventions, however the current text of the CC does not cover the full scope of these Conventions, therefore it is recommended to amend the legislation covering ML and TF offences so that it is fully in line with the Vienna, Palermo and Terrorism Financing Conventions; • Bulgarian authorities should take steps to ensure full implementation of relevant provisions on confiscation and preventive measures; • Provide for criminal liability of legal persons; • The shortcomings identified in relation to the listing and freezing procedures for implementation of UNSCR 1373

	and 1267 should be addressed.
6.3 Mutual Legal Assistance (R.36 & SR.V)	• The Bulgarian authorities are recommended to include a clear timeframe for the execution of MLA requests.
6.4 Other Forms of Co-operation (R.40 & SR.V)	These Recommendations are fully observed.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	***Recommendation 30*** • Additional material resources should be provided to FID-SANS in its capacity of FIU and of informal national coordinator of the AML/CFT system; • All the positions of the FID-SANS should completed with employees; • The supervisory resources of the Financial Supervision Commission (FSC) should include targeted assessment on AML/CFT compliance; ***Recommendation 32*** • The interagency council for monitoring National Strategy, review the system, and coordination of the system as a whole should be created; • The review of the AML/CFT system should be regular and systematic.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

10. TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS
203	Bulgarian authorities do not agree with the statement for "uneven understanding of "property" among the various authorities". The absence of definition of "property" does not create a problem for the application of the provision of Art. 253 of the Criminal Code (CC) of Bulgaria, as far as the definition in the two conventions on money laundering / 1990 and 2005 / is adequate. The Constitution of the Republic of Bulgaria and the Statutory Instruments Act are the legal basis allowing the use of these definitions of the abovementioned conventions. In the evaluation period there were no cases of failure to investigate or cases of acquittal of defendant as a result of the absence of a definition in the CC, i.e. this absence has not reduced the efficiency of the results of the Bulgarian LEAs.
R1 Rating box	Bulgarian authorities do not agree with the statement "low number of ML investigations compared with the number of investigations instigated for the predicate offences" referring to the total number of such investigations. Tables 2-4 in the report include all recorded crimes – everyday crimes /which

	cannot be predicate offenses for money laundering/ as well as the heavy /serious/ crimes. On this basis, because of the lack of distinction between them and the lack of accurate statistics on the number of the investigated serious crimes which could be predicate ones for money laundering, there is no real basis for comparison and thus this conclusion does not correspond to the used comparative data.
R. 3, Paragraphs 292, 325 and bullet 4 in Rating Box	**On R.3 – Request for inclusion of a written comment in Table 3 in the end of the Report (position of national authorities):** Concerning Protection of bona fide third parties (c.3.5) – Written comment on paras. 292, 325 and bullet 4: **- Concerning para. 292** – *"Article 396 of Civil Procedure Code defines that the ruling of the court on an injunction securing the action shall be appealable by an interlocutory appeal. However, neither the CC, nor the CPC provide for mechanisms to protect the rights of bona fide third parties whose interests have been infringed.*" – Bulgarian authorities do not agree with the second sentence (underlined) and with the content of the paragraph itself, as the statement does not correspond to the legal framework and thus the paragraph is not full as it lacks all the legal guarantees that exist in this regard, prescribed in details in the special legislation *(namely the Civil procedure code – many other provisions than just Art. 396 - these are the following articles: 124, 125, 356, 357, 358, 439, 440 and 441; the Law on obligations and contracts - Art. 135; and the Law on the ownership – these are the following articles: 68, 69, 70, 71, 76, 77, 99, 100, 108 and 109)*. Authorities draw attention as well to the provision of Art. 53, para. 2, letter b) of the CC – *"the acquired through the crime, **if it does not have to be returned or restored. Where the acquired is not available or has been disposed of, an equivalent amount shall be adjudged.".*** The first legal guarantee stands in a provision in the General Part of the CC, stating that if the acquired through the crime - for example the real estate bought with money from ML has been sold to a third party in good faith, the real estate cannot be confiscated directly from the third party, but in this case the equivalent amount of this property is adjudged to the perpetrator of the ML offence himself/herself. Secondly, according to the Law on ownership, good faith is always presumed until proven otherwise. In conclusion, when considering the protection regime for the third bona fide party, besides the CC, should be taken into consideration all the guarantees available in the legislation - the Law on the ownership, the Law on obligations and contracts and the Civil Procedure Code (especially Art. 439 and Art.440 of the latter). In addition, in compliance with Bulgarian legal system the place of procedural provisions for protection of these rights is not in the Criminal procedure code, but is in the Civil procedure code as the substance of the protected right is to be taken into consideration in this case. As the subject of the claim for the third party protection (as well as the establishment of the fact whether the third party is bona fide or not) is of a civil nature. The guarantees – general principles and concrete provisions concerning the protection of rights of the third party *(and of any type of property)*, are respectively found in the special legislation – the Law on the ownership and the Civil procedure code. For these reasons, Bulgarian authorities do not agree with the Recommendation under para. 325: ***"**Distinct provisions and adequate procedures for protection of the rights of bona fide third parties should be included in the legislation"* and respectively with Bullet point 4 on R.3: *"The rights of bona fide third parties are not protected in all circumstances"*.
Compliance with Recommendation	FSC is obliged to perform direct enquiries on behalf of foreign counter-parts and lead investigation, which obligation comes from the following provisions of

40 and SR.V R. 40 third bullet point: "No provisions enabling FSC to perform direct enquiries on behalf of foreign counter-parts;"	the FSC Act: Art. 18 (1), item 5 of FSC Act - upon exercise of the powers of the Commission it has the right to require from third parties information, documents, including certified copies of documents, statements of accounts and other data required for conduct of crosschecks and/or in relation to warnings, complaints or requests, including by authorities of other countries exercising financial supervision. Also, under Art.18, Paragr.3 FSC Act - "banks shall be obligated to provide information on the assets in and operations with accounts and deposits of bank customers in case the FSC receives a request by a foreign financial supervision authority acting in another state, if an agreement on cooperation and information exchange has been concluded with such authority".
R. 40 fourth bullet point: "FSC ability to Exchange information with foreign counter-parts not demonstrated."	According to the official statistics of IOSCO for the exchange of information between the FSC and other supervisors, the FSC has the following numbers of real information exchange: 2008 – N/A (The data does not include 2008 because FSC joined the IOSCO MMoU in 2009) 2009 - 2 2010 - 0 2011 - 2 2012 - 8 Apart from official statistics of IOSCO during that period we required supervisory information and assistance from the regulatory authorities in EU under the Memoranda of ESMA (Securities) and Siena Protocol (insurance). Unfortunately there are no official statistics, but the cases (in the period 2008-2012) are not less than 10.

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Bulgaria has been a member country of the European Union since 2007. It has implemented [/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	The Bulgarian legislation does not envisage criminal liability for legal persons. According to the information provided by the authorities the principle for the personal character of the criminal liability – meaning that a punishment could be imposed solely on a natural person, is a fundamental principle of the national criminal law and exists ever since the adoption of the Bulgarian Criminal Code in 1968. The issue concerning the liability of legal persons is regulated under the Law on administrative violations and sanctions. As defined under Article 83a of the Law on administrative violations and sanctions a legal person, which has enriched itself or would enrich itself from a crime under Articles 108a (TF) or 253 (ML) of the Criminal Code, when they have been committed by: 1. an individual, authorised to formulate the will of the legal person; 2. an individual, representing the legal person; 3. an individual, elected to a control or supervisory body of the legal person, or 4. an employee, to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of this task, shall be punishable by a property sanction of up to BGN 1,000,000, but not less than the equivalent of the benefit, where the same is of a property nature; where the benefit is no of a property nature or its amount cannot be established, the sanction shall be from BGN 5,000 to 100,000.

Conclusion	Criminal liability for money laundering does not extend to legal persons. Civil or administrative liability applies.
Recommendations and Comments	N/A

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	Art. 4 (1) of the LMML prohibits the opening of anonymous accounts or accounts under a dummy name. Financial institutions are obliged to identify the customers when business or professional relations are established. Furthermore, Art. 5 of the BNB Regulation No3, states that legal or natural persons willing to open a payment account should provide all data related to the identification. Anonymous passbooks never existed in Bulgaria.
Conclusion	No anonymous or numbered accounts are allowed in Bulgaria and they have never been allowed.
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	Transactions and linked transactions of €15,000 are covered. According to Art. 4 (1) of the LMML and following, the Obligated persons shall be bound to identify their clients when business or professional relations are established, including when opening an account, and when executing a transaction or concluding a deal of a value exceeding BGN 30,000 (below €15.000or its equivalent in foreign currency, and persons referred to in Art. 3 (2) 1-4, 9-11, 13 and 28, shall also be bound to do so in case of any cash transaction exceeding BGN 10,000 or its equivalent in foreign currency.
Conclusion	The Law implements the Directive accordingly.
Recommendations and Comments	N/A

4.	**Beneficial Owner**
Art. 3(6) of the Directive	The definition of 'Beneficial Owner' establishes minimum criteria

(see Annex)	(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	The definition of beneficial owner does not comprises natural persons and applies to legal persons only. Art. 3 (5) of the RILMML defines the beneficial owner of a legal entity in sub-part 1 as: 1. *natural person or natural persons who directly or indirectly own more than 25% of the shares or of the capital of a customer-legal entity, or of another similar structure, or exercise direct or indirect control over it;* 2. *natural person or natural persons in favour of which more than 25% of the property is controlled or distributed, whenever the customer is a foundation, a non-profit organisation or another person performing trustee management of property or property distribution in favour of third persons;* 3. *a group of natural persons in favour of whom a foundation, or a public benefit organisation, or a person performing trustee management of property or property distribution in favour of third persons is established, or acts, when these persons are not determined but can be determined by specific signs.*
Conclusion	Bulgarian legislation ensures the application of both the Directive and the FATF recommendation in general terms; however the understanding of the definition in context of natural persons remains unclear.
Recommendations and Comments	It is advised that the understanding of the term "beneficial owner" should be future elaborated and explained in legislation, in particular in relation to natural person, in light of the object and purposes, in order to cover all potential difficulties arising from limited interpretation of the text.

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 derogation set out under Art. 4 of the Commission Directive 2006/70/EC has not been implemented in Bulgarian legislation.
Conclusion	Bulgaria has not taken advantage of this derogation.
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	Bulgarian legislation provides that obligated persons may apply, depending on the potential risk assessment simplified CDD measures. The Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient information identification remains. The given advice does not confront the general principle of FATF, as it allows also to use of simplified measures.
Conclusion	The scope of implementation of simplified CDD in in Bulgarian legislation is narrower than provided in Para.2 of Art. 11 of Directive.
Recommendations and Comments	It is advised to extend the application of Simplified CDD measures in respect of all persons as listed in Para.2 a), b) of Art 11.

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	Bulgaria has applied Art. 13 (4) of the Directive. The same principles are applicable in regard to domestic and foreign PEPs. Bulgaria has implemented Art. 2 of the Commission Directive 206/70/EC. However, Art. 8a of the RILMML, while referring to the timeframe of 1 year, also requires that the timeframe is being applied subject to the assessment of related risk, that is "without prejudicing the

	application of extended measures based on the assessment of risk" (Art. 8a, Para. 6 of RILMML). Thus, the period of 1 year is not absolute.
Conclusion	The Directive approach has been implemented into Bulgarian AML/CTF Law.
Recommendations and Comments	N/A

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	Art. 5b. of the LMML (1) stipulates that upon entering into correspondent relationship with a credit institution from a third country that is not in the list of equivalent countries, credit institutions shall: 1. collect sufficient information about the respondent credit institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision; 2. assess the internal control mechanisms against money laundering and terrorism financing implemented by the respondent institution; 3. organise the process in such a way so as to obtain approval from senior management of the credit institution before establishing new correspondent banking relationships; and 4. document the respective responsibilities of each correspondent institution with regard to the measures against money laundering and terrorism financing.
Conclusion	Art 13 (3) of the Directive (more restrictive) is implemented into the Bulgarian AML/CTF Law.
Recommendations and Comments	N/A

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	Art 5c of the LMML has transposed the Directive 2005/60/EC and provides the approach as follows: The obligated persons shall implement extended measures with regard to

	products or transactions which might favour anonymity pursuant to the terms and conditions specified in the Rules for the Enactment of this Law. For such cases, Art. 8b of the RILMML requires to implement ECDD and list the measures. Furthermore, Guidelines issued by BNB underlines the importance of implementing ECDD in case of products and technologies that might favour anonymity. Guidance has also been issued by FID-SANS in regard to new payment methods in addition to non-face-to-face relations.
Conclusion	Art 13 (6) of the Directive is implemented into the Bulgarian AML/CTF Law.
Recommendations and Comments	N/A

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 provisions of the Bulgarian legislation are stricter than the Directive as the Art 6a of the LMML only allows reliance on credit institutions as third parties under conditions stipulated in LMML.
Conclusion	Art 15 of the Directive is implemented into the Bulgarian AML/CTF Law.
Recommendations and Comments	The Bulgarian approach is stricter than both FATF and the Directive requirements

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	Accountants, auditors and persons providing tax advice are considered as Obligated persons according to the LMML and therefore subject to all measures included in the AML/CTF legislation without any exceptions (applicable in all situations).
Conclusion	The Bulgarian legislation follows the Directive which is stricter than FATF Recommendations.
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	The broader approach was used in Bulgarian AML/CTF legislation up till February 2011. Following the entering into force of the Law Limiting Payments in Cash, which prohibited all cash operations above €7,500 (approximately), the persons trading in goods above €15,000 were removed from the categories of Obligated persons.
Conclusion	The Bulgarian legislation prohibits the cash payments falling under the requirements of the 3rd Directive and FATF Recommendation 12.
Recommendations and Comments	The Bulgarian legal provisions are stricter than both FATF Recommendation and EU 3rd Directive

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 Bulgarian legislation identification of customer is required whenever the customer enters into a casino. In addition, identification has to be further carried out when engaging in operations above €3,000. Verification of the clients' identity shall be done according to Art. 6 of the LMML.
Conclusion	Art 10 of the Directive is implemented into the Bulgarian AML/CTF Law.
Recommendations and Comments	The casino customers are identified and their identity verified in all cases in Bulgaria.

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	According to the Art. 11 of the LMML and Art. 9, Para. 3 of the LMFT accountants, auditors and tax advisors, notaries and other independent legal professionals are not allowed report through a self-regulatory body.
Conclusion	Bulgarian legislation does not provide for such an option as provided in Art. 23 (1) of the Directive.
Recommendations and Comments	The STRs are sent directly to the FIU.

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	Where money laundering has been suspected, the reporting entities shall be bound to notify the Financial Intelligence Directorate of the State Agency for National Security immediately **prior** to the completion of the transaction or deal while delaying its execution within the allowable time as per the regulations dealing with the respective type of activity. Art. 11 (2) of the LMML states that in case of a delay in the transaction or deal is objectively impossible, the Obligated person shall notify the Financial Intelligence Directorate of the State Agency for National Security immediately after its completion.
Conclusion	The Bulgarian legislation provides for the *ex ante* reporting as required by the 3rd Directive.
Recommendations and Comments	N/A

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 Analysis	Art. 15 of the LMML stipulates that disclosure of information in the cases specified under Art. 9 (providing data and documents to FIU), Art. 11 (reporting suspicion), Art. 11a (reporting cash threshold operations), Art. 13 (providing information requested by FIU) and Art. 18 (provision of information for ML by institutions and international information exchange) of the LMML shall not result in any liability for violation of other laws or a contract.
Conclusion	The Bulgarian legislation is in line with Art. 27 of the Directive.
Recommendations and Comments	N/A

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	According to the Art. 14 of the LMML, the Obligated persons who manage and represent the Obligated person and their personnel may not notify their client or any third party of the disclosure of the information. The information disclosure ban under Para.1 shall not apply to the relevant supervisory authorities provided under Art. 3a of the LMML.
Conclusion	The LMML follows the approach of Art 28 of the Directive.
Recommendations and Comments	N/A

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 Analysis	According to Art. 3 (4) of the LMML: Measures under Para.1 shall furthermore apply to branches registered abroad of the Obligated persons, as well as to branches of foreign

	persons registered in Bulgaria. Art. 3c. Para (1) stipulates that Obligated persons shall ensure the application of the measures provided for in the LMML and of the statutory provisions for its implementation by their branches and majority-owned subsidiaries abroad in conformity with the applicable foreign legislation. Art. 16 of the LMML requires the elaboration of internal rules by all obliged entities and endorsement by the Chairperson of SANS. In addition Art. 17, Item 4 of the RILMML requires the communication of the measures in regard to branches through their obligatory inclusion in the internal rules.
Conclusion	Bulgarian legislation is in line with 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	According to the Art.3c (2) of the LMML, where the national legislation of the foreign country does not allow for or imposes restrictions on the application of the measures under Para. 1, the Obligated persons shall notify the Financial Intelligence Directorate of the State Agency of National Security and the respective supervisory authority, as well as undertake supplementary measures adequate to the risk and provided for in the Rules for the Enactment of the Law.
Conclusion	The Bulgarian legislation follows the FATF approach.
Recommendations and Comments	N/A

	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	Art. 3a (1) of the LMML obliges supervisory bodies to inform the FIU where, in the course of their work, they encounter transaction or deal related to a suspected money laundering or failure to meet the obligation to submit the CTR.
Conclusion	The Bulgarian legislation follows the Directive approach.
Recommendations and	N/A

Comments	

20.	**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	Art. 13 of the LMML obliges to the Obliged persons to provide requested information to FIU but no specific "systems" are mentioned.
Conclusion	The 3rd Directive is not fully implemented in this issue.
Recommendations and Comments	Bulgarian authorities are invited to take measures to align the legislation to the 3rd AML EU Directive.

21.	**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 measures under the LMML also apply to several additional categories of the Obligated persons on the basis of a risk assessment of the Obligated persons which is carried out on a regular basis by the FIU. The analysis as part of the joint working groups and coordination and cooperation mechanism between the Bulgarian institutions also do not support the exclusion of those additional categories of reporting entities.
Conclusion	The risk based application of Art. 4 of the Directive are provided in LMML.
Recommendations and Comments	It is not clear how the results of the of risk assessment are disclosed to the additional categories of the Obligated persons and how they are obliged to meet the relevant measures. The authorities should disclose the results of the risk assessment to the Obligated persons.

22.	**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	Art. 4 (9) of the LMML provides that the Obligated persons shall not perform identification under Art. 3 (1) and shall not require presentation of a declaration under Para. 7 from its client where such client is a credit institution from the Republic of Bulgaria, from another Member State or a bank from a third country named in a list as endorsed under a joint order issued by the Minister of Finance and the Governor of the Bulgarian National Bank. Art. 4 (10) of the LMML provides that the list referred to in Para. 9 shall include countries the legislation of which provides for requirements consistent with the requirements under this Law. The list shall be promulgated in the State Gazette. Art. 4 (19) of the LMML provides that where a bank account of a person under Article 3 (2), subparagraphs (11) and (28) from the Republic of Bulgaria, from another Member State or from a country named in the list referred to in paragraph (9) is used to deposit amounts of a client of the person under Article 3, paragraph (2), subparagraphs (11) and (28), the bank shall not perform the identification under Article 3, paragraph (1) of such client and shall not require a declaration under Article 7, provided that such identification has been made and the declaration accepted by the notary public or by the person under Article 3, paragraph (2), subparagraph (28) and the information gathered in such identification is available to the bank upon request. The bank shall gather sufficient information so as to verify compliance with the conditions for applying simplified measures.
Conclusion	The equivalent countries are defined as another Member State (of the EU) or countries named by joint order of Ministry of Finance and BNB.
Recommendations and Comments	Bulgaria has implemented the 3rd EU AML Directive's approach.

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(2013)13ANN