COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

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

MONEYVAL(2013)15

Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

CROATIA

17 September 2013

Croatia is a member of MONEYVAL. This evaluation was conducted by MONEYVAL and the mutual evaluation report on the 4th assessment visit of Croatia was adopted at its 42nd Plenary (Strasbourg, 16-20 September 2013).

TABLE OF CONTENTS

LIST OF ACRONYMS USED

AGC	Act on Games of Chance
AML/CFT	Anti-money laundering and combating financing of terrorist
AMLO	Anti-money laundering Office
AMLTF Law	Anti-Money Laundering and Terrorist Financing Law
CC	Criminal Code
CCP (CPA, CPC)	Code of Criminal Procedure
CDD	Customer Due Diligence
CEN	Customs Enforcement Network
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CIA	Credit Institutions Act
CMA	Capital Market Act
CNB	Croatian National Bank
CP	Croatian Post
CPB	Croatian Post Bank
CPC	Criminal Procedure Code
CTR	Cash transaction report
CUA	Credit Unions Act
DNFBP	Designated Non-Financial Businesses and Professions
EAW	European Arrest Warrant
EC	European Commission
EJN	European Judicial Network
ELMIs	Electronic money institutions
EMA	Electronic Money Act
ESW	Egmont Secure Web
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FEA	Foreign Exchange Act
FI	Financial Inspectorate
FIL	Financial Inspectorate Law
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GD	Governmental Decision
GDP	Gross domestic product
GRECO	Group of States against Corruption
HANFA (CFSSA)	Croatian Financial Services Supervisory Agency
HRK	Croatian national currency
IBEs	International Business Enterprises
IBUs	International Banking Units
IIWG	Inter-institutional Working Group on AML/CFT
IMF	International Monetary Fund
IN	Interpretative note
IRM	Act on International Restrictive Measures
IT	Information technologies
KYC	Know your customer
LEA	Law Enforcement Agency
MEQ	Mutual Evaluation Questionnaire

MER	Mutual Evaluation Report
MFIN	Ministry of Finance
ML	Money Laundering
MLA	Mutual legal assistance
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
MVT	Money Value Transfer
NATO	North Atlantic Treaty Organisation
NBMIS	National Border Management Information System
NC	Non-compliant
NCCT	Non-cooperative countries and territories
NPO	Non-Profit Organisation
OECD	Organisation for Economic Co-operation and Development
OEM	Other enforceable means
OFAC	Office of Foreign Assets Control (US Department of the Treasury)
OST	Case referral report
PC	Partially compliant
PEP	Politically Exposed Persons
PIs	Payment institutions
PNUSKOK	Police National Office for Suppression of Corruption and Organised Crime
PSA	Payment system Act
RE	Reporting Entities
SAR	Suspicious Activity Report
SC	Supervision Committee of the CBSM
SEEPAG	Southeast European Prosecutors Advisory Group
SELEC	Southeast European Law Enforcement Center
SIA (SOA)	Security-Intelligence Agency
SR	Special recommendation
SRO	Self-Regulatory Organisation
STR	Suspicious transaction report
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TA	Tax Administration
TCSP	Trust and company service providers
The Office	AMLO
UCITS	Undertakings for Collective Investment in Transferable Securities
UN	United Nations
UNSCR	United Nations Security Council resolution
USKOK	State Attorney's Office for Suppression of Corruption and Organised Crime
UTR	Unusual Transaction Report
WU	Western Union

I. PREFACE

1. This is the fifteenth 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 Croatia, and information obtained by the evaluation team during its on-site visit to Croatia from 19 to 24 November 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 Croatia. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues and comprised: Ms Kateryna BUHAYETS, (Head of International Co-operation Department, State Committee for Financial Monitoring, Ukraine) who participated as legal evaluator, Ms Kadri SIIBAK (Chief Specialist, Financial Markets Policy Department, Ministry of Finance, Estonia) and Mr Edgar SARGSYAN (Head, Analysis Department, Financial Monitoring Centre, Central Bank of Armenia, Armenia) who participated as financial evaluators, Mrs Elsbieta FRANKOW-JASKIEWICZ (Head of the International Co-operation Unit, Department of Financial Information, Ministry of Finance, Poland) who participated as a law enforcement evaluator and John BAKER, Mr Dmitry KOSTIN, Mr Fatih ONDER and Mr Daniel TICAU, 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 (DNFBP), 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 Croatia at the time of the 4th on-site visit (19 to 24 November 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 assessments 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 Croatia 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 and 9 Special Recommendations but is intended to update readers on major issues in the AML/CFT system of Croatia.

2. Key findings

2. Most money laundering in Croatia is considered to be of domestic origin. The main criminal offenses which are the primary sources of money laundering are: economic crimes such as abuse of power and authority in economic operations; abuse of power and authority; tax evasion; and abuse of drugs. Although Croatia is part of a major transit route for drugs entering Europe, there is little evidence that these networks have utilised Croatia's financial system in order to launder the proceeds of sales.

3. The new money laundering offence appears to be broadly in line with the international standards. The physical and material elements of the ML offence, however, do not fully correspond with the requirements of the Vienna and Palermo Conventions. Almost all the cases brought are "own proceeds" laundering. No autonomous money laundering cases have been brought in respect of third parties laundering on behalf of others. The low number of convictions raises concerns about the overall effectiveness of money laundering criminalisation, given the level of proceeds-generating offences in Croatia.

4. The financing of terrorism offence is largely in line with the FATF requirements and the Terrorist Financing Convention. As there is no legal definition of the terms "*terrorist*" and "*terrorist organisation*" the interpretation of the relevant articles of the Criminal Code could lead to a narrow application of the standards.

5. The current legal framework applicable to confiscation and provisional measures still appears complicated and is not harmonised. With regard to the effectiveness of operation, the level of confiscations appeared low compared with the estimated economic loss as a result of proceeds generating crime.

6. Since the previous evaluation Croatia has made progress in addressing some gaps in respect of the freezing of funds used for terrorist financing and the legal framework has been changed to a large extent. There are still, nonetheless, a number of technical deficiencies in the legislation, as well as shortcomings in the underlying mechanisms and procedures.

7. The Anti-Money Laundering Office (AMLO) is designated as the Croatian financial intelligence unit. During the on-site visit the representatives of law enforcement agencies and prosecutors met confirmed that cooperation with AMLO was good and that they were satisfied with the information received from AMLO.

8. The preventive measures for the Croatian financial sector are primarily set out in the Anti-Money Laundering and Terrorist Financing Law ("AMLTF Law") which came into effect on 1 January 2009. Through this, Croatia has taken significant steps to remedy the deficiencies in preventive measures identified in the 3rd round. However, the effectiveness of implementation of customer due diligence (CDD) measures relating to beneficial owners, and in business relationships with non-resident customers, was not demonstrated.

9. Croatia has introduced a number of requirements relating to CDD for politically exposed persons (PEPs) since the 3rd round. However, there are no requirements to identify situations when the customer or beneficial owner subsequently becomes a PEP in the course of a business relationship, and not all guidelines require the identification of the source of wealth.

10. The obligation to make a suspicious transaction report has been extended to apply to attempted transactions. There are, however, technical deficiencies in the reporting requirement, particularly as the obligation does not extend to funds which are "linked or related to" terrorism generally and (partially) to "those who finance terrorism".

11. The AMLTF Law defines the scope of responsibility for all of the supervisory authorities. The supervisory authorities have adopted a risk-based approach to supervision and appeared to have adequate resources as well as a good understanding of their AML/CFT responsibilities. Although "fitness and properness" procedures are in place, they do not extend to criminal associates of those holding controlling interest or managerial functions in financial institutions and there were additional shortcomings related to the identification of ultimate beneficial owners of significant or controlling interest in insurance companies and pension funds.

12. All DNFBPs are now subject to the requirements of the AMLTF Law, including CDD and reporting of suspicious transactions. Although the level of reporting of suspicious transactions has improved since the 3rd round evaluation, there are still concerns about the low level of reporting from certain DNFBP sectors.

13. The Court Register contains comprehensive information on the registered owners of legal persons as well as about persons who act on behalf of the companies and is publicly available. However, there is no requirement to provide details of the ultimate beneficial owner. Although it is no longer permissible to issue bearer shares, there was a lack of information on the number of bearer shares still in circulation.

14. The legal framework in Croatia for mutual legal assistance (MLA) includes the full range of conventions. As long as MLA is provided by Republic of Croatia based on international conventions which have precedence over national law and are from direct applicability, pursuant to the Croatian Constitution, the main international standards in this matter are met. There are some concerns related mainly to non-treaty based cooperation or for the regulation of issues not covered by the otherwise applicable treaty.

15. With regard to other forms of international co-operation, the Croatian authorities have the authority to collaborate with their foreign counterparts in their respective areas of competence. One technical concern is that although AMLO is empowered to exchange information relating to money laundering, there is no provision in the AMLTF Law for AMLO to cooperate or exchange information on the underlying predicate offence.

3. Legal Systems and Related Institutional Measures

16. Following the 3rd round report Croatia has made amendments to the money laundering and financing of terrorism provisions in the Criminal Code (CC) with a view to bring it in line with the recommendations made by the 3rd round MER.

17. The new money laundering offence appears to be broadly in line with the Vienna and Palermo Conventions. However, there are concerns with regard to implementation of the criteria related to the physical and material elements of the offence as Croatian law does not wholly correspond with the Conventions' requirements on these aspects. As the new Criminal Code only came into force and effect after the on-site visit, it was not possible to form a view of its effective application. It is noted that almost all the cases brought were own proceeds laundering and no autonomous money laundering cases have been brought to the courts.

18. The new financing of terrorism offence is largely in line with the requirements of SR.II and the Terrorist Financing Convention. It extends to any person who provides or collects funds, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be

used, in full or in part, to carry out the defined criminal offences. However, there is no legal definition of the terms "*terrorist*" and "*terrorist organisation*". While definitions are not mandatory, the scope of these terms, following analysis of the different articles of the CC, could be narrower than the FATF standards.

19. The current legal framework applicable to confiscation and provisional measures appears complicated. There are parallel regimes both in terms of criminal substantive and procedural law, with one set of rules applied for the objects which are the product of committing a criminal offence and another for pecuniary advantage. The respective measures are inaccurately formulated and their scope often overlaps to such an extent as to make the assessment of their interconnection and mutual applicability very difficult. The new Criminal Code has introduced the "*Principle of Confiscation of Pecuniary Advantage"* stating *"No one may retain a pecuniary advantage acquired through illegal means."* This is considered an important improvement to the confiscation regime. Confiscation is considered as a "*sui generis*" criminal measure of a mandatory character and can be applied to proceeds and instrumentalities of a criminal offence. With regard to effectiveness of operation, the level of confiscations appeared low compared with the estimated level of crime.

20. Since the previous evaluation Croatia has made progress in addressing some gaps in respect of SR III and the legal framework has been changed to a large extent. There are still, nonetheless, a number of technical deficiencies in the legislation. Furthermore there is no effective mechanism in place to designate persons in the context of UNSCR 1373 (2001). There is no procedure for a consolidated list to be sent to the reporting entities. This is coupled with a general lack of understanding by the reporting entities about the mechanism of freezing of funds used for terrorist financing.

21. The Anti-Money Laundering Office (AMLO) is designated as the Croatian financial intelligence unit. Amendments to the AMLTF Law have defined the competences and responsibilities of AMLO. AMLO has sufficient structural and operational independence, and sufficient financial resources. A significant number of cases are notified to law enforcement agencies and prosecutors. The quality of the analytical work appears high. During the on-site visit the representatives of law enforcement agencies and prosecutors met confirmed that cooperation with AMLO was good and that they were satisfied with the information received from AMLO. AMLO has provided the reporting entities with typologies and reports on AML/CFT.

22. Croatia has a declaration system for monitoring incoming and outgoing cross-border transportations of cash. The Croatian Authorities have established a border control system which allows for screening of cash imports and exports. Data on cash entering and leaving Croatia is registered and forwarded to AMLO and sanctions have been applied for misdemeanours.

4. Preventive Measures – financial institutions

23. The preventive measures for the Croatian financial sector are primarily set out in the Anti-Money Laundering and Terrorist Financing Law ("AMLTF Law") which came into effect on 1 January 2009. The AMLTF Law introduces complete customer due diligence (CDD) procedures according to the 3rd EU Directive, as well as requirements relating to PEPs, restrictions on cash operations and a prohibition of the use of anonymous products. The AMLTF Law is supplemented by guidelines issued by the supervisory bodies and rulebooks issued by the Ministry of Finance. The AMLTF Law has introduced the risk-based approach which is embedded in the AMLTF Law and in related guidance and regulations.

24. Croatia has taken significant steps to remedy the deficiencies in preventive measures identified in the 3rd round. Reporting entities identify and verify their customers and the system is generally in line with the international standards. However, some deficiencies still remain, particularly relating to the application of enhanced CDD and simplified CDD. The evaluators were also concerned that there were structural weaknesses in the implementation of CDD measures relating to beneficial owners and in business relationships with non-resident customers. Nonetheless, representatives

from the financial sector interviewed during the on-site visit displayed a high level of understanding of their CDD obligations.

25. Croatia has introduced a number of requirements relating to CDD for politically exposed persons (PEPs) since the 3rd round. There are, however a number of shortcomings. The definition of foreign politically exposed person is not in line with the standard and the provisions do not apply to foreign PEPs who are temporarily or permanently resident in Croatia. Furthermore, there are no requirements to identify situations when the customer or beneficial owner subsequently becomes a PEP in the course of a business relationship and not all guidelines require the identification of the source of wealth.

26. Since the 3rd round report, Croatia has introduced comprehensive provisions relating to correspondent banking relationships, although the definition is narrower than that defined by FATF. The AMLTF Law has also introduced a requirement that financial institutions are required to pay special attention to any ML/TF risk which may stem from new technologies enabling anonymity. Croatia has also put policies and measures in place aimed at preventing the use of new technologies for ML/TF purposes. Although the evaluators were advised that financial institutions prefer not to entrust CDD to third parties, provisions concerning the introduction of clients by third parties have been introduced. These are broadly in line with the standard, although there is no clear obligation for financial institutions to take adequate steps to satisfy themselves that CDD procedures will be made available by the third party.

27. With regard to the requirement that financial institutions secrecy should not inhibit implementation of the FATF Recommendations, the evaluators noted that overall there are provisions that allow the sharing of information in defined circumstances. There are, however, certain technical deficiencies which could present problems in sharing information, particularly with regard to leasing companies and correspondent banking. Nonetheless, during the on-site visit the evaluators were informed that there did not appear to be any problems experienced in practice in receiving information from domestic reporting entities. In the AMLTF Law there is a general requirement for the reporting entities to ensure data storage and protection and these are reinforced by requirements in sectoral legislation.

28. With regard to wire transfers, Croatia has modified its legal framework by introducing specific provisions under the AMLTF Law, which were further complemented by the Rulebook on Wire Transfers which sets out the content and type of information on payers accompanying cash wire transfers, on duties of payment service providers and exceptions from the cash wire transfer data collection obligation.

29. The AMLTF Law now contains a requirement that reporting entities are obliged to pay special attention to all complex and unusually large transactions, as well as to each unusual form of transaction without an apparent economic or visible lawful purpose even in instances when reasons for suspicion of money laundering or terrorist financing have not yet been detected in relation to such transactions. There are also general provisions requiring enhanced CDD at the establishment of a correspondent relationship with a bank or other similar credit institution seated in a third country.

30. The AMLTF Law imposes the obligation to report any transaction suspected of being related to either money laundering or the financing of terrorism, without a threshold. The obligation to make a suspicious transaction report applies to attempted transactions. There are, however, technical deficiencies in the reporting requirement, particularly as the obligation does not cover funds which are suspected to be linked or related to terrorism and those who finance terrorism. The authorities consider that the reports received are of a high standard and that the new legal provisions have had a positive impact on the whole system of reporting; although the number of reports decreased, their quality has increased significantly.

31. The AMLTF Law now requires that reporting entities shall be obliged to define the procedures for the implementation of CDD measures in their internal enactments. Reporting entities are required

to have a compliance officer, an internal audit function, employee training and employee screening although the evaluators considered that the compliance officer is not required to report to a sufficiently senior level. The law also contains requirements that financial institutions should be required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations although, in practice very few institutions have foreign branches or subsidiaries. There is no clear requirement that financial institutions should pay special attention in the case of jurisdictions which do not or insufficiently apply the FATF Recommendations. A prohibition on conducting business with shell banks has been introduced, although the lack of further guidance could have an impact on effectiveness.

32. The AMLTF Law defines the scope of all of the supervisory authorities. All of the authorities appear to have adequate powers to compel the production of records as required. Sanctions for AML/CFT breaches are set out in the AMLTF Law, although the sanctions do not cover the requirements relating to complex and unusual transactions and certain data protection issues. Although "fitness and properness" procedures are in place, they do not extend to criminal associates and there are additional shortcomings for insurance companies and pension companies related to ultimate beneficial owners. There is also a concern that there is no licensing or registration for money and value transfer services offered by the Croatian Post and entities engaged in factoring activities. All relevant supervisors have issued comprehensive guidance which is given statutory backing by the AMLFT Law. The supervisory authorities have adopted a risk-based approach to supervision and appeared to have adequate resources as well as a good understanding of their AML/CFT responsibilities. An equivalent supervisory regime is in place for money and value transfer services, although the representatives of Croatian Post met during the on-site visit did not demonstrate an appropriate understanding of the requirements related to wire transfers.

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

33. All DNFBPs are now subject to the requirements of the AMLTF Law, including CDD and reporting of suspicious transactions. As such the deficiencies already outlined also apply in relation to DNFBPs. Although the level of reporting of suspicious transactions has improved since the 3rd round evaluation, there are still concerns about the low level of reporting from certain DNFBP sectors.

34. Subsequent to the 3rd round evaluation, the authorities sought technical assistance from the IMF in order to develop a supervision manual for inspectors in accordance with the AMLTF Law and guidance for implementation and enforcement of AMLTF Law measures for reporting entities. Overall the evaluators were impressed with the supervisory arrangements for DNFBPs which appeared to be comprehensive. The one concern is that there is no requirement for preventing criminal associates from holding significant interests in casinos.

6. Legal Persons and Arrangements & Non-Profit Organisations

35. Since the 3rd round evaluation, the authorities have introduced a definition of beneficial owner which is set out in the AMLTF Law. The AMLTF Law requires the reporting entities to collect the information on the beneficial owner of the customer. The Court Register contains comprehensive information on the registered owners of legal persons as well as about persons who act on behalf of the companies. Legal persons are required to file information on change of control as well as annual financial information. This information is publicly available both to competent authorities and reporting entities. However, there is no requirement to provide details of the ultimate beneficial owner. The evaluators were also concerned that although it is no longer permissible to issue bearer shares there was a lack of information on the number of bearer shares still in circulation. This raised concerns over the effectiveness of appropriate measures to ensure that they are not being misused for money laundering.

36. With regard to non-profit organisations (NPOs), the evaluators noted that the supervision of NPOs is fragmented and carried out by a number of authorities. Although AMLO had organised meetings with state authorities responsible for the supervision of NPOs with the aim of enhancing cooperation there had still been no comprehensive review of the vulnerability of the NPO sector to terrorist financing risks. Furthermore, apart from the issuance of typology reports, there has been insufficient outreach to the NPO sector and little awareness-raising on the risk of NPOs being misused for TF.

7. National and International Co-operation

37. The Inter-institutional Working Group on AML/CFT (IIWG) was formed after the 3rd round evaluation. This working group comprises all major government agencies involved in the fight against ML and TF. The IIWG meets regularly to improve cooperation and coordination of all institutions involved in achieving strategic and operational objectives in the fight against money laundering and terrorist financing. In particular the IIWG seeks to identify weaknesses and risks in the process of combating money laundering and terrorist financing, as well as obstacles that hinder the achievement of these strategic and operational goals. During the on-site visit it was confirmed to the evaluators that there was a high level of co-operation between the relevant national bodies.

38. The legal framework in Croatia for mutual legal assistance includes the full range of conventions: Vienna; Palermo; TF convention; the Strasbourg Convention; the Convention on Mutual Assistance in Criminal Matters and its additional protocols; and CETS 198, which have all been signed, ratified and are in force. However, as noted in Section 3 above, there are a number of areas where the conventions have not been fully implemented in legislation. This does give rise to the concern that these deficiencies could limit the degree to which the authorities can respond to requests for mutual legal assistance. Nonetheless the evaluators received a number of very positive responses to the questionnaire on international co-operation and a number of respondents were complimentary concerning the speed and quality of responses.

39. With regard to other forms of international co-operation, the Croatian authorities have the authority to collaborate with their foreign counterparts in their respective areas of competence. In the majority of cases, international cooperation may take place directly between authorities exercising similar responsibilities and functions in a manner foreseen by the international treaties or other special acts which regulate such cooperation. One technical concern is that, although AMLO is empowered to exchange information relating to money laundering, there is no provision in the AMLTF Law for AMLO to cooperate or exchange information on the underlying predicate offence. The lack of comprehensive statistics has meant that it is not possible to fully assess the effectiveness of international cooperation.

8. Resources and statistics

40. Apart from AMLO, which appeared to be understaffed, all of the supervisory bodies appeared to have adequate resources. Overall the evaluators were impressed by the calibre of the supervisors who were met on-site.

41. Croatia does, however, need to pay more attention to the collection and use of statistics. In particular, there is a lack of statistics on both national and international cooperation and, although interlocutors indicated that cooperation was satisfactory, there were no statistics to support this. Furthermore, there is a lack of detailed analysis of the reasons for the low number of convictions for stand-alone money laundering, given the level of economic crime in Croatia.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General Information on Croatia

1. Croatia is situated on the cross-roads between Central Europe and the Mediterranean, along the eastern coast of the Adriatic Sea and its hinterland. It stretches from the Alps in the North-West to the Panonnian plain in the East. The population is of Croatia is 4,290,612[2]. The official language and script are the Croatian language and Latin script and the national currency unit is Kuna (100 Lipa), which is approximately €0,13. Croatia is a multi-party parliamentary republic. The Croatian capital is Zagreb, which has 792,875 inhabitants and is Croatia's economic, traffic, cultural and academic centre.

2. Croatia became a member of NATO on 1 April 2009.

3. Croatia signed an Accession agreement with the European Union on 9 December 2011 and became a full member of the European Union on 1 July 2013, following the Agreement ratified by the Parliament of all Member states of the EU. Croatia had observer status in all the Institutions and bodies of the EU after the Accession Agreement.

Economy

4. The estimated Gross Domestic Product per capita in purchasing power parity in 2011 was around UD$14.198 or 61% of the EU average for the same year. The industrial sector is dominated by shipbuilding, oil derivatives production, chemicals and their derivatives. The industrial Sector represents 17% of Croatia's total economic output and agriculture represents 6%[3]. Tourism is a significant source of income during the summer. With over 11.5 million foreign tourists in 2011 generating over €7 bn. in revenue. Trade is beginning to play a major role in Croatian economic output. In 2011, Croatia exported goods in to the value of US$13.4 bn.. Bank deposits represent 67% of GDP.

5. Due to the economic crisis economic problems remain evident, particularly unemployment which amounted to 17.3% in June 2011.

System of Government

6. Since the adoption of the 1990 Constitution, Croatia has been a democratic republic. Between 1990 and 2000 it had a semi-presidential system, and since 2000 it has had a parliamentary system.

7. The President of the Republic is the head of state, and is directly elected to a five-year term. The President can serve a maximum of two terms under the Constitution. The President is also the commander in chief of the armed forces. The president also has the procedural duty of appointing the Prime Minister with the consent of the Parliament, and has some influence on foreign policy.

8. The Croatian Parliament (*Sabor*) is a unicameral legislative body. The number of the Sabor's members can vary from 100 to 160; they are all elected by popular vote to serve four-year terms. The Parliament has authority to enact laws in any session where a majority of representatives are present. There are two types of laws:

   a) Ordinary laws: the parliament is entitled to declare those in any session where more than half of the present representatives vote for their passage.
   b) Essential laws (the Constitution calls them "organic" laws): laws which relate to basic rights and freedoms of ethnic and national communities. The Parliament is entitled to declare organic laws if the "qualified majority" (2/3 of present representatives) votes for their passing.

[2] According to the data published by the Croatian State Statistic Bureau by the name "Population, households and apartments list in 2011 – first results according to the settlements".
[3] 2009.

Legal System and Hierarchy of Normative Acts

9. Judicial power is administered by: the Supreme Court of the Republic; county courts; and municipal courts. The judges are bound to be impartial and are independent from the other branches of government. The Constitutional Court rules on matters regarding the Constitution.

10. Municipal courts are courts with first instance jurisdiction in both civil and criminal cases. In criminal cases these courts are competent in all cases with a penalty of imprisonment of no more than 10 years. In civil litigation these courts act as first instance courts in all judicial, extra-judicial and execution procedures, especially in litigation against unlawful actions, and lawsuits for correction of information.

11. County courts are almost exclusively second instance courts. On occasion these courts are used as first instance courts: in criminal cases if the punishment by law exceeds 10 years or by special regulations (e.g. compensation for expropriated real estate). It is important to recognise that a right to appeal is a constitutional right of every citizen and legal entity according to the practice of the Constitutional court.

12. The Supreme Court is a court of full jurisdiction with respect to court decisions and it can void them, confirm them or revise them. The Supreme Court is the highest court in Croatia, and as the court of final instance, it can decide on extraordinary legal remedies against valid court decisions of the courts of general jurisdiction (e.g. a dismissed appeal), and all other courts in Croatia. The Supreme Court is also an appellate court in all cases where the municipal court was the court of first instance.

13. The Constitutional Court is not a court with full jurisdiction. It was designed by the Constitution as a fourth branch of state authority. All of the decisions of the Constitutional Court must be published in Narodne Novine – the official gazette of Republic of Croatia, although writs are published only if the Constitutional court decides to publish them. All of the decisions of the Constitutional Court are considered a precedent (case law) because according to the Constitution all courts and other governmental bodies must adhere to opinions and interpretations of the Constitution and laws taken by the Constitutional Court. Beside this fundamental jurisdiction, the Constitutional Court assists the execution and control of Parliamentary elections and solves any questions concerning the conflict of jurisdiction of the legislative, executive and judicial powers. The Constitutional Court decides on appeals against the decisions of the State Judiciary Council to impeach judges due to disciplinary violations. Any breaches of human rights guaranteed by the Constitution also fall under its jurisdiction. Only in these matters can the Constitutional Court interfere in particular judicial acts (litigation), and this is the sole reason it was named a court, although it stands completely outside the hierarchy of the courts. If an individual citizen (or a legal entity) deems his/her rights and freedoms violated by an act of judicial or executive power, they have the right of appeal to the Constitutional Court. If it pertains to a judicial act the Constitutional Court appears to be the court of the fourth instance (an instance above the Supreme Court) but with exclusive jurisdiction to confirm or deny the decisions validity.

14. In Croatia, the hierarchy of normative acts is as follows:

    1. Croatian Constitution (Ustav);
    2. Constitutional Laws;
    3. International Agreements:
       International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law;
    4. Laws and Decrees with the force of law; and
    5. Subordinate Legislation:
       Subordinate legislation can be issued by units of local and regional self-government

(county, district), public administration bodies and executive bodies (the Government of Croatia).

15. The detailed AML/CFT provisions for obliged entities are set out in sectoral guidance. This guidance is issued by the competent supervisory bodies as designated under the Anti-Money Laundering and Terrorist Financing Law (AMLTF Law) which are classed as public administration bodies. A discussion on the status of whether such guidance can be considered as other enforceable means is set out at the start of section 3 below.

1.2 General Situation of Money Laundering and Financing of Terrorism

16. The evaluators do not consider that Croatia is an offshore financial centre. Most money laundering in the country is considered to be of domestic origin. The main criminal offenses which are the primary sources of money laundering are: economic crimes such as abuse of power and authority in economic operations; abuse of power and authority; tax evasion; and abuse of drugs. Although Croatia is part of a major transit route for drugs entering Europe, there is little evidence that these networks have utilised Croatia's financial systems in order to launder the proceeds of sales; although local sales of drugs constitute a major domestic predicate offence.

17. Croatia is a transit point along the Balkan route through which narcotics are smuggled from production countries to consumer countries, in particular for Southwest Asian heroin to Western Europe. It has also been used as a transit point for maritime shipments of South American cocaine bound for Western Europe[4]. Croatia is also a destination, source, and transit country for men, women, and children subjected to conditions of sex trafficking and forced labour.[5]

18. With regard to corruption, in 2011 the Country was ranked 66th by Transparency International with a Corruption Perceptions Index of 4.0. Croatia has taken a number of steps to tackle corruption and in November 2012, Ivo Sanader, the former Prime Minister of Croatia was sentenced to 10 years for corruption.

19. The following table, which is based on information from the "control slip" (which AMLO inspectors fill in before disclosure is sent to the competent authority), provides an indication of the spread of crimes reported:

Table 1: Indication of the spread of crimes reported by AMLO

	FREQUENCY	
Predicate Criminal Offences	**2010 %**	**2011 %**
Economic Crime	28.70	31.05
Corruption	18.70	19.47
Unknown not enough data for an analyst to make qualification of a criminal offence, and the funds are not covered with declared revenue	16.09	20.53
Tax Evasion	9.13	9.47
Organised Crime	7.83	8.42
Drug Abuse	5.22	2.63
General Crime	3.91	2.11
Cybercrime	3.48	1.58
Counterfeiting	3.48	1.05
Terrorism	2.17	2.63

[4] US State Department Narcotics Report 2012.
[5] US State Dept Trafficking in Persons Report 2011, http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm

Trafficking	0.00	1.05

20. The following table sets out in greater detail the Economic loss or damage from criminal offences.

Table 2: Economic loss or damage from criminal offences[6]

	2006	2007	2008	2009	2010	2011	2012 (6 mts.)
CRIMINAL OFFENCES AGAINST PROPERTY							
Theft	14,231	13,400	13,069	12,378	13,296	15,208	6,833
Burglary	20,321	19,248	17,471	17,080	18,452	19,237	9,403
Fraud	2,283	1,905	1,907	1,732	1,366	1,620	672
Robbery	1,445	1,272	1,259	1,411	1,245	1,382	761
Theft of vehicles	1,941	1,942	1,820	1,736	1,568	1,560	668
Concealment	594	585	544	402	452	486	176
Other CO against property	4,477	3,379	3,770	3,049	3,599	3,691	1,805
CRIMINAL OFFENCES of ECONOMIC NATURE							
Business fraud	494	514	603	647	647	727	279
Fraud	2,283	1,905	1,907	1,732	1,366	1,620	672
Issuing of an uncovered cheque, misuse of a credit card	87	118	93	67	33	39	16
Tax evasion	68	67	73	81	53	63	16
Forgery	1,164	1,272	687	795	1,041	1,055	626
Abuse of authority or rights	409	398	483	392	420	497	244
Embezzlement	373	375	324	271	368	515	179
Usury	62	25	32	9	27	28	53
Abuse of Insider Information	5	7	11	11	14	4	3
Abuse of Financial Instruments Market	20	35		3	2	2	1
Unauthorised Use of Another's Mark or Model	12	24	30	35	37	24	9
Other CO of economic nature	4,591	2,997	4,355	4,272	4,094	4,355	1,781
Approximate economic loss or damage from c.o. of economic nature in 1000 HRK	1,101,656	836,690	1,092,037	1,983,750	5,257,168	1,930,579	1,015,318
OTHER CRIMINAL OFFENCES							
Production and	8,346	7,952	7,882	7,063	7,784	7,767	3,065

[6] Police statistics.

trafficking with drugs							
Illegal migration	5,149	3,527	2,119	1,823	2,221	3,046	1,185
Production and trafficking with arms	718	737	649	605	491	587	248
Falsification of money	483	254	296	136	117	139	104
Corruption	336	296	398	339	570	911	311
Extortion	22	12	27	20	29	24	14
Smuggling	631	469	1.107	1.294	804	283	100
Murder, Grievous bodily harm	1,323	1,309	1,332	1,261	1,169	1,044	521
Prohibited Crossing of State Border or Territory, Trafficking in Human Beings	325	481	222	141	96	98	51
Violation of Material Copyright	1,140	414	390	227	203	192	125
Kidnapping, False Imprisonment	84	108	88	82	74	54	17
Burdening and Destruction of Environment	586	554	558	618	541	501	194
Unlawful Acquisition or Use of Radioactive or Other Dangerous Substances	1		3			1	0
Pollution of Drinking Water	6	7	4	3		1	0
Tainting of Foodstuffs or Fodder	0	0	0	0	0	0	0
TOTAL	66,581	60,158	59,487	56,160	58,592	62,095	28,275
OTHER CRIMINAL OFFENCES (NOT INCLUDED ABOVE) against life and limb, human rights, honour, sexual integrity, public health, etc.	14,468	15,699	15,084	17,337	14,736	13,525	5,845
NUMBER OF ALL CRIMINAL OFFENCES	81,049	75,857	74,571	73,497	73,328	75,620	34,120
Approximate economic loss or damage of all criminal offences in 1000 HRK	**1,655,028**	**1,652,579**	**1,672,709**	**2,496,488**	**5,926,189**	**2,620,124**	**1,490,883**

21. The following table sets out the number of instances of cybercrime:

Table 3: Number of cybercrimes

CRIMINAL OFFENCE	2007	2008	2009	2010	2011	2012
Child Pornography on Computer System or Network	47	101	35	63	*	*
Breach of Confidentiality, Integrity and Availability of Computer Data, Programs or Systems.	7	22	8	9	6	19
Computer Forgery	23	184	19	27	9	58
Computer Fraud	97	346	305	903	90	505
Violation of Copyright or of the Rights of Performing Artists	2	0	4	0	0	0
Illicit Use of an Author's Work or an Artistic Performance	414	390	227	203	101	253
Violation of the Rights of Producers of Audio or Video Recordings and the Rights Related to Radio Broadcasting	205	132	59	87	2	65
Violation of Patent Rights	6	3	1	5	3	1
Infringement of Industrial Property Rights and Unauthorised Use of Another's Company Name	202	204	155	156	69	188
TOTAL	**1,003**	**1,382**	**813**	**1,453**	**280**	**1,089**
REPRESENTED IN ECONOMIC CRIME (%)	**17.19%**	**20.65%**	**12.3%**	**23.3%**	**4.55%**	**18.1%**

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

Financial Institutions

Banking sector

22. As of 18 May 2012, the structure of the banking sector was as follows:

- 31 commercial banks;
- 1 saving banks
- 5 housing savings banks
- 4 representative offices of foreign banks;
- 12 banks and savings banks undergoing bankruptcy proceedings;
- 6 banks and building societies were undergoing winding-up proceedings;
- 5 electronic money institutions;
- 24 credit unions.

23. 16 of the commercial banks are primarily owned by resident shareholders and there are 16 banks where more than 50% of shares are in foreign ownership. There were no foreign bank branches in Croatia in 2012. The banking market is a little bit more concentrated than during the 3rd round evaluation (3 banks and 80 credit unions less than in 2005). The number of credit unions has declined following the introduction of the Credit Unions Act (Official Gazette, No. 141/06, 25/09, 90/11), which precipitated a rationalisation of the sector. The total assets of the banking sector at 31 December 2011 were HRK 407.4bn (€ 54.1bn) compared with 31 December 2005 HKR 260.5bn (€34.6bn). The assets of the ten largest banks amounted to HRK 360bn (€47.8bn). The share of assets of the six largest banks in foreign ownership was 81 % (in 2005 85%). The evaluators were advised that internet banking is not very popular in Croatia.

24. The operation of banks, savings banks and housing savings banks is regulated by the Credit Institutions Act (CIA) (Official Gazette No. 117/08, 74/09,153/09,108/12,54/13), which came into force on 1 January 2009 (with some exceptions – some articles coming into force later). A credit institution having its registered office in the Republic of Croatia may be established as a bank, savings bank or a housing savings bank (Art. 2, §29 of the CIA). The operation of credit unions is regulated by the Credit Unions Act (CUA) which came into force on 1 January 2007.

25. The provision of payment services in the Republic of Croatia is regulated by the Payment System Act (PSA) (Official Gazette No. 133/09, 136/12), which entered into force on 1 January 2011 and implements Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market that regulates the provision of payment services in all EU Member States in a harmonised manner. The PSA defines the institutions authorised to provide payment services, including credit institutions (authorised to provide payment services under the CIA), electronic money institutions (ELMIs), authorised to provide payment services by the CNB pursuant to the Electronic Money Act (EMA), and new payment service providers – payment institutions (PIs), authorised to provide payment services by the CNB pursuant to the PSA. The evaluators were advised that the CNB had not granted any authorisation for the provision of payment services pursuant to the PSA at the time of the on-site visit.

26. The Electronic Money Act (EMA) (Official Gazette No. 139/10), which entered into force on 1 January 2011, was adopted pursuant to Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions. The EMA defines an ELMI as a legal person that has been granted an authorisation to issue electronic money. Pursuant to the authorisation granted, an ELMI may provide services of the issuance of electronic money, payment services related to the issuance of electronic money and one or several payment services that are not related to the issuance of electronic money.

27. The Foreign Exchange Act (FEA) (Official Gazette No. 96/03, 140/05, 132/06, 150/08, 92/09, 133/09 - Payment System Act, 153/09, 145/10),which came into force in 2003, but has been amended 7 times subsequently, sets out the requirements that authorised exchange offices must fulfil in order to conduct exchange transactions. There were 1,400 authorised exchange offices in Croatia as at 31 August 2012. Authorised exchange offices may be legal persons, sole traders and craftsmen having a head office or a place of residence in the Republic of Croatia. As concerns their legal form, 64% of authorised exchange offices are limited liability companies, 26% are craftsmen, 8% joint-stock companies and 2% are other legal persons. 182 exchange offices have exchange office activity as their main activity, while 1,190 have this as secondary activity. The authorisation to conduct exchange transactions is issued and withdrawn by the CNB. The authorisation procedure includes the verification of whether the persons that manage or own authorised exchange offices fulfil the fit and proper criteria. The Ministry of Finance - Financial Inspectorate is responsible for the supervision of the operation of authorised exchange offices.

Croatian Post

28. However, in practice at least one more type of entity, i.e. the Croatian Post (CP) provides certain money and value transfer, as well as currency exchange services. Thus, according to information

available at the official website of the company, the range of services offered to the customers includes certain financial services such as sending/receiving money both domestically and abroad (via national and international postal money orders, Western Union, Eurogiro system operated between Croatia and Bosnia and Herzegovina), some banking services (such as withdrawal of cash from current accounts held with Croatian partner banks, as well as all types of transactions through current accounts held with its strategic partner, the Croatian Post Bank). The assessment team was not with provided any information as to whether these services are subject to licensing or registration by the authorised body. The Croatian Post has held a CNB licence for currency exchange services since June 2007

29. The CP does not render these services in its own name and for its own account, but in the name and for the account of the Croatian Postal Bank (CPB), pursuant to the Decision on Outsourcing (based on the Credit Institutions Act). Consequently, the CPB takes on the responsibilities and obligations of providing payment services. In view of this, the CPB is also obliged to carry out the measures and actions prescribed for obligated persons in Article 4 of the AMLTF Law with respect to these activities.

30. In December 2010, the CPB entered into an International Payment Services Cooperation Agreement with the Western Union[7] (WU), under which it undertook to provide money transfer services in the RC in its own name and for its own account, using the know-how and brand of the WU. According to the Agreement, the CPB does not provide the money transfer services as a WU representative, but in its own name and for its own account, applying the technological model developed by the WU. In March 2011, the CPB concluded a Framework Contract with the CP on strategic partnership and outsourcing of part of activities in the area of payment and other CPB services, which, among other things, provided for the outsourcing of part of activities related to the provision of money transfer services by the CPB, to the Croatian Post, which were to be carried out by the CP in the name and for the account of the CPB.

Croatian capital market

31. The New Capital Market Act (CMA) came into force on 1 January 2009. This law regulates the conditions for establishment, operation, supervision and dissolution of an investment firm, market operator and settlement system operator in the Republic of Croatia and provides conditions for the provision of investment services, performance of investment activities and related ancillary services and rules for trading on a regulated market. There are 34 companies which are authorised to perform investment services.

32. The activities of investment funds management companies are defined by the Investment Funds Law (Official Gazette, No. 150/05)[8]. There are 26 investment fund management companies managing 118 open-end and 7-closed-end investment funds in Croatia. There are also two funds established by special acts.

Pension funds and pension funds management companies

33. The activities of these entities are defined in the Pension Insurance Law (NN 102/98, Amendments to the Act: NN 127/00, 59/01, 109/01, 147/02 and 177/04), the Law on Mandatory and Voluntary Pension Funds (NN 49/99 and 63/00, Additional amendments to the Act: NN 103/03, 177/04, 71/07, 124/10 and 114/11), the Law on Pension Insurance Companies and Payment of Pension Annuities Based on Individual Capitalized Savings (NN 106/99 and 63/00) (were in force at the time of the 3rd round evaluation) which have been subsequently amended

[7] Pursuant to the provisions of the Payment System Act, as of the date of accession of the Republic of Croatia to the EU (1 July 2013), the WU, based on passporting, provides payment services in the Republic of Croatia indirectly, through branches or representatives.

[8] The Investment Funds Law (Official Gazette, No. 150/05) was replaced by the Act on Open-ended Investment Funds with a Public Offering (Official Gazette, No. 16/13) and the Alternative Investment Funds Act (Official Gazette 16/13) which came into force on 1 July 2013.

(amendments to the Act: 107/07, 114/11). There are 8 pension fund management companies with 27 pension funds.

Leasing

34. The Leasing Act has been in force since 21 December 2006 and there are 25 leasing companies and 16 factoring companies in Croatia. Most of the leasing companies belong to international banking groups. Leasing companies do not use cash transactions in practice.

Consumer loans

35. Consumer loans are regulated through the Consumer Loan Law (OG 75/09) and the Rule Book about Authorisation for Consumer Loan Service Providing (OG 14/10). The licensing procedure for providing a consumer loan service and loan intermediation is conducted by the Ministry of Finance, Financial System Administration. A license has been obtained by 27 consumer loan providers (lenders) of which 21 are leasing societies and 33 are loan intermediaries. However, following the amendments to the Consumer Loan Law, from October 2012 licensing is not conducted for the entities supervised by HANFA and CNB.

Insurance undertakings

36. The Insurance Act which has been in force since 1 January 2006 with amendments in 2008 and 2009 regulates insurance undertakings. There are 17 life insurance companies in Croatia. There are also 25 banks authorised to conduct insurance representation activities, 155 insurance representation trades, 37 insurance and reinsurance brokerage companies, 22 insurance agencies, 36 insurance agencies conducting business activities at vehicle roadworthiness test garages, 12,634 insurance agents and 308 insurance brokers.

37. The following table summarises the various categories of financial institution as well as setting out the bodies responsible for their supervision.

Table 4: Financial institutions in the Republic of Croatia

Financial Institutions		
Type of business	**Supervisor**	**No. of Registered Institutions**
1. Acceptance of deposits and other repayable funds from the public	CNB	31 banks and 1 savings bank 5 housing savings banks
2. Lending	CNB Financial Inspectorate	31 banks and 1 savings bank; 6 Consumer credit companies 33 Credit dealing intermediaries.
3. Financial leasing	CNB HANFA	26 banks 25 (24 financial leasing and 1 operating leasing)
4. The transfer of money or value	CNB	31 banks and 1 savings bank
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	CNB	26 banks
6. Financial guarantees and commitments	CNB	31 banks and 1 savings bank
7. Trading in: (a) money market	CNB HANFA c),d) and e)	31 banks and 1 savings bank 10 Investment firms

instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities (e) commodity futures trading		
8. Participation in securities issues and the provision of financial services related to such issues	CNB HANFA	14 Banks 6 Investment firms
9. Individual and collective portfolio management	CNB HANFA	14 Banks 26 Investment fund management companies
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	CNB HANFA	22 banks 5 custodian banks
11. Otherwise investing, administering or managing funds or money on behalf of other persons	CNB	4 banks
12. Underwriting and placement of life insurance and other investment related insurance	CNB HANFA	23 banks 27 insurance companies
13. Money and currency changing	Financial Inspectorate	1,400 authorised exchange offices

Designated Non-Financial Businesses and Professions (DNFBPS)

38. With the adoption new Anti-Money Laundering and Terrorist Financing (AMLTF Law), Art. 4 §2 designates various DNFBP sector entities as reporting entities. According to the AMLTF Law reporting entities are:

1. Legal and natural persons performing matters within the framework of the following professional activities:

- Public notaries as regulated by the Public notaries Law (OG 78/93, 29/94, 16/07 i 75/09) and the Public Notaries Chamber Statue. A license has been obtained by 318 public notaries and they are members of Public Notaries Chamber which is public legal person.

- Lawyers and law firms as regulated by the Law on Legal Professions and the Croatian bar Association Statute (OG 74/09, 90/10 i 64/11). A license has been obtained by 3,354 independent lawyers and lawyers' societies.

- Auditing firms and independent auditors as regulated by the Audit Law (OG 146/05, 139/08) and the Croatian Audit Chamber Statue (OG 43/2010). A license has been obtained by 266 audit societies and 2 independent auditors.

- Natural and legal persons performing accountancy and tax advisory services. There is no one specific organisation but a number of geographically situated organisations. This is a big sector with about 7,500 reporting entities. According to the Central Office of Tax Administration many of them are to be liquidated, are in insolvency or are not active any more, but they are not closed because of liquidation costs.

- Tax advisor sector as regulated by the Tax Advisors Law (OG 127/00). In Croatia there are 29 tax advisors associated within the Croatian Association of Tax Consultants and Advisors.

2. Legal and natural persons performing business in relation to the activities listed hereunder:

   - Real-estate intermediation as regulated by the Real Estate Intermediation Law (OG 107/07) and the Rule Book Real Estate Intermediators Register (OG 56/08). The Croatian Chamber of Economy issues licenses for entering the market, there are 1,114 registered entities;

   - Traders of precious metals and gems and products made of them. There is no exclusive law that regulates precious metals trade, precious metals are treated as goods and their trade is regulated by the Commerce Law. The export and import of precious metals is subject to a licensing regime of the Ministry of Economy; there is no special permit needed for entering the market and there is no official register of entities that are conducting mentioned activities. According to the Administration for Precious Metals of State Office for Metrology there are 1,120 producers of gold products; however, there are also entities that are engaged solely in trading (mostly purchasing broken gold). Therefore the estimated total number is 1,250.

     Trading of precious metals and gems sector is rated as a medium risk sector in Croatia. According to the FATF Recommendations, dealers in precious metal and stones are obliged to apply AMLCFT measures in cases of cash transactions over €15,000. Furthermore, obliged entities that are involved in purchasing of broken gold are obliged to identify the client irrelevant of the value; this is under the control of the Ministry of Interior;

   - Trading artistic items and antiques. There is no law which regulates the trading in artistic items and the antiques trade; they are treated as goods and their trade is regulated by the Commerce Law. There are no special permits needed for entering the market and there is no official register of entities that conduct these activities. It is estimated that there are about 100 entities involved;

   - Organising or carrying out auctions. There is 1 entity; and

   - Trust or company service providers. There is no developed market in Croatia. There are 2 registered entities that have this as a main activity; fiduciary services are mostly provided by lawyers. The Financial inspectorate is the supervisory body for trust or company service providers.

3. Organisers of games of chance

   Organisers of games of chance includes lottery games, casino games, betting games, slot-machine gaming and games of chance on the Internet and via other telecommunications means, i.e. electronic communications. These can be organised in accordance with the Act on Games of Chance (Official Gazette no. 87/09), a decision of the Government of the Republic of Croatia and the authorisation of the Ministry of Finance. The Republic of Croatia can transfer its right to organise all games of chance (in casinos, on slot machines and betting) to Hrvatska Lutrija d.o.o. (Croatian Lottery Ltd.), a company founded by The Republic of Croatia. The right to organise the games of chance may be obtained, based on decision and authorisation, by other companies with their registered offices in the Republic of Croatia. There are 14 companies that organise games of chance in casinos, 43 companies that organise games of chance on slot machines, and 7 companies that organise betting in Croatia.

4. Pawnshops.

   There is no developed market in Croatia.

39. The AMLTF Law holds most categories of DNFBP to the same standards as the reporting financial institutions. DNFBPs have the same customer due diligence obligation as financial sector entities with some exceptions for persons performing professional activities and for the organisers of games of chance prescribed in the AMLTF Law.

40. The Financial Inspectorate is authorised to conduct examinations of all the reporting entities based on risk assessment and on demand of other competent bodies (AMLO, State Attorney Office, USKOK).

41. The following table summarises the various categories of DNFBP and other reporting entities as well as setting out the bodies responsible for their supervision.

Table 5: Designated Non-Financial Businesses and Professions and other reporting entities in the Republic of Croatia

DNFBP		
Type of business	**Supervisor**	**No. of Registered Institutions**
1. Casinos (which also includes internet casinos)	Ministry of Finance, Tax administration	18 companies that organise games of chance in casinos, 53 companies that organise games of chance on slot machines, and 9 companies that organise betting.
2. Real estate agents	Financial Inspectorate	1,114
3. Dealers in precious metals and precious stones	Financial Inspectorate	Estimated: 1,250
4. Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to internal "professionals" that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering	Financial Inspectorate	Lawyers: 3,354 Public notaries: 318 Accountants: 7,500*
5. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere		2

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

42. Since the 3rd round evaluation there have been changes to the Act on Court Register which regulates the mandatory content of data for an individual trader, trading companies, and banks and credit institutions registered in the court register.

43. The Act on Amendments to the Act on the Court Register ("Official Gazette", No. 91/2010) entered into force on 31 July 2010. The Act on Amendments to the Act on the Court Register regulates the mandatory content of data for an individual trader, trading companies, and banks and credit institutions registered in the court register. Companies whose members were not entered in the register were obliged by 31 October 2010 at the latest to submit the registration court application for the registration of members of the company with the prescribed data. Failure to comply with these provisions is punished with a fine. The Act on the Court Register has subsequently been amended in 2011 by the Act on Amendments to the Act on the Court Register ("Official Gazette", No. 90/2011) which entered into force on 10 August 2011.

44. No other changes to commercial laws and mechanisms governing legal persons and arrangements were reported to the evaluators.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

Inter-Institutional Working Group on AML/CFT

45. As a strategic document with the purpose of further coordination and enhancement of inter-agency cooperation in AML/CFT, the Protocol on Cooperation and Establishment of the Inter-institutional Working Group on AML/CFT has been signed at ministerial level on 1 March 2007. It came into force on the day of its signature. The Inter-Institutional Working Group on AML/CFT (IIWG) includes 11 government institutions and agencies, as follows: Anti-Money Laundering Office (AMLO); State Attorney's Office of the Republic of Croatia; the Ministry of the Interior – the Police Directorate; the supervisory services of the Ministry of Finance (the Financial Inspectorate, the Customs Administration, Tax Administration and the Financial Police); the Croatian Financial Services Supervision Agency; the Croatian National Bank; the Security-Intelligence Agency; and the Ministry of Justice. The Ministry of Foreign Affairs and European Integration joined the IIWG on 22 September 2009. The Financial Police of the Ministry of Finance was abolished on 7 March 2012. A representative of AMLO is elected president of IIWG.

46. The goals and tasks of the IIWG are facilitating the cooperation and coordination of all 11 institutions involved in achieving strategic and operational objectives in the fight against money laundering and terrorist financing, identifying (and elimination of) weaknesses and risks in the process of combating money laundering and terrorist financing, and identifying obstacles that hinder the achievement of these strategic and operational goals.

47. The main objectives and tasks of the IIWG are:

a) ensuring, improving and accelerating the coordination, cooperation and information exchange within and between the involved institutions;
b) making suggestions to simplify/simplifying the access to information, including to databases;
c) simplifying the workflow and avoiding duplication of work and loopholes;
d) assessing regularly the status and achieved progress;
e) to coordinate the participation in international organisations and working groups as well as improving participation in and more active use of national and international programs;
f) to analyse anti-money laundering and terrorist financing legislation and procedures and to start initiatives including the elaboration of recommendations for their modification and improvement;
g) to make suggestions in case of misunderstandings between the institutions involved in fight against money laundering and terrorist financing;
h) to create a common web site covering all issues regarding prevention of money laundering and terrorist financing (hosted and updated by the FIU);
i) to enhance know how and awareness by organising training, seminars and workshops for the staff of the involved institutions as well as for the reporting entities; and

j) to draft guidelines addressed to particular reporting institutions.

48. In the view of the Croatian authorities, the IIWG has demonstrated its ability to operate at a strategic level, working through the regular semi-annual meetings and at an operational level in facilitating the daily contact of authorities in solving particular problems. A list with 44 people responsible for communication has been established and each institution within the protocol was required to determine the representative in the working group, a deputy representative, a contact person (liaison officer) and a vice contact person.

49. Between 2007 and 2012 held eleven regular and four extraordinary meetings. In the course of meetings, participants exchange information on all relevant activities in AML/CFT field (including the results of members' participation in other meetings, projects, activities in relation to NPO sector etc.) and are informed on results of the AML/CFT system in the previous period with emphasis on judicial statistics in order to discuss and review the effectiveness of the system.

Action Plan on Fight against ML/TF

50. Also at a strategic level, the Croatian Government adopted the Action Plan on Fight against ML/TF on 31st January 2008. This Action Plan identified 150 activities for 11 institutions covering legislative, institutional and operational matters for current and permanent development of the overall AML/CFT system with the aim of harmonising it with relevant international standards.

51. Measures from the Action Plan relating to legislation have been implemented including passing a new law on money laundering and terrorist financing and implementing acts, etc..

National Strategy for Prevention and Suppression of Terrorism

52. The Republic of Croatia has an integrated approach to the prevention and suppression of terrorism which is adjusted to the particularities of the individual measures and procedures to counter terrorism. The countering of financing of terrorism is an integral part of this integrated strategy. The Republic of Croatia has been systematically implementing institutional solutions as well as measures and activities as a reaction to general security challenges and to concrete threats, including international terrorism.

53. The Interagency Working Group for the Suppression of Terrorism was formed in April 2005. Its tasks include:

- Promoting and coordinating the activities of competent state bodies concerning the implementation of anti-terrorist measures, and to draw up reports within their scope for every reporting period on individual activities and measures undertaken to implement them in accordance with the guidelines for the preparation of the Report to the UN Security Council's Counter-Terrorism Committee and to other international institutions;
- Examining the reports of competent state bodies delivered to the Working Group as background for the preparation of the integral reports of the Republic of Croatia;
- Ensuring coordinated interagency activities in response to the questions of the UN Security Council's Counter-Terrorism Committee and other international institutions and interested parties;
- Proposing viewpoints to be presented by the delegations of the Republic of Croatia at international conventions on terrorism;
- Reporting to the government of the Republic of Croatia on activities undertaken in the fulfilment of the obligations assumed under the UN Security Council resolutions and international legal documents; on the activities of the Working Group; and on reports submitted to the UN Security Council's Counter-Terrorism Committee and other international institutions.

54. In 2008 the Republic of Croatia adopted a National Strategy for Prevention and Suppression of Terrorism. The goal of the Strategy is to ensure the highest possible level of protection against the

threat of terrorism in the Republic of Croatia. The five measures in prevention and suppression of terrorism are:

- Prevention of Terrorism;
- Suppression of Terrorism;
- Protection against Terrorism;
- Damage Control and Recovery from Terrorist Attacks; and
- Criminal Prosecution and Processing.

55. An Action Plan for the prevention and suppression of terrorism was adopted by the Croatian Government on 28 April 2011. The Action Plan, is in line with the national legislation, contains all the sixteen recommendations of the Council of the European Union.

National Strategy for Combating Corruption and (revised) Action Plan

56. The Croatian Parliament adopted the National Strategy for Combating Corruption together with an Action Plan of the Anti-Corruption Strategy on 19 June 2008. The aim of these measures is the improvement of the legal and institutional framework for the efficient and systematic suppression of corruption.

Preliminary national risk assessment

57. Croatia has participates in a project of developing a preliminary national risk assessment with the IMF. This project involves all the bodies of the Croatian AML/TF system and has so far responded to the 8 questionnaires and surveys and additional information requested by the IMF. As well as participating in related seminars.

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

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

Ministry of Finance

59. The Ministry of Finance is responsible for the development of policy on the regulatory framework for the financial sector. Draft laws on the banking sector are prepared by the Financial System Directorate of the Ministry. It is empowered to send recommendations to the Croatian Government concerning banks. A more detailed description of the role of the Ministry of Finance is set out in section 1.5 b. of the 3rd round report.

Anti-Money Laundering Office (AMLO)

60. AMLO is the Croatian FIU. AMLO is a unit within the Ministry of Finance which performs tasks for prevention of money laundering and terrorist financing, and other functions provided in the Anti-Money Laundering and Terrorism Financing Law. A more detailed description of the role of AMLO is set out in section 1.5 b. of the 3rd round report as well as in section 2.5 below.

Tax Administration

61. The Tax Administration is the administrative organisation within the Ministry of Finance, whose main task is to implement tax legislation and regulations on the collection of contributions for mandatory insurance. The Tax Administration oversees the implementation of the AMLTF Law for organisers of games of chance. In conducting inspections within its scope the Tax Administration also checks compliance by legal and natural persons with the prescribed limits on cash payments, in accordance with Art. 39 of the AMLTF Law.

Customs Administration

62. The Customs Administration is the administrative organisation within Ministry of Finance that has responsibility for determining economic and development policies in the area of customs and excise and implementing non-tariff protection. In accordance with the AMLTF Law, the Customs

Administration is obliged to notify AMLO of large cash movements and suspicions of money laundering. Further details are set out under Section 2.6 below.

Ministry of Foreign and European Affairs

63. The Ministry of Foreign and European Affairs performs administrative and other tasks related to representation of Croatia and developing and improving the Republic of Croatia's relations with other countries, international organisations and other subjects of international law and international relations; as well as cooperation with international organisations and other forms of multilateral cooperation between countries. A more detailed description of the role of the Ministry of Foreign and European Affairs is set out in section 1.5 b. of the 3rd round report.

Ministry of the Interior

64. The Ministry of Interior performs administrative and other tasks related to police and criminal police to protect life and personal safety of people and property, prevent and detect crime, locate and capture the perpetrators of criminal offences and bringing them to the competent authorities. A more detailed description of the role of the Ministry of Interior is set out in section 1.5 b. of the 3rd round report.

Police

65. The Police, as a central service of the Ministry of the Interior, carry out the tasks determined by the law and other provisions. The Police is organised in 3 hierarchical levels: General Police Directorate, Police Districts, (there are 20 in Croatia), and Police Stations. In order to better define the obligation of the police to search for illegally obtained pecuniary gain the Law on Police Activities and Powers (NN 76/2009) was adopted and came into force on 1 July 2009. This law governs the duties and powers applied by the police in criminal investigations and includes the powers of the police relating to the tracing of illegally obtained pecuniary gain as well as confiscation of the objects and means resulting from criminal offences. There are police officers who specialise in conducting financial investigations and the discovery and investigation of money laundering offences.

Police National Office for Suppression of Corruption and Organised Crime (PNUSKOK)

66. PNUSKOK, which operates within the Ministry of the Interior, was created by a Government Decree of 29 May 2008. PNUSKOK has with four Regional Centres (Zagreb, Split, Rijeka and Osijek) as a central national body competent to conduct financial investigations (as well as for international cooperation in exchange of data relevant for financial investigations) and is competent to investigate cases where there are grounds for suspicion that the criminal offence of money laundering has been committed. With the establishment of PNUSKOK, specialised jobs of the police officers for financial investigations have been set up within this Office.

67. With the establishment of PNUSKOK the so called "USKOK vertical" has been completed. This introduces an integrated approach by the prosecution and courts in prosecution of cases of organised crime and cases with elements of corruption, which consists of the police, state attorney's office (USKOK) and the so called "USKOK" courts (see below).

Office for Suppression of Corruption and Organised Crime (USKOK)

68. The Office for the Suppression of Corruption and Organised Crime (Croatian abbreviation USKOK) is a specialised State Attorney's Office competent for the whole territory of the Republic of Croatia. It was created by the Law on USKOK at the end of 2001 with a mandate to prosecute corruption and organised crime. USKOK performs the State Attorney Office's tasks in cases involving a number of criminal offences. In particular, USKOK has jurisdiction over criminal offences of money laundering.

Ministry of Justice

69. The Ministry of Justice performs administrative and other tasks related to the area of civil, criminal and commercial law and administrative justice including organisation and operation of courts, the specialisation education and training of judges, prosecutors and staff of courts. A more detailed description of the role of the Ministry of Justice is set out in section 1.5 b. of the 3rd round report.

Judiciary

70. The government in the Republic of Croatia is organised on the principle of separation of powers into legislative, executive and judicial branches. Judicial power is exercised by the courts. The judiciary is autonomous and independent. Details of the hierarchy of the courts are set out under section 1.1 above. A more detailed description of the overall judicial system is set out in section 1.5 b. of the 3rd round report.

State Attorney's Office

71. Art. 125, § 1 of the Constitution of the Republic of Croatia prescribes that the State Attorney's Office is an autonomous and independent judicial body empowered to proceed against those who commit criminal and other punishable offences, to undertake legal measures for protection of the property of the Republic of Croatia and to provide legal remedies for protection of the Constitution and law.

72. The State Attorney's Office Act of 2009 prescribes the structure of the State Attorney's Office, the authorities, rights and obligations of State Attorneys and their Deputies, the operation of the State Attorney Council and other fields important for the work of state attorney's offices. The Act also regulates the actions of a state attorney in the course of conducting inquiries and investigation, i.e., prior to the commencement of the criminal procedure.

73. Additional training for state attorney and deputy state attorneys working on economic crime cases has been conducted. A list of deputies specialised in cases involving criminal offences of money laundering has been delivered to all state attorney's offices. Currently there are 93 state attorneys or deputies who are additionally trained and specialised to handle criminal cases of money laundering.

Security-Intelligence Agency (SIA, SOA)

74. Following the adoption of a new Security Intelligence System Act in 2006, the security services were restructured. The Intelligence and Counterintelligence Services were merged and function as a new Security-Intelligence Agency (SIA) accompanied by the Military Security-Intelligence Agency. These agencies conduct their activities in accordance with the Constitution, relevant national legislation, the National Security Strategy, the Defence Strategy and the Annual Guidelines for the Work of Security Services.

75. All government bodies, the judiciary and other legal entities that keep and control records/databases that include personal information, are bound to give access to this information to representatives of the security services. The security services are allowed to gather information: directly from citizens, from open public sources, by accessing official records and different databases and, if necessary, by applying covert procedures and measures.

Croatian National Bank (CNB)

76. The CNB is the central bank of the Republic of Croatia. The CNB is autonomous and independent within the Constitution and law in performing the operations within its competence. Among other activities the CNB is responsible for:

- the issuance and withdrawal of authorisations and approvals in accordance with the laws governing the operation of credit institutions, credit unions, payment institutions, payment transaction settlement systems, foreign exchange operations and the operation of authorised exchange offices;

- the exercise of supervision and oversight in accordance with the laws governing the operation of credit institutions, credit unions, payment institutions and payment transaction settlement systems; and
- the keeping of credit institutions' accounts and execution of payment transactions across these accounts, granting of loans to credit institutions and accepting deposits from credit institutions.

77. In accordance with the provisions of the AMLTF Law, the CNB conducts supervision of the implementation of the AMLTF Law by the obligated persons including:

- banks, branches of banks of Member States, branches of third-country banks and banks of Member States authorised for the direct provision of banking services in the Republic of Croatia,
- savings banks,
- housing savings banks,
- credit unions,
- companies for the issuance of electronic money, branches of companies for the issuance of electronic money from Member States, branches of companies for the issuance of electronic money from third countries and companies for the issuance of electronic money from Member States authorised to directly render services of issuing electronic money in the Republic of Croatia.

78. For a detailed discussion of the supervisory activities of the CNB see section 3.10 below.

The Financial Inspectorate

79. With the adoption of the Financial Inspectorate Act in July 2008 the Foreign Exchange Inspectorate's authority and jurisdiction were broadened. The scope and authorities of the Financial Inspectorate are:

(1) *Prevention of money laundering and financing of terrorism*; the Financial Inspectorate supervises the implementation of measures, tasks and procedures for the prevention and detection of money laundering and financing of terrorism, as stipulated by the AMLTF Law;
(2) *Foreign currency operations*; the Financial Inspectorate supervises compliance with the conditions and the manner of conducting trans-border operations, as well as operations involving means of payment in the country;
(3) *Providing the services of payment operations*; the Financial Inspectorate supervises the progress of payment transactions and other tasks of payment operations; and
(4) *First degree minor offence proceedings*; the Financial Inspectorate conducts first degree minor offence proceedings for violations of the provisions of the Financial Inspectorate Act and the acts according to which the prevention of money laundering and financing of terrorism, foreign currency operations and the providing of payment operation and money transfer services are regulated.

80. Under the Financial Inspectorate Act the Financial Inspectorate became a single body for the supervision of reporting entities from the DNFBP sector. Apart from being authorised to supervise authorised exchange offices, consumer credit financing and credit intermediators in the financial sector, the Financial Inspectorate is authorised to conduct supervisions of all the reporting entities referred to in the AMLTF Law based on ML/TF risk assessment, which can also be initiated by other competent authorities (FIU, State Attorney's Office, USKOK, Ministry of Interior, CNB, Ministry of Finance)

81. With the goal of performing those tasks and assignments the Financial Inspectorate shall be authorised to perform the following:

1. independently and in cooperation with AMLO and the Office of the Public Prosecutor, to plan, organise and implement inspection supervision in order to detect punishable offences

and collect evidence in the area of money laundering and the financing of terrorism and in the area of foreign currency operations and providing the services of payment operations and money transfer;

2. at the order of the court and the public prosecutor, to provide assistance in the implementation of financial investigations, especially in cases in which it is necessary to procure data on monetary transactions and business documentation of the defendant and on the supervision of the movement of property gains acquired through a criminal offence;
3. to implement the procedure of the forcible collection of monetary fines and the costs of proceedings in minor offence proceedings that it conducts when stipulated by this Act;
4. to cooperate with the Croatian National Bank, the Croatian Agency for the Supervision of Financial Services, the supervisory bodies of the Ministry of Finance and other government bodies and within the framework of its authority to undertake measures for promoting cooperation;
5. pursuant to international contracts, to cooperate with the authorised bodies of other countries and international organisations;
6. to participate in the providing of international legal assistance in minor offence proceedings that are conducted against legal persons;
7. to propose amendments to the supervisory body of the provisions that refer to proceedings from its sphere of activity;
8. together with AMLO and in cooperation with other regulatory and supervisory bodies, to issue recommendations or guidelines for the uniform implementation of the individual provisions of the Money Laundering and Financing of Terrorism Prevention Act and the provisions adopted pursuant to said act for persons obligated by this Act;
9. together with the supervisory bodies and AMLO, to cooperate with the persons obligated pursuant to the Money Laundering and the Financing of Terrorism Prevention Act in the compilation of a list of indicators for recognising suspicious transactions and parties, in connection with whom there are reasons for suspicion of money laundering or the financing of terrorism;
10. to prepare analyses with the goal of determining which subjects of supervision are vulnerable or could be vulnerable in their activities to greater risk from abuse in connection with money laundering or the financing of terrorism;
11. to record statistics on the exchange of data among the Financial Inspectorate, supervisory bodies and AMLO;
12. to participate in the work of inter-institutional working groups for the prevention of money laundering and the financing of terrorism, with the goal of establishing operative and strategic structures for cooperation among individual members of the group; and
13. to participate in the advanced training of the employees of the subjects of supervision engaged in the prevention and discovery of money laundering and the financing of terrorism

Croatian Financial Services Supervisory Agency (CFSSA - HANFA)

82. HANFA is responsible for supervising the operations of:

- stock exchanges and regulated public markets and issuers;
- companies for the management of investment, privatisation investment and pension funds, investment funds, pension funds, Fund of the Croatian Defenders of the Homeland War and Members of their Families, and the Retired Persons' Fund;
- investment firms, brokers and investment advisers;
- the Central Depositary and Clearing Company;
- the Central Registry of Affiliates;
- insurance and reinsurance companies, pension insurance companies, insurance brokers and representatives; and

- legal entities performing the operations of leasing and factoring, unless the banks perform them within the scope of their registered activities.

83. HANFA is regulated by the Act on the Croatian Financial Services Supervisory Agency. Within its framework of supervision, HANFA undertakes supervision, regulation and enforcement of measures of anti-money laundering and terrorist financing. HANFA regularly notifies AMLO on all information and documents on parties or transactions for which there is suspicion of money laundering or terrorist financing, AMLO then acts within its powers or proceeds with notifying the competent court or files indictment motions to the Financial Inspectorate.

Division of responsibility for AML/CFT Supervision

84. Arts. 83-85 of the AMLTF Law define the supervisory bodies, their scope of competence and responsibilities. Furthermore, different sectoral laws define the supervisory power to conduct inspections in financial institutions. Hence, Art. 4 of the Act of Croatian National Bank defines the powers the of the CNB for the exercise of supervision and oversight in accordance with the laws governing the operation of credit institutions, credit unions, payment institutions and payment transaction settlement systems. Art. 1 §2 of the Financial Inspectorate Act empowers the Financial Inspectorate to supervise the implementation of the provisions in the area of AML/CFT, as well as of foreign currency operations and provision of payment operation and money transfer services. Art. 13 of the Act on HANFA defines the fundamental objectives of the Agency as the promotion and preservation of the stability of the financial system and supervision of legality of the supervised entities operations. HANFA is empowered to supervise a broad range of entities; its powers are regulated by different pieces of legislation. These legislative provisions allow HANFA to conduct both off-site surveillance and on-site inspections of factoring companies, leasing companies, insurance companies, investment funds, investment funds management companies, investment firms, pension funds and pension fund management companies as well as, pension insurance companies, insurance brokers and representatives. In AMLO's Procedures of Work of Department for Financial and Non-Financial Institutions Targeted Supervision (see ANNEX XXVI) the division of responsibility for AML/CFT supervision is set out between the Financial Inspectorate, The Tax Administration, the CNB and HANFA.

c. The approach concerning risk

85. Croatia has taken significant steps to remedy the risks of ML&TF identified in the 3rd round evaluation. The evaluators welcome the improvement brought to the AMLTF legislation since the 3rd round report by the imposition of the risk-based approach. The Croatian authorities have a well-established Inter-Institutional Working Group for Suppression of Money Laundering and Financing Terrorism (Working Group) and further coordination and enhancement of inter-agency cooperation in AML/CFT mitigates the risks of ML&TF. The Working Group operates at the strategic level and assesses ML&TF risks in practice. The Croatian Government adopted the Action Plan on the Fight against ML/TF on 31 January 2008, and twice a year the Ministry of Finance reports to the Croatian Government on the progress of each institution and the AML/CFT system as a whole.

86. As noted above, the risk-based approach is embedded in the AMLTF Law and in related guidance and regulation. According to the legal requirements, reporting entities are obliged to develop a risk analysis and apply it in order to rate risks of individual groups or types of customers, business relationships, products or transactions in respect of possible abuse relative to money laundering and terrorist financing taking account of the specificities of the reporting entity and its operations, e.g. the reporting entity's size and composition, scope and type of business performed, types of customers it deals with and products it offers. During the on-site visit the financial sector representatives interviewed appeared to have a high level of understanding of their obligations according to AMLTF Law.

87. In conjunction with the International Monetary Fund (IMF), the Croatian authorities have started to develop a national risk assessment, which will be progressed in 2013.

88. Although no formal national risk assessment has been completed, the Croatian authorities have highlighted that money laundering linked to corruption poses a significant problem. Foreign exchange offices and the real estate sector are considered to be particularly vulnerable to laundering.

89. Statistics concerning IT fraud and other cybercrimes, which is a growing trend for ML predicate are set out in section 1.2 above. There were, however, no relevant statistics about the number of internet banking customers and services offered via internet although 5 e-money institutions are listed on the CNB website.

90. Training on anti-money laundering measures and on the fight against cybercrime has continued.

d. Progress since the last mutual evaluation

91. There have been a number of important developments in Croatia since the 3rd round evaluation.

Anti-Money Laundering and Financing of Terrorism Law (AMLTF Law)

92. On a legislative level, the new Anti-Money Laundering and Financing of Terrorism Law was passed on 15 July 2008 and came into force on 1 January 2009. This Law is based on Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005. Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, as well as relevant FATF Recommendations and relevant provisions of Warsaw Convention are also incorporated.

93. The AMLTF Law has introduced a comprehensive CDD procedure according to the 3rd EU Directive, including requirements concerning PEPs, restrictions in cash operations, prohibition of the use of anonymous products as well introducing the criteria for simplified CDD and certain exemptions. The law also: defines money laundering and terrorism financing; gives definitions of suspicious transactions; and introduces a wide range of sanctions which can be used against legal persons, responsible persons and member of the board. The Law additionally defines different types of inter-institutional cooperation fully enabling AMLO's powers relating to access to reporting entities' and governmental institutions' data, but also giving limited possibilities of governmental institutions to suggest to the FIU to initiate its analytical work. The law provides AMLO with the authority to suspend suspicious transactions and to order the monitoring of customer's financial operations. The Law introduces relevant provisions from the Warsaw Convention inter alia authorising AMLO to postpone suspicious transaction on the request of its foreign counterpart. AMLO is now obliged to inform the reporting entities on the results of its work (feedback). The Law additionally prescribes collection of data for joint statistics.

94. In 2009 the Ministry of Finance passed 9 Rulebooks on the implementation of AMLTF Law:

- Rulebook on reporting the Anti-Money Laundering Office on suspicious transactions and persons (O.G. 01/09);
- Rulebook on the manner and deadlines for reporting the Anti-Money Laundering Office on suspicious transactions and persons and on keeping records by lawyers, law firms, notaries public, auditing firms and independent auditors as well as legal and natural persons involved in the performance of accounting and tax advisory services (O.G. 01/09);
- Rulebook on reporting the Anti-Money Laundering Office on cash transactions equal to or greater than HRK 200,000 and on the conditions under which the reporting entities shall not be obliged to report to AMLO on cash transactions for designated clients (O.G. 01/09);
- Rulebook on the content and type of information on payers accompanying wire transfers, on duties of payment service providers and exceptions from the wire transfer data collection obligation (O.G. 01/09);
- Rulebook on controlling domestic or foreign exchange cash carrying across the state border (O.G. 01/09);

- Rulebook on the manner of and deadlines for supplying the Anti-Money Laundering Office with data on the money laundering and terrorist financing criminal offences (O.G. 76/09);
- Rulebook on the manner of and deadlines for supplying the Anti-Money Laundering Office with data on misdemeanour proceedings (O.G. 76/09);
- Rulebook on terms and conditions under which the reporting entities under the Anti-Money Laundering and Terrorist Financing Law shall be allowed to entrust the conducting of customer due diligence with third persons (O.G. 76/09);
- Rulebook on determining conditions under which the reporting entities shall make grouping of customers representing a negligible money laundering or terrorist financing risk (O.G. 76/09).

The AMLTF Law refers specifically to these rulebooks and includes sanctions for breaches of the requirements of both the AMLTF Law provisions as well as the provisions of the related rulebooks. Details of the applicable sanctions are set out in ANNEX II.

AMLO

95. As a result of the adoption of the AMLTF Law, AMLO was reorganised and expanded from 2 to 4 specialised departments including an additional 4 specialised sub-departments (divisions) with a total of 36 positions (increasing the number of positions of 22 by 63%).

96. AMLO and all the supervisory authorities continued their work on raising awareness and continuing education of reporting entities, especially in the DNFBP sector, which resulted in a higher quality of STRs received as well as an increase in the number of STRs received from DNFBPs (especially from lawyers and notaries public).

97. In July 2010 AMLO established the WEB 2010 System as a new and improved system of sending STRs and CTRs from reporting entities to AMLO. In September 2012 AMLO fully implemented a secure two-way on-line communication with reporting entities which used the WEB 2010 System in order to improve and fasten exchange of information with reporting entities concerning requests from AMLO on additional information.

98. AMLO has developed its first typologies report which it has disseminated to AML/CFT government stakeholders as well as reporting entities. The findings also formed the basis for an Annual AML/CFT Workshop that was held in January 2012 for all reporting entities.

Financial Inspectorate Act

99. As a part of the AML/CTF Action plan, in July 2008, the Financial Inspectorate Act was adopted, with the goal of improving the legal framework, strengthening supervisory institutions and raising total operational capacity in order to achieve more efficient application of the financial and legal framework and the prevention of different forms of abuses of financial system, especially money laundering and terrorism financing.

100. In 2008, the Financial Inspectorate issues Guidelines in relation to the enforcement of the Anti-Money Laundering and Counter Terrorism Financing act for auditors, accountants and tax advisors and in 2009 Guidelines for lawyers and public notaries.

Law on Personal Identification Number

101. A new Law on Personal Identification Number came into force in 2008. The aim of introducing the Personal Identification Number is to provide information for public administration, connection and automated data exchange among public administration institutions, a better overview of the property and income of the natural and legal entities and flow of money, as a key component of a transparent economy and to support the suppression of corruption. It will also enable the timely exchange of information needed for timely and consistent implementation of administrative, tax and criminal proceedings, as well as facilitating and speeding up proceedings that are being conducted by citizens before public authorities for the exercise of various rights. During 2009 a personal identification number was determined and assigned to all

persons (Croatian citizens by birth or acquisition of Croatian citizenship, legal persons domiciled in the Republic of Croatia and foreign persons when registering the residence on Croatian territory), and the registration of assigned identification numbers with the official records had begun.

Act on Games of Chance

102. The Act on Games of Chance came into force on 1st January 2010, replacing the previous Act on Operating Games of Chance and Lottery Games. This Act governs the system, types and conditions related to the operating of games of chance, the rules and procedures for obtaining and revoking the gaming concession, the rights and obligations of gaming operators, the allocation of revenues generated from games of chance, and the control of the gaming operations. Furthermore, the Act is fully harmonized with the relevant provisions of the AMLTF Law, prescribing that gaming operators shall operate according to the legislation regulating the prevention of money laundering and terrorist financing, particularly in cases of customer due diligence, identification of customer and customer's beneficial owner, suspicious transactions and the requirements for retaining customers information.

Payment System Act

103. New legislation that regulates payment services in the Republic of Croatia entered into force in January 2011. The most important new regulation is the Payment System Act (PSA) which implemented the provisions of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Payment Services Directive - PSD) that regulates payment services in all EU member states in harmonised manner. The PSA also defines payment service providers; beside credit institutions (that are authorised to provide payment services according to the provisions of the Credit Institutions Act). The PSA introduces a new payment service provider category - payment institution (PI). This category of payment service providers includes card issuers (that operate independently from the banks), providers of bill payment services or money remittance service providers.

Electronic Money Act

104. The Electronic Money Act entered into force on 1st January 2011 and implemented the provisions of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC. The Electronic Money Act regulates the operation of e-money institutions (EMI) that are authorised to issue electronic money and may also provide payment services.

Law on Criminal Proceedings

105. On 1 July 2009 a new Law on Criminal Proceedings was introduced for criminal offences from the competence of the Office for Suppression of Corruption and Organised Crime which primarily contributed to a greater increase in identification and investigation of corruption offences. On 1 September 2011, the Law on Criminal Proceedings came fully into force for all crimes.

Act on the Proceedings for the Confiscation of Pecuniary Gain Resulting from Criminal Offences and Misdemeanours

106. On 1 January 2011, the Act on the Proceedings for the Confiscation of Pecuniary Gain Resulting from Criminal Offences and Misdemeanours came into force which fully regulates the procedure of establishing pecuniary gain from crime, ensuring the seizure and the seizure based on the final court decision. Further details are set out under section 2.3 below.

Law on Police Activities and Powers

107. In order to additionally define the obligation of the police to search for illegally obtained pecuniary gain the Law on Police Activities and Powers was adopted and came into force on 1 July 2009. The law regulates the powers of the police relating to the tracing of illegally obtained pecuniary gain as well as confiscation of the objects and means resulting from criminal offences.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1)

2.1.1 Description and analysis

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

Summary of 2008 factors underlying the rating

108. Recommendation 1 was rated PC in the 3rd round based on the following conclusions:

- some of the legislative provisions needed further clarification; particularly, precise requirements for extra-territorial offences in respect of dual criminality;
- it was unclear if indirect proceeds deriving from property other than money is covered.
- the scope of the money laundering offence was "limited to banking financial or other economic operations".
- significant backlogs both in general terms and especially in money laundering cases seriously threatened the effectiveness of the AML system.
- there had been no convictions or final decisions in any money laundering case since 2003.
- no prosecutions or convictions of legal entities for money laundering gave rise to concerns about the effective implementation of corporate criminal liability.

Legal Framework

109. The criminal offence of money laundering was introduced into Croatian legislation in 1996 by an Amending Act to the former "Basic Penal Code" of the Republic of Croatia including the offence in Art. 151a "Concealment of Unlawfully Acquired Money". In January 1998, the new Criminal Code of the Republic of Croatia replaced the said Penal Code and covered money laundering, still under the same designation, in its Art. 279. This article has been amended twice since the 3rd round evaluation.

110. The Law on the Amendments to the Criminal Code was introduced and entered into force on January 1, 2009. The Law amended Art. 279 with a view to bring it in line with the recommendations made by the 3rd round MER. In this respect at Art. 279 §1, the word "*economic*" was deleted and the words "*transfers*" and "*transforms*" were inserted. Consequently the new Art. 279 removed former restrictions and covered other operations, beside banking and financial, in respect of anyone who invests, takes over, transfers, exchanges, transforms or otherwise conceals the true source of money, objects, rights or ***pecuniary advantages*** *(imovinske koristi* in Croatian language) [9] knowing that they were generated or acquired from a criminal offence.

111. "**Pecuniary advantages**" was defined by the addition of para. 37 to Article 89 of the Criminal Code, as "*every increasing of or disabling of the reduction of assets regardless of being material or immaterial, movable or immovable, or whether it is a decree in any form which proves right or interest over assets which is directly or indirectly gained by criminal offence*."

112. Thus the version in force and effect of the ML offence at the time of the on-site visit was as follows:

[9] The original version (in Croatian language):Pranje novca, Članak 279.
(1) Tko u bankarskom, novčarskom ili drugom poslovanju uloži, preuzme, prenese, zamijeni, pretvori ili na drugi način prikrije pravi izvor novca, predmeta, prava ili **imovinske koristi** za koju zna da je nastala ili je pribavljena kaznenim djelom, kaznit će se kaznom zatvora od šest mjeseci do pet godina……
Članak 89.
(37**)** **Imovinska korist** je svako uvećanje ili sprječavanje umanjenja imovine bez obzira je li ona materijalna ili nematerijalna, pokretna ili nepokretna, ili se radi o ispravi u bilo kojem obliku koja dokazuje pravo ili interes nad imovinom koja je izravno ili neizravno ostvarena kaznenim djelom.

Article 279 Money Laundering

(1) Whoever, in banking, financial or other economic operations, invests, takes over, exchanges or otherwise conceals the true source of money, objects, rights or pecuniary advantage, knowing that they were generated or acquired from a criminal offence shall be punished by imprisonment for six months to five years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be ¬inflicted on whoever acquires, possesses or brings into circulation for himself or for another the money, objects or rights referred to in paragraph 1 of this Article, although at the moment of acquisition he knew the origin of such.

(3) Whoever commits the criminal offence referred to in paragraphs 1 and 2 of this Article as a member of a group or a criminal organisation shall be punished by imprisonment for one to ten years.

(4) Whoever, committing the criminal offence referred to in paragraphs 1 and 2 of this Article, acts negligently regarding the fact that the money, objects or rights are acquired by the criminal offence referred to in paragraph 1 of this Article shall be punished by imprisonment for three months to three years.

(5) If the money, objects or rights referred to in paragraphs 1, 2 and 4 of this Article are acquired by a criminal offence committed in a foreign state, such an offence shall be evaluated pursuant to the provisions of the Croatian criminal legislation taking into consideration the provisions of Article 16, paragraphs 2 and 3 of this Code.

(6) The money and objects referred to in paragraphs 1, 2 and 4 of this Article shall be forfeited while the rights referred to in paragraphs 1, 2 and 4 shall be ¬pronounced void.

(7) The court may remit the punishment of the perpetrator of the criminal offence referred to in paragraphs 1, 2, 3 and 4 of this Article who voluntarily contributes to the discovery of such a criminal offence.

The law in force and effect after the on-site visit

113. The Croatian Parliament adopted the new Criminal Code on 21 October 2011 and it entered into force on 1 January 2013. In the new Criminal Code the ML offence is set out in Art. 265 and reads as follows:

Article 265 Money Laundering

(1) Whoever invests, takes over, converts, transfers or replaces a pecuniary advantage derived from criminal activity for the purpose of concealing or disguising its illicit origin shall be sentenced to imprisonment for a term of between six months and five years.

(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of a pecuniary advantage derived by another from criminal activity.

(3) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever acquires, possesses or uses the pecuniary advantage derived by another from criminal activity.

(4) Whoever commits the offence referred to in paragraph 1 or 2 of this Article in financial or other dealings or where the perpetrator engages professionally in money laundering or the pecuniary advantage referred to in paragraph 1, 2 or 3 of this Article is of considerable value, shall be sentenced to imprisonment for a term of between one and eight years.

(5) Whoever commits the offence referred to in paragraph 1, 2 or 4 of this Article through negligence with respect to the circumstance that the pecuniary advantage is derived from criminal activity shall be sentenced to imprisonment for a term of up to three years.

(6) If the pecuniary advantage referred to in paragraphs 1 through 5 of this Article is derived from criminal activity carried out in a foreign country, the perpetrator shall be punished when the activity is a criminal offence also under the domestic law of the country where it is committed.

(7) The perpetrator referred to in paragraphs 1 through 5 of this Article who contributes of his/her own free will to the discovery of the criminal activity from which a pecuniary advantage has been derived may have his/her punishment remitted.

114. Art 89 (37) of the CC was replaced by Art.87 (21) of the new CC and reads as follows:

"A pecuniary advantage obtained by a criminal offence shall mean a direct pecuniary advantage obtained by a criminal offence consisting of any increase or prevention of decrease in the property which came about as a result of the commission of a criminal offence, the property into which the direct pecuniary advantage obtained by a criminal offence has been changed or turned into as well as any other advantage gained from the direct pecuniary advantage obtained by a criminal offence or from property into which the direct pecuniary advantage gained by a criminal offence has been changed or turned into, irrespective of whether it is located inside or outside the territory of the Republic of Croatia."

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

Money laundering should be criminalised on the basis of the Vienna and Palermo Conventions i.e. the physical and material elements of the offence.

115. The Vienna and Palermo Conventions place an obligation on countries to make the concealment or disguise and the conversion or intentional transfer of the proceeds of crime a criminal offence. These Conventions state that, subject to constitutional principles and the basic concepts of their domestic legal systems:

(1) the acquisition, possession or use of property that is the proceeds of crime; and
(2) participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of these offences, should also constitute criminal offences.

116. Money laundering is currently defined in Croatian law by Art. 265 of the Criminal Code (see above) which is an updated version of the previous Art. 279. The offence appears to be broadly in line with the Vienna and Palermo Conventions.

Conversion or transfer and concealment or disguise (Art. 6.1 (a) of the Palermo Convention and Art. 3.1 (b) of the Vienna Convention)

117. Art. 265 §1 of the new Criminal Code provides five different actions as " *actus reus*" of the ML offence which include "conversion" and "transfer" along with "invest", "takes over", and "replace" of a pecuniary advantage derived from criminal activity. There is no confusion regarding the meaning of these two key words (i.e. "conversion" and "transfer") which are in line with the meaning of the terms used by the Conventions.

The purposive element of disguising which should characterise the conversion or transfer is not fully covered.

118. To be considered as a ML offence, the actions indicated by Art.265 §1 should be committed "*for the purpose of concealing or disguising"* the illicit origin of the pecuniary advantage derived from criminal activity (according to the translation provided by the Croatian authorities).

119. According to a more accurate translation in English the provisions of Art. 265 §1 are as follows: "*for the purpose of concealing its origin*". The original Croatian wording is "*u cilju prikrivanja njezinog nezakonitog podrijetla*" and appears not to contain the element of "disguise". The Croatian authorities have explained that the original translation of Article 265 §1 of the CC is not an accurate one because the word "*disguising*" is added although it does not appear in the

Croatian text, but nevertheless, the word "*concealing*" ("*prikrivanje*") in the Croatian language fully covers the meaning of the word "*disguising*".

120. The authorities provided the evaluators with the description of a relevant case in respect of this idea. They have asserted that in the USKOK case No: UK-369/07 from the description of the case is clear that Croatian word "*prikrivanje*" covers both concealment and disguise. In the mentioned case, the perpetrators transferred the money, as proceeds from the predicate criminal offence (Art. 292 CC- Abuse of Authority in Economic Business Operations), from banks in Austria to accounts opened in banks in Croatia. The basis for the money transfer was shown as a loan arrangement with the offshore companies. So that money, as a direct proceed from the predicate criminal offence, for the purpose to conceal its origin, when transferred from Austria to the several perpetrators accounts in the financial institutions in the Croatia, was disguised in the loan arrangement. The loan arrangement disguised the true nature of the money. In that case, the indictment was confirmed by the court (the indictment is final), the main hearing at the County court in Zagreb is under way.

121. As long as this case is still pending and no final court decision was issued to explicitly or implicitly demonstrate that the semantic area of the English word "*disguising*" is fully comprised in the semantic area of the Croatian word "*prikrivanja*", the evaluators concerns at this point remain.

122. Conversely, it could be observed that the official Croatian translations of the Strasbourg, Palermo and Warsaw Conventions have used different words to translate "*concealment or disguise*" as follows:

- Strasbourg Convention – "*prikrivanje ili maskiranje*";
- Palermo Convention "*sakrivanje ili prikrivanje*";
- Warsaw Convention – "*prikrivanje ili maskiranje*".

123. Also as a matter of consistency with other MONEYVAL reports, the evaluators consider that these two conducts (i.e. concealment and disguising) should be explicitly and distinctly provided for by the Croatian CC as it is required by the relevant conventions.

The purposive element of helping any person involved in the commission of the predicate offence to evade the legal consequence of his or her action is not fully covered.

124. The provisions of Art. 265 §1 also do not appear to be fully in line with the international standards as long as the purposive elements do not explicitly comprise the alternative purposive element in Art. 6, §1.a (i) of the Palermo Convention - "*helping any person involved in the commission of the predicate offence to evade the legal consequence of his or her action*". The Croatian authorities advised the evaluators that Art. 303 of the CC (Aiding the Perpetrator Following the Commission of a Criminal Offence –"*Whoever conceals or harbours the perpetrator of a criminal offence for which a sentence of imprisonment of five years or a more severe sentence is prescribed, or by concealing the means by which the criminal offence was committed, traces of the criminal offence or objects which are the product of or which were obtained by the criminal offence or otherwise aids him/her in avoiding detection or apprehension*" covers the conducts provided by the Palermo Convention as regards conversion or transfer of the proceeds of crime perpetrated with this particular purposive element. They have sustained that "*by concealing the means by which the criminal offence was committed, traces of the criminal offence or objects which are the product of or which were obtained by the criminal offence or otherwise aids him/her in avoiding detection or apprehension*" should be understood as having a broad enough meaning to cover the criterion at this point, especially if the attempting to commit this offence is taken into consideration.

125. The evaluators consider that it is obvious that these provisions do not refer to "*helping to evade legal consequences*" but only "*avoiding detection or apprehension*" and that this is narrower than the standards.

126. At the same time it remains unclear if "*objects* (original language: *predmeta*) *which are the product of or which were obtained by the criminal offence*" (wording of Art. 303) shall be understood as "*property*" which represent "*proceeds of crime*" in the meaning of the Palermo Convention.

127. The evaluators consider that Art. 303 does not cover, to a sufficient extent, conversion or transfer of the proceeds of crime for the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequence of his or her action. The authorities have not provided any jurisprudential examples to contradict this conclusion.

Disguise as "actus reus" is not provided

128. The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property (Art. 6, §1.a (ii) of the Palermo Convention) seems to be also only partially covered by Art. 265 §2.

129. Art. 265 §2 does not contain the element of "*disguise*" when referring to "*whoever conceals the true nature*" (in Croatian "*će se tko prikriva pravu prirodu*"). As was explained above the Croatian authorities consider that the meaning of the word "*prikrivanje*", which is translated as "*concealment*", is broad enough to encompass the meaning of the English word "*disguising*". For the reasons already expressed (see supra) the evaluators consider that this approach is not in line with the international standards.

The perpetrator of the predicate offence could not be the perpetrator of the ML offences committed through the actions of concealment

130. The subject matter of these actions is the pecuniary advantage "*derived by another from criminal activity*".

131. The first paragraph of Art. 265 refers to pecuniary advantage "*derived from criminal activity*" while the second and the third paragraph of this article refer to pecuniary advantage "*derived by another from criminal activity*".

132. The evaluators consider that a feasible interpretation of this wording is that the perpetrator of the predicate offence could not be the perpetrator of the ML offences committed through the actions of concealment and during the on-site visit this understanding was confirmed by some of the Croatian authorities.

133. According to Art. 6 §2 (e) of the Palermo Convention it may be provided that the ML offence, in all its forms, does not apply to the persons who committed the predicate offence if required by fundamental principles of the domestic law of a State Party.

134. The evaluators were not advised about any fundamental principle of the Croatian legal system which could be breached by criminalisation of the ML offence committed in the manner of concealment or disguise by the person who committed the predicate offence.

135. The Croatian authorities advised the evaluators that the element of "*concealment*" required by the standards is covered, in relation to the self-laundering concept, by the provisions of Art. 303 of the CC. The evaluators consider it is not possible to apply Art. 303 for the concealment done by the perpetrator of the predicate offence. The wording of Art. 303 seems to cover only those acts intended to aid him/her (i.e. the perpetrator of the predicate offense) in avoiding detection or apprehension.

136. The evaluators' conclusion is that the standards are not fulfilled at this point.

The acquisition, possession or use of property knowing, at the time of receipt, that such property is the proceeds of crime (Art. 6.1 (b)(i) of the Palermo Convention and Art. 3.1 (c) (i) of the Vienna Convention).

The person who commits the predicate offence could not be the perpetrator of the ML offence committed through acquisition, possession or use of the proceeds of crime

137. The acquisition, possession or use of pecuniary advantage derived by another from criminal activity is provided by Art. 265 §3.

138. As with the case of concealment and disguise, analysed supra, the person who commits the predicate offence could not be the perpetrator of the ML offence committed through acquisition, possession or use of the proceeds of crime. No fundamental principles which may exclude the self-laundering offence in this form have been indicated by the Croatian authorities and for this reason the provisions are not fully in line with the essential criteria.

Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in the Conventions (Art. 6.1 (b)(ii) of the Palermo Convention and Art. 3.1 c) iv) of the Vienna Convention).

139. In Croatian criminal law, most ancillary offences are provided by the general part of the Criminal Code with potential applicability to any criminal offence defined in the Special Part, including money laundering. (for more details, see the analysis under c.1.7 below)

140. The analysis made in the 3rd round report regarding the provisions of Criminal Code related to the ancillary offences of money laundering in force until 1st of January 2013, is appropriate. (see the 3rd round MER).

141. The new Criminal Code which came into force and effect from 1 January 2013 contains some changes in the articles which provide for the ancillary offences (for more details related to the effect of these changes see the analysis in c.1.7 below)

142. Facilitating and counselling are not explicitly provided by the Criminal Code as ancillary offences. The evaluators were advised that although "*facilitating*" and "*counselling*" are not explicitly provided by the Criminal Code, they are fully encompassed by Art. 38 (Aiding); however, there is no evidence of this interpretation from the jurisprudence.

The laundered property (c.1.2)

143. Art. 2 (d) of the Palermo Convention defines "*property*" as "*assets of every kind, whether corporeal or incorporeal, movable and immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets*". "*Proceeds of crime*" are defined by Art. 2 (e) of the Palermo Convention as "*any property derived from or obtained, directly or indirectly, through the commission of an offence*"

144. At the time of the 3rd round evaluation, the object of the ML offence was described in the previous Art. 279 of the Criminal Code as "*money and, respectively, objects or rights procured by money*".

145. Since 1 January 2009 some amendments to the Criminal Code have entered into force and, according to the analyses made by the MONEYVAL Secretariat for the second progress report of Croatia in April 2011, they addressed most of the concerns raised in the mutual evaluation report. Related to the object of the ML offence, the progress report concluded that it had been extended to property, rights or proceeds and proceeds which have also been defined (amended Art. 89, §37).

146. The new version of the ML offence provided by Art. 265 of the Criminal Code as it was amended and in force since 1 January 2013, uses a different wording to refer to the subject matter of the ML offence, namely "*pecuniary advantage derived from criminal activity*" or "*pecuniary advantage derived by another from criminal activity*".

Pecuniary advantage in the understanding of the 3rd round Report

147. At the time of the 3rd round of evaluation the term "*pecuniary advantage*" (*imovinske koristi*) was not defined by the Criminal Code.

148. To some extent, the analysis provided by the evaluators in the 3rd round MER, in respect of the meaning of "*pecuniary advantage*" or "*pecuniary benefits*" or "*pecuniary gain*", is of relevance in the context of the current assessment. All of these concepts are used to translate the Croatian

original " *imovinske koristi" or "imovinskom korišću" or "imovinsku korist"* used by different pieces of Croatian legislation. The 3rd round MER concluded "*Turning to the object of confiscation, the previous report criticized the use of the term "pecuniary" in Art. 82 CC because its restrictive interpretation which, being not in line with the wide interpretation of "proceeds" under the 1990 Strasbourg Convention, was likely to prove ineffective. Again, it seems that this conclusion was caused by an improper translation as the original Croatian term is not so closely related to the notion of "money" like its English equivalent. In the original text, the adjective that was translated as "pecuniary" is "imovinske" (plural feminine form) that is directly derived from "imovina", i.e. "property". Therefore, the original term is related to the general notion of "property" irrespective of what sorts of property are concerned, while "pecuniary" as an English term would rather be definable by its relation to money. This interpretation proves to be true also because of the fact that "pecuniary", in this narrow sense, would be translated into Croatian with another word ("novčan" from the word "novac" = "money"). Overall, the term "pecuniary gain" appears to be wide enough to cover any sorts of property.*"

Pecuniary advantage defined by Art. 87§21of the new CC

149. The new CC defines now "pecuniary advantage" through Art. 87 §21 as follows:

> "***A pecuniary advantage obtained by a criminal offence***" shall mean "*a direct pecuniary advantage obtained by a criminal offence consisting of any increase or prevention of decrease in the property which came about as a result of the commission of a criminal offence, the property into which the direct pecuniary advantage obtained by a criminal offence has been changed or turned into as well as any other advantage gained from the direct pecuniary advantage obtained by a criminal offence or from property into which the direct pecuniary advantage gained by a criminal offence has been changed or turned into, irrespective of whether it is located inside or outside the territory of the Republic of Croatia."*

150. The definition comprises three categories of assets :

1- direct pecuniary advantage
2- the property into which direct pecuniary advantage has been changed
3- indirect pecuniary advantage (obtained from categories 1 and 2)

151. First of all it is important to observe that this definition covers both, direct and indirect "*pecuniary advantage*" obtained by a criminal offence. If "*pecuniary advantage*" is a concept which could be considered broad enough to cover the content of the concept of property used by the essential criterion then the requirement referring to indirect proceeds appears to be met.

Potential difficulties in determining the scope of the concept of "pecuniary advantage" as "corpus delicti" for the ML offence

152. "*Pecuniary advantage*" appears to be defined as a patrimonial effect (*increase or prevention of decrease in the property which come about as a result of the commission of a criminal offence*). It thus is quite complicated for the evaluators to understand the materiality of this concept and how it would be understood in practice.

153. On one hand, it was unclear to the evaluators why a simple reference to "*property which came about as a result of the commission of a criminal offence*" has not been used. The authorities explained that the intention of the Croatian legislator was to explicitly cover those possible proceeds which are the result of an illicit action of preventing the decrease of property. Although the will of the legislator appears to be understandable the evaluators consider that the way in which this intention has been expressed allows for different interpretations. It is also unclear how this will be applied in practice; it would appear that the practitioners need to assess if there is some "*increase or prevention of decrease*" in the property on each occasion.

154. The evaluators understand that "*the property which comes about as a result of the commission of a criminal offence*" appears to represent the proceeds of crime as it is defined by the FATF

Glossary (i.e. any property derived from or obtained, directly or indirectly, through the commission of an offence).

155. From the language of the original version of Art 87 §21 of the CC however it remains unclear if "*resulting from criminal offence*" is referring to "*property*" (version A) or to "*each increase or prevention of the reduction*" (version B). The authorities have explained that in the original language, the understanding should be "*each increase or prevention of decrease resulting from criminal offence*" (version B). The evaluators were not provided with relevant examples from jurisprudence which could reflect this interpretation.

156. If the interpretation (A) is considered in practice then, to determine the subject matter of the ML offence, there would be a process in two steps:

- step 1 – establishing that a property is a result of a criminal offence;
- step 2 – establishing that this property had an increase/establishing that entirely or partially that property was not reduced, as a result of a committed offence.

In this case without having step 2 fulfilled, the property which came about from a committed offence is not possible to be considered as the subject matter of the ML offence.

157. If option (B) applies, the reading of the definition of ML would be as follows: *Pecuniary advantage resulting from criminal offences refers to each increase or prevention of the reduction of objects and rights acquired by the perpetrator of a criminal offence and misdemeanour or their related party, resulting from criminal offence*.

158. Even in this case the two steps process is necessary to determine "*pecuniary advantage*". As long as objects or rights acquired by the perpetrator (or their related party) do not have any increase (or prevention of the reduction) compared with when they were acquired it would not be possible to consider these objects or rights as a pecuniary advantage.

159. The authorities have sought to persuade the evaluators that there are no difficulties in practice in establishing the pecuniary advantage as a subject matter of the ML offence. This was not supported through relevant jurisprudence provided to that effect.

160. Another possible way to understand the definition of the pecuniary advantage (version C) is that the increase or prevention of the decrease is related to the property of a person deemed as universality (all patrimonial assets and liability). If this will be the interpretation which will be imposed by jurisprudence the burden of proof related to pecuniary advantage would be even more complicated.

161. In conclusion the evaluators consider that, in any event, this approach adds a supplementary and difficult burden of proof for the practitioners when they come to determine the constitutive elements of the ML offence, in particular related to "*corpus delicti*".

162. More than this, it remains unclear if the proceeds of the predicate offence, without any increase, could be deemed as "*corpus delicti*" for the ML offence.

Property

163. The Criminal Code does not define "property" (*imovina* in Croatian).

164. The Croatian authorities have advised the evaluators that the Criminal Code incriminates acts against property since property is a protected value, but the definition itself is from civil law which is recognised as totality of rights in person, though no legal definition has been provided.

165. The authorities have indicated to the evaluators that, in an authoritative textbook on property law, there is a definition widely accepted in theory and practice saying that "*imovina*" is a list of rights of commercial value belonging to one person.

166. For a better understanding of the concept and the meaning of this concept in penal matters the authorities have indicated the definition of property provided by Art.3 of the Act on Confiscation[10] and also, by Article 3 §5 of the AMLTF Law[11]. The evaluators consider that both these acts contain definitions applicable only in the scope of their provisions and as long as there is no explicit linkage established by the Criminal Code in this respect these definitions have no more than of an approximate value and appear to not be mandatory for the practitioners in the process of establishing the constitutive elements of the ML offence. No relevant jurisprudence was provided.

167. Art.1 of the Act on Confiscation determines the scope of its application and qualified this Act as a law of procedural nature. In spite of the provisions of Art. 1, the Croatian authorities advised the evaluators that the Act on Confiscation is "*lex specialis*" in relation to the Criminal Code and the definition of pecuniary advantage provided by the Criminal Code shall be completed by the definition of "*pecuniary advantage*" provided by the Act on Confiscation. In their understanding, the meaning of the concept "*pecuniary advantage*" is a mixture of these two definitions (i.e. Art. 87 §21 of the CC and Art.3 of the Act on Confiscation).

168. However, as the Criminal Code is an organic act, the Act on Confiscation, as an ordinary act could not prevail over it, and this was confirmed by some practitioners. Conversely, the Act on Confiscation, being merely a procedural law, does not have precedence over the Criminal Code.

169. The evaluators also consider the provisions of Art. 382 of the new CC "*The Government of the Republic of Croatia shall start the process of alignment of the relevant provisions of the Criminal Procedure Act, Act on the Liability of Legal Persons for Criminal Offences, Juvenile Courts Act, Act on the Protection of Persons with Mental Disorders, Act on the Execution of the Prison Sentence, Probation Act and other acts containing criminal and other provisions relevant to the application of this Act with the provisions of this Act*." to be relevant.

170. The evaluators observed that the Act on Confiscation did not appear to be aligned with the new Criminal Code regarding provisions related to the concept of "*pecuniary advantage*".

171. The evaluators consider that, as long as the Croatian authorities and the practitioners consider, in practice, that to determine the "*pecuniary advantage*" as a constitutive element of the ML offence it is also necessary to take into consideration the provisions of the Act on Confiscation, the lack of clarity described above will generate difficulties in investigation and prosecution of the ML offence.

172. If the only applicable definition for "*pecuniary advantage*" is that provided by Art. 87 §21 of the Criminal Code, this does not cover the scope of the concept of "*property*" and "*proceeds of crime*" as defined by the Palermo Convention. For example, legal documents or instruments evidencing title to, or interest in such assets, appear not to be covered.

173. The Croatian authorities indicated in their comments that, when it comes to legal documents and instruments evidencing title to assets, it is in this respect that Art. 79 of the Criminal Code (on seizure of objects) applies. The word "*means*" (*sredstva*), used by Art.79, covers any kind of means – corporeal, incorporeal, movables, non-movables, pecuniary, non-pecuniary and also legal documents and instruments evidencing title to.

174. The evaluators consider that Art. 79 of the CC is applicable only in the matter of confiscation but not in issues related to establishing the constitutive elements of the ML offence.

[10] Art.3 (2) of the Act on Confiscation - *Property represent objects and rights acquired by the perpetrator of a criminal offence and misdemeanour or their related party, and it refers to all property and rights which can be the object of enforcement, especially real estate and movables, claims, business interests, shares, money, precious metals and jewels in the ownership, possession or under the control of the criminal perpetrator or their related party*

[11] Article 3§5 of the AMLTF Law - *property shall be assets of every kind, whether tangible or intangible, movable or immovable, and documents and instruments in any form, including electronic or digital, evidencing title to or ownership rights in relation to the assets*".

Proving property is the proceeds of crime (c.1.2.1)

175. The evaluators were informed by the practitioners during the on-site visit that there is no need for a conviction for a predicate offence to successfully prosecute money laundering. It was said to be sufficient that the underlying criminal act was actually committed. This information was provided in respect of both the legal text, the former ML offence (Art. 279) and the new Art. 265 of the CC as amended.

176. Regarding the latter, it should be mentioned that the usage of the wording "*criminal activity*" instead of "*criminal offence*" is likely to eliminate any theoretical confusion for the practitioners related to the necessity to obtain previously a conviction for the predicate offense as a prerequisite for prosecution and conviction for the ML offence. There are, however, no convictions for the autonomous ML offences, which may reflect this interpretation.

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

177. Croatia takes an "all crimes" approach to money laundering, without thresholds based on imprisonment terms, that is: there is no closed list of crimes that constitute predicate offences. The scope of the designated categories of offences implemented by the new Criminal Code is set out in ANNEX III. All the designated categories of offences are covered by the Croatian penal law.

Extraterritorially committed predicate offences (c.1.5)

178. According to Art. 265, §6 of the new CC that stipulates "*the pecuniary advantage referred to in paragraphs 1 through 5 of this Article is derived from criminal activity carried out in a foreign country, the perpetrator shall be punished when the activity is a criminal offence also under the domestic law of the country where it is committed*", the extraterritorially feature is respected.

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

179. With regard to the self-laundering issue some of the Croatian authorities, met during the on-site visit, mentioned that a criminal offence of money laundering in all its modalities can also be applied to the person who has committed the predicate offence.

180. The evaluators consider that, according to the wording of Art. 265 §2&3, the self-laundering offence is not possible in modalities described there because the subject matter of concealment, acquisition, possession or use can be only the "*pecuniary advantage derived <u>by another</u> from criminal activity*" as long as Art. 265 §1 is referring to "*pecuniary advantage derived from the criminal activity*" and that appears to be a very clear distinction made by the law.

181. This clear interpretation was confirmed during the on-site visit by some of the Croatian authorities. However, there is no jurisprudence to reflect the interpretation of these provisions.

182. Art. 6 §2 (e) of the Palermo Convention provides that the ML offence in all its modalities may not apply to the person who committed the predicate offence if required by fundamental principles of the domestic law of a State Party. No such principles have been identified by the evaluators in Croatian legal system.

Ancillary offences (c.1.7)

183. Until the entry into force of the new Criminal Code on 1 January 2013, the provisions in place for the ancillary offences were broadly the same as those in force at the time of the 3rd round evaluation and for this reason the present report does not provide a detailed analysis of these provisions. (For more details see the 3rd round MER).

184. In the new Criminal Code the ancillary offences are provided as follows:

<u>Association with or conspiracy to commit</u>

185. Conspiracy to commit a serious criminal offence constitutes a separate offence in Croatian criminal law according to Art. 327 of the new Criminal Code:

(1) Whoever conspires with another to commit a criminal offence for which a sentence of imprisonment for a term exceeding three years may be imposed under the law shall be sentenced to imprisonment for a term of up to three years.
(2) A perpetrator who uncovers the conspiracy referred to in paragraph 1 of this Article before the agreed upon criminal offence is committed may have his/her punishment remitted.

186. As money laundering is provided with imprisonment of six months to five years, it falls within the scope of the above provision.

187. The content of "*conspires*" ("*dogovor*" in the original language) is preparation act(ion) defined in all elements that matter for the execution.

188. Although the FATF Recommendations do not provide a definition for "*conspiracy*", this term is commonly understood as an agreement between two or more natural persons to break the law at some time in the future.

189. Conspiracy to commit money laundering is punishable under Croatian law.

Attempt

190. Attempt is provided for by Art. 34 of the CC:

(1) Whoever, with the intent to commit a criminal offence, performs an act which spatially and temporally directly precedes the realisation of the statutory definition of the criminal offence shall be punished for the attempt, provided that a sentence of imprisonment of five years or a more severe punishment may be imposed or that the law expressly provides for the punishment of an attempt as well.
(2) The perpetrator of an attempt may be punished less severely.
(3) The punishment of a perpetrator who through gross unreasonableness attempts to commit a criminal offence by unsuitable means or towards an unsuitable object may be remitted.

191. The ML offence, committed intentionally is provided with a punishment of imprisonment for a term of between six months and five years therefore the attempt of ML offence is subject to criminal liability.

Aiding and abetting

192. The previous Criminal Code provided through Art. 38, a list of conducts that were particularly to be deemed acts of aiding and abetting, namely:

(2) The following shall in particular be deemed acts of aiding and abetting: giving advice or instructions on how to commit a criminal offence, providing the perpetrator with the means for the perpetration of a criminal offence, removing obstacles for the perpetration of a criminal offence, giving an advance promise to conceal the criminal offence, the perpetrator, or the means by which the criminal offence was committed, as well as concealing the traces of a criminal offence or the objects procured by the criminal offence.

193. The new Criminal Code has a different approach and a list of conducts which shall in particular be deemed as acts of aiding and abetting is not provided. Instead, for the new version of the Criminal Code, the Croatian legislator used a more general term of "*accomplices*" through Art. 36 (Perpetratorship) paragraph 2 which is read as follows:

(2) If on the basis of a joint decision a number of persons commit a criminal offence so that each one of them participates in the carrying out of the act or otherwise substantially contributes to the commission of the criminal offence, each one of them shall be punished as the perpetrator (accomplices).

194. The evaluators considered that the words "…*or otherwise substantially contributes to the commission of the criminal offence*" would be understood as a concept broad enough to encompass different conducts which are acts of aiding or abetting. The authorities advised that Art. 36 §2 of The Criminal Code applies to a person or persons who, on the basis of a joint

decision, commit a criminal offence so that each one of them participates in the carrying out of the act or otherwise substantially contributes to the commission of the criminal offence, each one of them shall be punished as the perpetrator (accomplices), and it does not apply for aiding and abetting.

195. According to the explanations which have been provided by the Croatian authorities, the acts of aiding and abetting are not covered by the provisions of Article 36. In this case the evaluators have doubts about the clear understanding of the concept of abetting and the legal source of this concept. Article 37 provides for the sanctioning regime of abetting and aiding but there are no provisions related to the scope of the abetting concept.

196. Abetting and aiding are sanctioned similarly to attempt on the basis of intention and the references are made as follows:

Article 37 Incitement

(1) Whoever intentionally incites another to commit a criminal offence shall be punished as if he/she himself/herself has committed it.
(2) Whoever intentionally incites another to commit a criminal offence for which an attempt is punishable, and the act is never even attempted, shall incur the penalty provided for an attempt to commit this criminal offence.
(3) In the case of an inappropriate attempt at incitement, the punishment of the inciter may be remitted. "

Article 38 Aiding

Whoever intentionally aids another in the commission of a criminal offence may be punished less severely".

Article 39 Punishment of Accomplice and Participant

Every accomplice and participant (inciter and aider) shall be punished according to his/her guilt.

<u>*Facilitating and counselling*</u>

197. Facilitating and counselling are not explicitly provided by the Criminal Code as ancillary offences. The evaluators were advised that although "*facilitating*" and "*counselling*" are not explicitly provided by the Criminal Code, they are fully encompassed by Art. 38 (Aiding); however, there is no evidence of this interpretation from the jurisprudence.

198. The Palermo Convention requires to established as criminal offences, when committed intentionally, facilitating and counselling the commission of any of the offences established in accordance with Art. 6 §1 (a) and (b).

199. It is unclear if facilitating and counselling the commission of a ML offence would be prosecuted and convicted on the basis of Art. 38 where this conduct is occurred before a committed ML offence or an act of aiding or abetting (e.g. counselling is committed before the execution of *actus reus* of ML offence and this execution, for various reasons, is not done). For this reason the evaluators consider that a separate provision for these ancillary offences should be in place.

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)

200. According to Art. 265 §6 of the new Criminal Code it is indicated that "*if the pecuniary advantage referred to in paragraphs 1 through 5 of this Article is derived from criminal activity carried out in a foreign country, the perpetrator shall be punished when the activity is a criminal offence also under the domestic law of the country where it is committed*".

201. Considering the provisions quoted above on the base of logical principle "*per a contrario*" the evaluators conclude that the requirement of the additional element is not satisfied. The Croatian

authorities have not contradicted this conclusion and relevant jurisprudence in this respect was not indicated.

Recommendation 32 (money laundering investigation/prosecution data)

202. An analysis of the criminal offenses which are the main sources of money laundering is set out in section 1 above.

203. According to the police statistics, from 2006 onwards the total number of recorded criminal offenses of money laundering according to data from the criminal reports that the police sent to the relevant State Attorney's Offices were:

Table 6: Number of ML criminal offences according to reports sent by the Police to relevant State Attorney's Offices

Criminal Offence	2006	2007	2008	2009	2010	2011	2012*
Money Laundering	27	19	14	9	15	29	0

*First six months

204. According to Art. 82. §1. and 2. of the AMLTF Law and related rulebooks, the competent State Attorney's Office branches, the competent courts and competent state bodies shall undertake to keep comprehensive statistics and to supply the Office with data on proceedings for money laundering and terrorist financing offences, as well as misdemeanour proceedings for misdemeanours prescribed by the AMLTF Law. This is supplied for the purposes of making an assessment of the effectiveness of the overall system for combating money laundering and terrorist financing.

205. The competent courts and the competent State Attorney's Office branches shall undertake to supply the Office twice a year with data on investigation initiation, legal effectiveness of indictments, effectiveness of verdicts for offence of concealment of the illegally obtained monies and terrorist financing, and on other predicate offences in relation with money laundering in the manner and within deadlines to be prescribed by the Minister of Finance in a rulebook.

206. Based on the data provided by the Croatian authorities the data on investigations, prosecutions and convictions for ML offence are as follows:

Table 7: Number of investigations, prosecutions and convictions for ML offence

	Persons	Cases	Investigation	Cases	Indictments	Cases	Court rulings	Cases
2009	40	19	16	6	16	9	13	7
2010	46	15	12	4	26	6	8	5
2011	60	20	28	8	21	8	11	4
2012	19	8	0	0	10	4	9	4

*First six months

207. Regarding judicial statistics for ML contained in Table 7 (Number of investigations, prosecutions and convictions for ML offence) the authorities stress that the number of court rulings is related to the number of convictions (final and non-final) and acquittals (final and non-final) as well, whether it is initiated by the information from the FIU, or the FIU only contributed to the case.

208. The underlying predicate offences for ML case in the period 2009-2012, taking into consideration the statistics provided at page 71-77 of the MEQ, were as follow:

Table 8: Number of underlying predicate offences for ML

Predicate Offence	Registered cases	Indictments	Court rulings
Abuse of power in conducting business	11	5	2
Embezzlement	8	5	1
Tax evasion	3	1	2
Aggravated larceny	2	-	2
Abuse of narcotic drugs	7	3	5
Abuse of office and official authority	16	5	2
Fraud	1	-	-
Robbery	1	1	-
Receiving a bribe	1	-	-
Illegal transfer of persons across the state border	1	1	
Autonomous ML	1	1	-
TOTAL	52	22	14

209. The following table (according to the statistics provided at Section 8.1 of the MEQ) sets out the number of cases investigated, prosecutions and convictions:

Table 9: Number of ML cases investigated, prosecutions and convictions

	Investigations	Indictments	Convictions
2007	7	2	2
2008	5	11	2
2009	6	9	1
2010	4	6	2
2011	8	8	-
2012 (6 months)	-	2	1
TOTAL		38	8

Effectiveness and efficiency

210. Since the new CC had not come into effect in the Republic of Croatia at the time of the on-site visit, its effectiveness in prosecution of money laundering offences cannot be assessed. At the time of the on-site mission little progress had been made in terms of money laundering final convictions, based on the existing legislation.

211. Since the 3rd round evaluation the Croatian authorities have introduced changes in order to maintain comprehensive and detailed statistics on initiated money laundering cases (including numbers of accused persons and defendants), investigations, indictments, and court rulings including underlying predicate offences and whether the case is self-laundering, and whether confiscation has also been ordered.

212. To understand the effectiveness of the system of combating ML in Croatia the outcomes of the law enforcement and judicial system can be assessed according to the features of the crime situation in Croatia. An assessment of the general situation of money laundering and financing of terrorism is set out in section 1.2 above. A table of the economic loss or damage from criminal offences is also set out in section 1.2. However, a comprehensive national risk assessment of the country aimed, *inter alia*, to clearly identify the most important sources of proceeds to be laundered and the most important methods used to launder money in Croatia had not been undertaken at the time of the on-site visit.

213. The table above illustrates *per se* the extent to which the system was able to effectively react to identify, investigate, prosecute and obtain convictions for the ML offences related to the relevant categories of offences, within the reference period of time.

214. Between 2009 -2011 only 8 indictments were issued in ML cases generated by AMLO's notifications. The total number of the notifications in this period of time was 278 (2,9% of the notifications sent by AMLO resulted in indictments). Overall, in the period 2009-2011, there were 23 indictments issued in ML cases. This indicates that, to a considerable extent, the law enforcement agencies have taken the initiative to generate ML cases beyond those submitted to them through AMLO's notifications.

215. However the number of ML cases prosecuted appears to be low considering the level of proceeds-generating crimes in the country and also the approximate economic loss or damage from criminal offences of economic nature and from all criminal offences (as set out in section 1.2 above).

216. The evaluators were informed about an internal order issued by the Deputy State Attorney General of the Republic of Croatia which provides instructions related to actions of the State Attorney's Office upon receiving suspicious transactions reports from AMLO. The order provides that such cases should be handled in an urgent manner, and pursuant to provision of Art. 19c of the Criminal Procedure Act (CPA), as of 1 September 2011, the County State Attorney's Office is competent to conduct actions in cases referring to criminal offence of money laundering referred to in Art. 279 of the Criminal Code, and also the Office for the Suppression of Corruption and Organised Crime (USKOK), in line with Art. 21 §3 of the Act on USKOK for criminal offence referred to in Art.279 §3 of the CC.

217. The evaluators were not informed about other concrete measures taken at managerial level of law enforcement or the prosecutorial authorities to prioritise the investigative activities and prosecution in ML cases. No tactical or operational guidance was shown to the evaluators relating to the investigative approach of ML cases.

218. The evaluators were informed about a number of training seminars provided for the police officers, prosecutors and judges in the period 2011-2012, related to suppression of money laundering, implementation of financial investigations and seizure of proceeds from crime.

219. The authorities have informed the evaluators that, according to Croatian case law, sanctions imposed for persons convicted for ML offense were (unconditional) prison sentences in range for 6 months to 4 years and conditional sentences.

220. The evaluators were not informed about any regular procedure in place at the level of law enforcement and prosecutors related to a systematic analysis on the main causes of failures in investigating and prosecuting of ML cases.

221. Based on the discussions with the practitioners the evaluators consider that the main cause of the insufficient number of investigations and prosecutions of ML cases are:

- the difficulties in gathering sufficient evidence in respect of the high evidentiary standards required for the committed predicate offenses; and
- an inconsistent approach to the principle of "following the money" during the investigations of major proceeds-generated crimes. Financial investigations in major proceeds-generating crimes are not conducted on all these cases.

222. The practitioners met by the evaluators during the on-site did not indicate any legal or other nature obstacles which could explain the relative low level of prosecuted ML cases in the country.

223. Only one case of conviction for third party ML offence was reported. No cases of stand-alone ML offence were prosecuted or convicted.

224. The Croatian authorities stated that in most cases, the major underlying predicate offences concern criminal offences related to drug abuse, abuse of bankruptcy procedures, and abuse of authority in business operations. According to the statistics provided it should be also stated that all offences that reached conviction and where the predicate offence has been indicated (abuse of power in conducting business, embezzlement, aggravated larceny, abuse of narcotic drugs, abuse of office and official authority, tax evasion, fraud) were for self-laundering. (See table 8 above).

225. AMLO notified the LEAs on 521 cases for the period of 2007-2012. There are some concerns with regard to the low level of indictments based on the notifications sent by AMLO to law enforcement. Overall 4% of the notifications are turned into indictments (21 indictments). Taking into account the statistics provided with regard to final convictions as well as comprehensive statistics on money laundering offences insufficient progress has been made on final convictions.

2.1.2 Recommendations and comments

Recommendation 1

226. Croatia has adopted the new money laundering Article (265) and the offence appears to be broadly in line with the Vienna and Palermo Conventions. At the same time there are concerns with regard to implementation of Art. 265 on the Criteria 1.1 related to the physical and material elements of the offence as there are provided by the Conventions and Criteria 1.2 related to the scope of property as subject matter of the ML offence.

227. Art. 265 of the Criminal Code should be amended to ensure that concealment, disguise, acquisition, possession and use, as well all the types of property, are fully covered by legislation.

228. To be in line with the Vienna and Palermo Conventions, conversion or transfer of a pecuniary advantage for the purpose of disguising its illicit origin should be explicitly covered by the ML offense.

229. The Croatian authorities should amend Art. 265 §1 since it does not appear to be fully in line with the international standards as long as the purposive elements provided within do not explicitly comprise the alternative purposive element in Art. 6, §1.a (i) of the Palermo Convention - "*helping any person involved in the commission of the predicate offence to evade the legal consequence of his or her action*".

230. Disguising of the true nature, source, location, disposition, movement or ownership of or rights with respect to property (Art. 6, §1.a (ii) of the Palermo Convention) should be covered by Art. 265 §2. of the new CC.

231. Article 265 §2 of the new CC should be amended so that the subject matter of concealment of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, is related to the pecuniary advantage *derived by another from criminal activity,* the perpetrator of the predicate offence could be the perpetrator of the ML offences committed through the actions of concealment.

232. The Croatian authorities should take measures to amend Art 265 §3 of the new CC to cover acquisition, possession and use of the pecuniary advantage.

233. Croatia should amend the definition of "*pecuniary advantage*" to remove a supplementary and difficult burden of proof for the practitioners when they will come to determine the constitutive elements of the ML offence, in particular related to "*corpus delicti*".

234. The scope of the subject matter of the ML offence and the way in which it may be interpreted in different pieces of legislation which provide a definition for "*pecuniary advantage*" (i.e. the Criminal Code, the Act on Confiscation, the USKOK Act; the Act on Responsibility of Legal Person for Criminal Offences) should be clarified and harmonised.

235. Definition of "*pecuniary advantage*" provided through Art.87 (21) of the new CC does not comprise legal documents or instruments evidencing title to, or interest in such assets. These elements should be included in the definition of the subject matter of ML offence at the level of substantive penal legislation and should be eliminated discrepancies between the concepts used by this legislation and the procedural laws.

236. There should be clear provisions in place for criminalising of "*facilitating*" and "*counselling*" the commission of a ML offence where these conducts occurred before a committed ML offence or an act of aiding or abetting (e.g. counselling is committed before the execution of *actus reus* of ML offence and this execution, for various reasons, is not done).

237. Steps need to be taken to increase the number of money laundering indictments and convictions, including:

- Clarifying in legislation or guidance that the underlying predicate criminality can be proved by inferences drawn from objective facts and circumstances in money laundering cases brought in respect of both domestic and foreign predicate offences;
- Providing guidance to prosecutors on the amount of evidence needed to establish underlying predicate offence;
- Prosecutors should challenge the courts with more 3rd party ML cases based on the above mentioned guidance and also with autonomous ML offences;

238. A more proactive approach to the investigation and prosecution of money laundering offences based on strategic analysis and focused on organised and other categories of serious crimes should be adopted by the law enforcement agencies and the prosecutorial authorities.

2.1.3 Compliance with Recommendation 1

	Rating	Summary of factors underlying rating
R.1	**PC**	• The purposive element of disguising which should characterise the conversion or transfer is not fully covered; • The purposive element of helping any person involved in the commission of the predicate offence to evade the legal consequence of his or her action is not fully covered; • Disguise as "*actus reus*" is not provided; • The perpetrator of the predicate offence could not be the perpetrator of

		the ML offences committed through the actions of concealment; • The person who commits the predicate offence could not be the perpetrator of the ML offence committed through acquisition, possession or use of the proceeds of crime; • Potential difficulties in determining the scope of the concept of "pecuniary advantage" as "*corpus delicti*" for the ML offence. Proceeds without subsequent increase are not subject matters of ML offence; • The subject matter of the ML offence, as it is defined by the new CC does not cover all types of property (i.e. legal documents or instruments evidencing title to, or interest in such assets); • Facilitating and counselling of ML offense are not explicitly provided by the Criminal Code as ancillary offences and there are no legal reasons to consider that these acts would be investigated, prosecuted and convicted as offences in the absence of a committed ML offense; • Shortcomings in the definition of TF as a predicate offence; **Effectiveness** • Only two cases of conviction for non-self ML offense and no convictions for autonomous ML; • The overall effectiveness of ML criminalisation raises concerns considering a relative low number of convictions for ML, given the level of proceeds generating offences in Croatia; • Due to the timing of its introduction there was no opportunity to assess the effectiveness of the new Criminal Code.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

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

Summary of 2008 factors underlying the rating

239. Special Recommendation II was rated partially compliant in the 3rd round based on the following conclusion:

- Financing of terrorism is only to a very limited extent provided for as an autonomous offence; and
- The incrimination of terrorist financing appears not wide enough to clearly sanction:
  - the provision or collection of funds for a terrorist organisation for any purpose, including legitimate activities;
  - the collection or provision of funds with the unlawful intention that they should be used in full or in part by an individual terrorist for any purpose (as above); and
  - as far as domestic terrorism is concerned - the collection of funds with the intention or in the knowledge that they should be used in full or in part to carry out terrorist acts as referred to in Art. 2(a) and (b) of the Terrorist Financing Convention, irrespective of whether or not the funds are actually used to (attempt to) carry out a terrorist act.

Legal framework

240. Since the 3rd round of mutual evaluation the legal framework related to financing of terrorism has changed in two stages:

- *The first stage* was marked by the Law on Amendments to the Criminal Code (in force in January 2009), which amended the previous Art. 169 (international terrorism) to also cover acts of terrorism against Croatia and a detailed list of acts of terrorism. In this legal framework

the financing of terrorism was criminalised as "*planning criminal offences against values protected by international law*" under Art. 187 (a); and

- *The second stage* was the entrance into force of the new Criminal Code on 1 January 2013. Under the newly adopted Criminal Code, financing of terrorism is a separate criminal offence set out under Art. 98 in the following terms:

Article 98"Financing of terrorism"

(1) Whoever directly or indirectly provides or collects funds with the intention that they should be used or knowing that they are to be used, in full or in part, with the purpose of committing one or more of the criminal offences referred to in Article 97, Articles 99 through 101, Article 137, Article 216, paragraphs 1 through 3, Article 219, Article 223, Article 224, Articles 352 through 355 of this Act or any other criminal offence intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in an armed conflict, when the purpose of such act is to intimidate a population or to compel a state or an international organisation to do or to abstain from doing an act shall be punished by imprisonment for one to ten years.

(2) The punishment referred to in paragraph 1 of this Article shall also be inflicted on whoever directly or indirectly provides or collects funds with the intention that they should be used or knowing that they are to be used, in full or in part, by terrorists or a terrorist organisation.

(3) The funds referred to in paragraphs 1 and 2 of this Article shall be confiscated.

241. Thus the sections below sets out an analysis of the current legislation in place after the entering into force of the new Criminal Code.

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

242. The 2008 MER described numerous deficiencies in the legal framework for criminalising TF and recommended that Croatia criminalise FT as an autonomous offence and address all of the essential criteria of SR.II and the requirements of the Interpretive Note for SR II in order to cover all forms of terrorist acts provided for in the Convention and all forms of financing of terrorist organisations, and financing of individual terrorists.

243. Croatia ratified the International Convention for the Suppression of the Financing of Terrorism ("FT Convention) in 1 October 2003 and is a party to all nine Conventions and protocols listed in the Annex to the TF Convention.

244. The new TF offence, as set out above, is largely in line with the requirements of SR.II. It extends to any person who provides or collects funds, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out the following criminal offences: 97 (Terrorism), 99 (Public instigation of Terrorism), 100 (Recruitment for Terrorism), 101 (Training for Terrorism), 137 (Kidnapping), 216 (Destruction or Damage of Public Utility Installations), 219 (Misuse of Radioactive Substances), 223 (Attacking an Aircraft, Ship or Fixed Platform), 224 (Endangering Traffic by a Dangerous Act or Means), 352 (Murdering an Internationally Protected Person), 353 (Kidnapping an Internationally Protected Person), 354 (Attacking an Internationally Protected Person), 355 (Threat to a Person under International Protection).

245. While the self-standing FT offence does not cover all activities contemplated in the various Conventions and Protocols referred to in the Annex to the TF Convention, the provision and collection of funds apply to the "terrorism offence", whose scope includes a number of specific acts, as listed in Art. 97:

Article 97- Terrorism

(1) Whoever commits any of the following acts which may seriously harm a state or an international organisation when the purpose of such act is to intimidate a population or to

compel a state or an international organisation to do or to abstain from doing any act or to seriously destabilise or destroy the fundamental constitutional, political, economic or social structures of a state or an international organisation:

1. *attack upon a person's life which may result in death;*
2. *attack upon the physical integrity of a person;*
3. *kidnapping or hostage taking;*
4. *causing destruction to a state or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property that may endanger human lives or result in major economic loss;*
5. *hijacking of aircraft, ships or other means of public or goods transport;*
6. *manufacturing, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons as well as research into and development of nuclear, biological or chemical weapons;*
7. *release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human lives;*
8. *interfering with or disrupting the supply of water, electrical energy or any other fundamental natural resource, the effect of which is to endanger human lives; or*
9. *possession or use of radioactive substances or manufacturing, possession or use of a device for the activation, dispersal or emission of radioactive material or ionising radiation, using or damaging a nuclear facility in such a way that this results in the release of radioactive material or the danger thereof or requesting, through use of force or threat, radioactive material, a device for the activation, dispersal or emission of radioactive materials or a nuclear facility shall be punished by imprisonment for three to fifteen years.*

(2) Whoever threatens to commit a criminal offence under paragraph 1 of this Article shall be punished by imprisonment for six months to five years.

(3) If, by the criminal offence referred to in paragraph 1 of this Article, extensive destruction or the death of one or more persons is caused, the perpetrator shall be punished by imprisonment for not less than five years.

(4) If the perpetrator, in the course of the perpetration of the criminal offence referred to in paragraph 1 of this Article, intentionally kills one or more persons, he/she shall be punished by imprisonment for not less than ten years or by long-term imprisonment.

246. The terrorism offence as set out in Art. 97 refers to various activities contemplated in the various Conventions and Protocols, thus extending the list of terrorist acts. For conduct to fall within the definition of "terrorism", it must involve an act which may seriously harm a state or an international organisation when the purpose of the act is to intimidate a population or to compel a state or an international organisation to do so or to abstain from doing an act or to seriously destabilize or destroy the fundamental constitutional, political, economic or social structures of a state or an international organisation.

247. The references in the definition of "terrorism" to the acts could include the majority of the activities referred to in the Conventions and Protocols of the Annex to the TF Convention. This means that the terrorist financing offences could apply to the financing of these particular activities if the activity to be financed included the purposive elements described above (i.e., the purpose of seriously harming or compelling a state or international organisation, compelling a state or influencing a government, etc.). The Conventions listed in the Annex of the FT Convention are set out in ANNEX II.

248. While these provisions would thus cover the financing of the majority of activities referred to in the Conventions and Protocols of the Annex to the TF Convention, there may still be some few instances where this would not be the case, in particular in relation to those activities which do not involve violence or the threat of violence, or lack the purposive elements referred to above (i.e. To

intimidate a population or compel a state/ international organisation to do or abstain from doing any act or to seriously destabilize or destroy the fundamental, constitutional, political, economic or social structures of a state/ international organisation). These could be covered by relying on the offences of aiding and abetting, conspiracy and complicity on the principle that offences are set out in the Criminal Code to comply with the various Conventions and Protocols, though this interpretation would have to be applied in practice in order to confirm its acceptability in the Croatian courts.

249. Another possible interpretation of Art. 98 is that these supplementary conditions (i.e. "*intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in an armed conflict, when the purpose of such act is to intimidate a population or to compel a state or an international organisation to do or to abstain from doing an act")* are related only to *"any other criminal offence*" but not to the list of offences provided by this article.

250. If this is the case, taking into consideration the content of each of the offences contained by the list of Art.98 read in conjunction with Art.97, could be observed that there are no supplementary conditions added to the activities referred to in the Conventions and Protocols of the Annex to the Convention.

251. The new TF offence also covers the provision or collection of funds for the purpose of committing any other criminal offence intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in an armed conflict, when the purpose of such act is to intimidate a population or to compel a state or an international organisation to do or to abstain from doing an act.

252. *C.II.1.(a)* requires that directly or indirectly providing or collecting of funds with the intention that they should be used or knowing that they are to be used, in full or in part, by a terrorist or a terrorist association (organisation) is punishable.

253. The terms "*terrorist*" and "*terrorist association*" (or terrorist organisation) are not defined by the Croatian law and it is difficult for the evaluators to assess if the scope of these terms is in line with the definitions provided by the Interpretative Note of SR II issued by FATF and by the Glossary of the FATF Recommendations.

254. The Croatian authorities advised the evaluators that the term "*terrorist*" is not provided explicitly by the Criminal Code, but from the wording of the Article 97 ("whoever") indicates that it is *delictum communium.* The same legal explanation is related to the term "Terrorist Association" in Article 102 of the Criminal Code.

255. Taking into consideration these explanations and the provisions of the Criminal Code, both the general and special parts of it, the evaluators have reached the conclusion that the understanding of these terms in the context of the Croatian legislation is as follows:

- "*terrorist*" is the person who commits, attempts to commit, incites or aids to commit, or threaten to commit the terrorism offence provided by Art. 97 of the CC.
- "*terrorist organisation*" is "*a criminal association the aim of which is to commit a criminal offence referred to in Article 97 through 101, article 137, Article 216, paragraphs 1 through 3, Article 219, Articles 223 through 224, Articles 352 through 355 of this Act or any other criminal offence intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in an armed conflict, when the purpose of such an act is to intimidate a population or to compel a government or an international organisation to do or to abstain from doing an act.*"

256. As it was described above the scope of Art. 97 is not broad enough to cover all the acts which should be considered as "*terrorist acts*", in the meaning of the Interpretative Note (IN) to SR II and of the Glossary. As a consequence the scope of the concept of "*terrorist*" as long as it is understood as the perpetrator of the terrorism offence is narrower than that provided by the IN to SRII and the Glossary.

257. The Croatian authorities have responded to this conclusion of the evaluators that the concepts of "*terrorist*" and "*terrorist organisation*" are not defined by the FATF Standards in a manner that would be deemed as essential criteria to be met. They considered that the definitions provided by the IN of SR II and the definitions provided by the Glossary of the FATF Recommendations are only of the indicative value. The evaluators are not convinced by this explanation.

258. Another possible shortcoming of the text of Art 98 is the reference made in paragraph (2) to "terrorists" but not to "an individual terrorist" as is required by the international standards. This approach could generate an interpretation in practice that it is not sufficient to commit financing of an individual terrorist in order for it to be considered a committed TF offence.

259. *C.II.1.(b)* According to the essential criteria the terrorist financing offence should extend to any *funds* as that term is defined in the TF Convention. This includes funds whether from a legitimate or illegitimate source. Art. 1 of the TF Convention defines "funds" as "*assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit*."

260. The English version of the new Criminal Code uses the term "*funds*" within the Terrorist financing offence. In its original language, Art. 98 uses the Croatian original word "*sredstva*" to designate the concept translated as "*funds*". ("*Tko izravno ili neizravno daje ili prikuplja sredstva s ciljem*"). However, using different other tools for translation the result for "*sredstva*" is "resources". The Criminal Code does not provide for a definition of the concept of "funds" (*sredstva*).

261. The Croatian authorities have explained that the term "*sredstva*" in Art. 98 of the Criminal Code (translated as "funds") covers the financial aspect, but also any other means that can be used, in full or in part, in order to carry out one or more of the listed criminal offences, for instance means of transportation, means of connection and communication, different kinds of devices, substances for certain devices etc. So, the term "*sredstva"* in its content (in Croatian language) is much more extensive than "*funds"* and it is used for any means that can be used for commission of criminal offence. Also, courts use definitions from Conventions which are, once ratified, above Croatian laws. According to Art. 134 of the Croatian Constitution "*International agreements concluded and ratified in accordance with the Constitution and made public shall be part of the Republic's internal legal order and shall in terms of legal effect be above law*."

262. It remains for the jurisprudence of the courts to confirm this interpretation in the absence of any linkage provided by the CC.

263. *C.II.1 (c)* The TF offence does not require that the funds are actually used to carry out a terrorist act nor is it linked to specific terrorist acts. The TF offence refers to "*whoever*", which includes natural and legal persons.

264. *C.II.1 (d)* It is an offence to attempt to *commit* the TF offence.

265. Art. 34 of the new CC provides that "*Whoever, with the intent to commit a criminal offence, performs an act which spatially and temporally directly precedes the realisation of the statutory definition of the criminal offence shall be punished for the attempt, provided that a sentence of imprisonment of five years or a more severe punishment may be imposed or that the law expressly provides for the punishment of an attempt as well*."

266. The TF offence as it is described by Art. 98 is an intentional offence and it is punished by imprisonment for one to ten years so the attempt to commit TF offence is covered.

267. *C.II,1 (e)* The Essential Criteria II.1 (e) requires criminalising the engagement in any types of conduct as set out in Art. 2 (5) of the TF Convention (participate as an accomplice, organise or direct others to commit, contribute to the commission of one or more offences as set forth in the Convention by a group of person acting with a common purpose). Pursuant to Title III of the new

CC a wide range of ancillary offenses are applicable as discussed under Recommendation 1 above. In particular, Art. 36 (Perpetratorship), Art. 37 (Incitement), Art. 38 (Aiding) are applicable.

268. Related to the different types of conducts required to be criminalised by Art. 2 (5) of the TF Convention (in particular related to "*organise or direct others to commit*" and "*contribute to the commission*" of the TF offence by a group of person acting with a common purpose) of distinct relevance, besides the general provisions of the Criminal Code, are the following articles of the Criminal Code:

Article 99 Public Instigation of Terrorism

Whoever publicly expresses or promotes ideas directly or indirectly instigating the commission of a criminal offence referred to in Articles 97 through 98, Article 137, Article 216, paragraphs 1 through 3, Article 219, Articles 223 through 224, Articles 352 through 355 of this Act shall be sentenced to imprisonment for a term of between one and ten years.

Article 102 *Terrorist Association*

(1) Whoever organises or runs a criminal association the aim of which is to commit a criminal offence referred to in Articles 97 through 101, Article 137, Article 216, paragraphs 1 through 3, Article 219, Articles 223 through 224, Articles 352 through 355 of this Act or any other criminal offence intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in an armed conflict, when the purpose of such an act is to intimidate a population or to compel a government or an international organisation to do or to abstain from doing an act shall be sentenced to imprisonment for a term of between three and fifteen years.

(2) Whoever becomes a member of the criminal association referred to in paragraph 1 of this Article or commits an act which he/she knows contributes to the achievement of the terrorist association's goal shall be sentenced to imprisonment for a term of between one and eight years.

269. "*Criminal association*" is criminalised through Art. 328 of the Criminal Code as follows:

Criminal association

Article 328

(*1) Whoever organises or directs a criminal association shall be sentenced to imprisonment for a term of between six months and five years.*
(2) Whoever participates in the association referred to in paragraph 1 of this Article but has not as yet committed any criminal offence for this association, or whoever carries out an act which in itself does not constitute a criminal offence but which he/she knows furthers the goal of a criminal association, or whoever financially or otherwise abets a criminal association shall be sentenced to imprisonment for a term of up to three years.
(3) The perpetrator of a criminal offence referred to in paragraph 1 or 2 of this Article who by timely disclosure of a criminal association prevents the commission of any of the criminal offences set forth in paragraph 4 of this Article or a member of a criminal association who discloses a criminal association before committing, as its member or on its behalf, any of the criminal offences set forth in paragraph 4 of this Article may have his/her punishment remitted.
(4) A criminal association shall be made up of three or more persons acting in concert with the aim of committing one or more criminal offences that are punishable with imprisonment for a term longer than three years and shall not include an association randomly formed for the immediate commission of one criminal offence

Committing a Criminal Offence as a Member of a Criminal Association

Article 329

(1) Whoever, knowing about the goal of a criminal association or its criminal activities, commits a criminal offence as a member of such an association or incites another to commit a criminal offence as a member of such an association shall be sentenced:
4. to imprisonment for a term of between three and fifteen years in the case of a criminal offence for which a maximum penalty of ten or twelve years is prescribed;
(2) Whoever, knowing about the goal of a criminal association or its criminal activity, aids or abets another to commit a criminal offence as a member of such an association shall be imposed a sentence prescribed in paragraph 1 of this Article or may incur a less severe sentence.
(3) If the perpetrator referred to in paragraph 1 or 2 of this Article substantially contributes to the discovery of a criminal association, he/she may incur a less severe sentence."

270. Considering all the provisions mentioned above the evaluators appreciate that the requirement of Essential criteria II.1(e) is fulfilled by the Croatian law.

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

271. Due to the "*all crime approach*" applied in Croatia the Financing of Terrorism offence provided by Art. 98 of the Criminal Code is a predicate one for money laundering.

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

272. The Croatian authorities indicated that according to Art. 16 of the General part of the Criminal Code the "*criminal legislation of the Republic of Croatia shall be applied to anyone who outside its territory commits any of the criminal offences referred to in Articles 88, 90, 91, 97, 104, 105 and 106 of this Act or a criminal offence which the Republic of Croatia is required to punish under an international treaty also when committed outside the territory of the Republic of Croatia*".

273. The evaluators have observed that Croatian law does not make any distinctions regarding the place where the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur. If the terrorist(s)/terrorist organisation(s) is located in another country or the terrorist act(s) occurred/will occur in another country and the person alleged to have committed the financing of these persons or of these acts is in Croatia the terrorist financing offence appears to be applicable.

274. The essential elements from this perspective are only to establish, according to the Croatian legislation, the terrorist character of the financed person(s) or organisation(s) or, respectively, to consider the conducts occurred/which will occur abroad, as a criminal offences.

275. However, as stated above, there are no definitions of the terms "*terrorist*" and "*terrorist association*" (or terrorist organisation). As long as the financed person would not be considered a "*terrorist*" because the offence which is supposed to be committed or it has been committed is not covered by the scope of Article 97 of the Criminal Code the FT offence would not be applicable.

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

276. The Croatian criminal legislation contains no explicit provision whether the intentional element of a criminal offence, including financing of terrorism, may be inferred from objective factual circumstances. The examiners were nevertheless assured by the representatives of the judiciary that circumstantial evidence is admissible in this respect, that is, drawing inference from facts in order to prove *mens rea* standards might be "entirely sufficient" in criminal proceedings.

277. Croatian legislation permits, in principle, that the intent and knowledge required to prove the terrorist financing offence can be interfered from objective factual circumstances.

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

278. The liability of legal persons is prescribed by the Act on the Responsibility of Legal Persons for the Criminal Offences (Official Gazette No. 151/03, 110/07) and has a reference to domestic

and foreign legal persons. The responsibility of legal persons is based on the guilt of the responsible person and the legal person shall be punished for the criminal offence of the responsible person also in cases when the existence of legal or actual obstacles for establishing of responsibility of responsible person is determined. The provisions of the Criminal Code, the Criminal Procedure Act and the Law on the Office for the Prevention of Corruption and Organised Crime shall apply to legal persons (Art. 2 of the Act).

279. Art. 10 of the Act establishes the sanctions as fines or termination of legal persons connecting to the level of the sanction prescribed by the appropriate article of the criminal code. In line with the terrorist financing offence (Art. 98) (from one up to 10 years of imprisonment) the penalty as a fine will be established in the amount of 15,000 -7,000,000 kuna (equivalent to c. €2,000-€900,000) or severer related offence (Art. 97 or Art. 102 – long-term imprisonment or up to 15 years of imprisonment) – in the amount of 20,000-8,000,000 kuna (equivalent to c. €2,500-€1,000,000). The penalty of termination of the legal person is applied if the legal person has been established for the purpose of committing criminal offences or if the same has used its activities primarily to commit criminal offences (Art. 12 §1 of the Act).

280. Art. 15 of the Act establishes additional security measures. The court may impose one or more of the following security measures on the legal person apart from other penalties, such as ban on performance of certain activities or transactions, ban on obtaining of licenses, authorisations, concessions or subventions, ban on transaction with beneficiaries of the national or local budgets, and confiscation of the illegally obtained benefit. The new Criminal Code Art. 98 establishes mandatory confiscation for the terrorist financing offence toward the natural person and in this regard the sanctions toward the legal person need to adjusted and balanced as well as applied the mandatory termination of such legal person.

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

281. The penalties have been increased, compared from the previous Criminal Code.

282. The new Criminal Code, namely on the terrorist financing offence, as well as on the terrorism offence are considered to be serious offences establishing a sentence by imprisonment between one to ten years (Art. 98); three to fifteen years and in case of aggravating circumstances even up to long-term imprisonment (Art. 97). According to Art. 98 §3 the funds for financing of terrorism shall be confiscated. Thus, criminal sanctions applied to natural persons are effective and dissuasive

283. The sanctions established by The Act on Responsibility of Legal Person for the Criminal Offences, described above, appear also to be effective and dissuasive.

Recommendation 32 (terrorist financing investigation/prosecution data)

284. The provisions prescribed by Art. 82 §1&2 of the AMLTF Law regarding keeping of statistics are also applied to terrorist financing offences including submission of data to AMLO twice a year. AMLO also collects data on criminal sanctions applicable to persons convicted of offenses of terrorist financing.

Effectiveness and efficiency

285. The new Criminal Code of Croatia has been applied since the 1st January 2013; there is no data related to possible cases of the TF offence under the new legislation.

2.2.2 Recommendations and comments

Special Recommendation II

286. The new terrorist financing offence according to the new Criminal Code appears to be broadly in line with the Terrorist Financing Convention.

287. The collection and provision of funds to be used to carry out a terrorist act(s) and used by terrorist organisation are covered. An express wording with regard to the collection and provision

of funds to be used or in the knowledge that they will be used by an individual terrorist should be introduced.

288. Croatia should provide a recommendation to prosecutors and law enforcement agents, through guidance or other similar, to take into consideration the definition of "*funds*" provided by the TF Convention for determining the scope of "*funds*" (*sredstva*) as "*corpus delicti*" of FT offence.

289. The scope of the terms "*terrorist*" and "*terrorist organisation*" should clearly cover the scope of these terms envisaged by the FATF standards. A clear and comprehensive definition of the terms "*terrorist*" and "*terrorist organisation*", in line with the international standards might be helpful to eliminate any possible formal obstacles for jurisdiction of TF offence as it is required by criterion c.II.3.

290. To evade any possible misinterpretation in practice, it would be helpful to mention through guidance or similar tools for prosecutors and law enforcement agents that the conditions provided at the last part of Art. 98 para.1 are applicable only to "*any other criminal offence*" but not to the offences listed within the content of the same paragraph. In this way the application of Art.98 appears to fulfil the requirement of the essential criterion II.1.(a)(i).

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• The scope of the terms "terrorist" and "terrorist organisation", derived from logical and systemic interpretation of different articles of the CC, is narrower than envisaged by the FATF standards.

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 2008 factors underlying the rating

291. Recommendation 3 was rated based on the following factors:

- The confiscation regime is still far too complicated which may hamper its effective application.
- The number of confiscations is too small (there had been no confiscation in money laundering cases during the period under evaluation) which questions the effectiveness of the system.
- Confiscation of proceeds appears, at least in terms of procedural rules only discretionary and the same goes for instrumentalities of money laundering offences.
- The general confiscation regime covers indirect proceeds only in specific cases (i.e. the pecuniary equivalent of ill-gotten money, securities or objects).
- The specific confiscation regime for money laundering cases does not allow for value confiscation.
- The general value confiscation regime is restricted to "money, securities or objects" and does not cover any other sorts of property, like real estate or property rights,
- The confiscation amount is limited to the pecuniary equivalent of the ill-gotten assets.
- There is - apart for money laundering cases - no general authority to take steps to prevent or void contractual or other actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.
- A clearer provision for freezing orders ex parte or without prior notice would be beneficial.
- Provisional measures are not taken regularly.

Legal framework

292. A comprehensive understanding of the entire mechanism of seizure and confiscation of the proceeds of crime in Croatia may only be reached by reading together the provisions of the different pieces of legislation and understanding the relationship between the different acts (e.g. the precedence of some on others). The relevant legislation is as follows:

Criminal Act of October 2011, Title VI Confiscation of Pecuniary advantage, Seizure of Objects and Public Announcement of Judgement, Arts. 77 to 80;

Criminal Procedure Code, Chapter XVIII, Evidence Collecting Actions, Section 2 Temporary Seizure of Objects, Arts. 261 to 271;

Act on Proceedings for the Confiscation of Pecuniary Advantage Resulting from Criminal Offences and Misdemeanours (Act on Confiscation) On 17 December 2010 the Croatian Parliament adopted the Act on Proceedings for the Confiscation of Pecuniary Advantage Resulting from Criminal Offences and Misdemeanours (referred further as Act on Confiscation) published on 24 December 2010 (NN 145/2010) that came into force on the 8th day of publication in the Official Gazette. The main characteristics of the Act on Confiscation are:

- The act contains more detail than the provisions of the chapter XXVIII of the Criminal Procedure Code and regulates:
  - the procedure for establishing pecuniary advantage from crime;
  - the procedure to ensure confiscation of pecuniary advantage;
  - the procedure for enforcement of court decision on the confiscation of pecuniary advantage;
  - dealings with confiscated property and property included in the provisional measure; and
  - exercise of rights of damaged persons as well as the rights of third persons;
- The pecuniary advantage acquired by means of a criminal offence shall be established by the court in its verdict;
- In a judgment where the defendant is pronounced guilty of a criminal offense, the court determines which items and rights represent pecuniary advantage from crime as well as their monetary equivalent and that these items or rights passed into the ownership i.e. have become property of the Republic of Croatia;
- The court orders the defendant or associated persons to submit these items, i.e. transfer the rights or to pay the equivalent sum to the Republic of Croatia and to enter into public registers the right to the benefit of the Republic of Croatia;
- The procedure of confiscation of pecuniary advantage according to the law can be carried out before, during and following the conclusion of the criminal proceedings and thus also when criminal proceedings cannot be carried out for a criminal offence due to the circumstances which exclude the prosecution if it is probable that pecuniary advantage of crime is at least HRK 5,000 (€650);
- The obligation of the state authorities, banks and other entities is to submit data to court; and
- To ensure the confiscation the proposer (prosecutor) is entitled, before during and following conclusion of criminal proceedings to propose to ensure confiscation with any measure to achieve the purpose and the law cites only as example several such measures.

Act on the Office for the Suppression of Corruption and Organised Crime, Chapter IV, Securing the Seizure of Instruments, Income, or Assets which are the Proceeds of Crime; and

Act on the Responsibility of Legal Person for the Criminal Offences, Art. 19 (Confiscation), and Art. 20 (Confiscation of illegally gained benefit).

Confiscation of property (c.3.1)

293. From the beginning of this analysis, it should be mentioned that Art. 5 of the new Criminal Code, has introduced the "*Principle of Confiscation of Pecuniary Advantage*" as a general principle by stating "*No one may retain a pecuniary advantage acquired through illegal means."* This should be considered as an important added value to the confiscation regime of the proceeds of crime in the legal system of Croatia.

294. Confiscation is considered as a "*sui generis*" criminal measure of a mandatory character and can be applied to proceeds and instrumentalities of a criminal offence.

Definitional issues

295. Different pieces of translated Croatian laws use the terms "*confiscation*" or "*seizure* "to translate "*oduzimanje*". After the clarifications provided by the Croatian authorities the evaluators have understood that the correct translation of "*oduzimanje*" is "*confiscation*" in the meaning envisaged by Recommendation 3.

Confiscation of property that has been laundered or which constitutes proceeds from the commission of any ML, FT or other predicate offences and property of corresponding value

296. The new Criminal Code dedicates, at the level of general provisions, a distinct section to the issues of "*confiscation of pecuniary advantage*" and "*seizure of objects*", respectively under Title VI: Confiscation of Pecuniary Advantage, Seizure of Objects and Public Announcement of Judgment.

297. Art. 77, entitled "*Conditions for and Manner of Confiscation of Pecuniary Advantage*" provides as follows:

> *(1) Pecuniary advantage shall be confiscated on the basis of a court decision establishing the commission of an unlawful act. Pecuniary advantage shall also be confiscated from the person to whom it was transferred if it was not acquired in good faith.*
> *(2) If the injured party has been awarded a pecuniary claim which by its nature and contents corresponds to the acquired pecuniary advantage, the part of pecuniary advantage exceeding the awarded pecuniary claim shall be confiscated.*
> *(3) The court shall confiscate the pecuniary advantage also in cases where it has instructed the injured party to assert his/her pecuniary claim in a civil action.*
> *(4) Where it has been established that confiscation in full or in part of things or rights acquired as pecuniary advantage is impossible, the court shall order the perpetrator to pay the corresponding money equivalent. It may be ordered that payment be made in instalments.*
> *(5) The confiscated pecuniary advantage shall not be reduced by the value of resources invested in the criminal activity.*
> *(6) The court may decide against the confiscation of pecuniary advantage if its value is negligible."*

298. Art. 87 (21) defines "*pecuniary advantage obtained by a criminal offence*" as follows:

> *A pecuniary advantage obtained by a criminal offence shall mean a direct pecuniary advantage obtained by a criminal offence consisting of any increase or prevention of decrease in the property which came about as a result of the commission of a criminal offence, the property into which the direct pecuniary advantage obtained by a criminal offence has been changed or turned into as well as any other advantage gained from the direct pecuniary advantage obtained by a criminal offence or from property into which the direct pecuniary advantage gained by a criminal offence has been changed or turned into, irrespective of whether it is located inside or outside the territory of the Republic of Croatia*

Therefore the definition of "pecuniary advantage" includes three categories of assets:

1. Direct pecuniary advantage

2. The property into which the direct pecuniary advantage has been changed or turned into
3. Indirect pecuniary advantage (obtained from (1) and (2))

299. Indirectly obtained proceeds seem to be covered in the definition of Art. 87 §21, but it does not explicitly cover incorporeal assets and legal documents or instruments evidencing title to, or interest in such assets. These items might be comprised within the scope of the concept of "property" but there are no references in this sense. (See also the comments related to essential criterion c.1.2. supra). The authorities have not provided the evaluators with relevant examples from jurisprudence in this respect.

300. In the application of Art. 77 §1 of the Criminal Code, pecuniary advantage shall be confiscated on the basis of a court decision establishing the commission of an unlawful act. As a general rule, the confiscation regime is conviction based. Pecuniary advantage shall also be confiscated from the person to whom it was transferred if it was not acquired in good faith.

301. Furthermore, Art. 455 §2. 4 of the Criminal Procedure Code provides "*In a judgement of conviction the court shall state (...) the decision on security measures and the confiscation of pecuniary advantage*".

302. Pursuant to the Art. 557 of the Criminal Procedure Code "*pecuniary advantage acquired by criminal offence is determined during the proceedings by proposal of a prosecutor and the court and other authorities before which criminal proceedings are conducted are obliged to obtain evidence and investigate circumstances which are relevant for the determination of pecuniary advantage*".

303. New legislation on confiscation was adopted on 15 December 2010, respectively the Act on Confiscation.

304. According to Art. 1 of the Act on Confiscation, this Act shall regulate:

a) the procedure of establishing pecuniary benefit resulting from criminal offences,
b) the procedure of confiscating pecuniary benefit resulting from criminal offences,
c) the enforcement procedure of a decision on the confiscation of pecuniary benefit resulting from criminal offences,
d) criminal proceedings regarding confiscated assets and the assets with respect to which a temporary measure has been imposed,
e) exercise of the rights of the person injured by the criminal offence, and
f) protection of rights of third parties."

305. Paragraph 2 of this Article establishes that *"provisions of other acts regulating the establishment, ensuring confiscation and enforcement of decisions on the confiscation of pecuniary benefits resulting from criminal offences and misdemeanours shall apply only unless otherwise prescribed by this Act".*

306. This Act, as it is defined by its Art. 1 is a special law in criminal procedural matters and should be understood as "*lex specialia"* in relation to the Criminal Procedure Code which is "*lex generalia*" and pursuant to the principle "*Specialia generalibus derogant"* should be of applicability related to any issues explicitly provided.

307. Where the Act on Confiscation does not provide explicitly, the general law (i.e. Criminal Procedure Code) is applicable. Art. 2 (1) states "*Proceeding pursuant to this Act may be conducted before, during or following the conclusion of criminal proceedings. Unless otherwise prescribed by this Act, the court shall take actions in accordance with criminal proceedings rules."*

308. As stated above, the Act on Confiscation is an act that prescribes procedures but not a substantive law, a law in respect of the substance of the confiscation measure which is a "*sui generis*" penal measure defined by the Criminal Code.

Pecuniary advantage

309. During the elaboration of the report the evaluators have encountered difficulties in obtaining clear answers from the Croatian authorities related to the scope of the provisions of the Act on Confiscation in respect of the concept of "*pecuniary advantage*", which is differently defined in this Act, compared with the definition in the new Criminal Code.

310. The explanations provided by the Croatian authorities indicate that the concept of "*pecuniary advantage*" should be understood as a result of a mixture of the text of the CC and the Act on Confiscation. The evaluators have considered that the relevant definition is that provided by the Criminal Code which is an organic law. The Croatian authorities advised the evaluators that Act on Confiscation is an ordinary law.

311. Furthermore, Art. 382 of the new CC establishes that "*The Government of the Republic of Croatia shall start the process of alignment of the relevant provisions of the Criminal Procedure Act, Act on the Liability of Legal Persons for Criminal Offences, Juvenile Courts Act, Act on the Protection of Persons with Mental Disorders, Act on the Execution of the Prison Sentence, Probation Act and other acts containing criminal and other provisions relevant to the application of this Act with the provisions of this Act.*"

312. The authorities have advised the evaluators that the provisions of other acts (including the Criminal Code and the Criminal Procedure Act) regulating the establishment, ensuring confiscation and enforcement of decisions on the confiscation of pecuniary benefits resulting from criminal offences and misdemeanours, shall apply unless otherwise prescribed by the Act on Confiscation.

313. The evaluators fully accept this conclusion as long as it is read in the light of the premise that the Act on Confiscation has relevance only in criminal procedure matters. Otherwise it should be noted that Art. 3 of the Act on Confiscation is not in line with Art. 1 of the same Act as long as Art. 3 goes beyond the established scope of this Act.

314. In Title II "*The meaning of specific expressions*", Art. 3 of the Act on Confiscation provides as follows:

> *Specific expressions from this Act shall have the following meaning:*
> 1. *Pecuniary benefit resulting from criminal offences, pursuant to this and other Acts, refers to each increase or prevention of the reduction of property resulting from criminal offences;*
> 2. *Property represent objects and rights acquired by the perpetrator of a criminal offence and misdemeanour or their related party, and it refers to all property and rights which can be the object of enforcement, especially real estate and movables, claims, business interests, shares, money, precious metals and jewels in the ownership, possession or under the control of the criminal perpetrator or their related party;"*

315. The conclusion is that, at the time of the assessment, the provisions of the Act on Confiscation have not been aligned to the provisions of the new CC and this situation could be a source of confusion in practice as long as there appear to be some parallel provisions relating to the confiscation regime.

The Croatian authorities' point of view

316. Despite these apparent differences, the Croatian authorities have argued that the definition provided by Art. 87 §21 of the Criminal Code and the relevant definition from the Act on Confiscation use the same terminology since pecuniary advantage resulting from criminal offences defined by the Act on Confiscation refers to "each" increase or prevention of the reduction of assets resulting from criminal offences. That means that the definition provided by the Act on Confiscation refers to any of those three categories of pecuniary advantage comprised by the definition provided by Art 87 §21 of the CC. (see above.)

The evaluators' opinion

317. The evaluators are not convinced by this explanation and consider that Art. 87 §21 of the CC uses the same wording as Art.3 §1 of the Act on Confiscation to refer only to the direct pecuniary advantage (i.e. "any ("*svakog*" in Croatian language) increase or prevention..."). Art. 3 §1 just duplicates the definition of "*direct pecuniary advantage*" provided by Art.87§21. Both of the definitions contain the word "*svakog*" translated as "*each*" or "*any*" by the Croatian authorities.

Potential difficulties in determine the scope of the concept of "pecuniary advantage"

318. See the analysis done in this respect under R.1.

319. The authorities have argued that there are no difficulties in practice in establishing the pecuniary advantage and to apply confiscation regime on it.

320. The explanations provided by the Croatian authorities in respect of "*objects*", as subject matter of the measure of confiscation provided by Art 79 of the CC, are relevant to some extent also at this point (see below the comments related to instrumentalities).

321. The evaluators considered that potential difficulties for the practitioners to prove that a property represents "*pecuniary advantage*" may impact on the effective application of seizure and confiscation measures.

Property

322. Another issue that needs to be clarified is the definition of "*property*". Both relevant articles (i.e. Art. 87 §21 of the new CC and Art. 3 of the Act on Confiscation) use the term "*property*" to define "*pecuniary advantage*".

323. As long as the CC does not provide a definition of property (*imovina*), it is defined by Art 3 §2 of the Act on Confiscation as objects and rights (*stavri i prava*) acquired by the perpetrator of a criminal offence and misdemeanour or their related party, and it refers to all property and rights which can be the object of enforcement, especially real estate and movables, claims, business interests, shares, money, precious metals and jewels in the ownership, possession or under the control of the criminal perpetrator or their related party.

324. The enumeration done by this Article is an indicative one and the scope of this concept of property appears to be broad enough to cover all the categories encompassed by the definition of property provided by the FATF Glossary. But it remains unclear if the concept of "*property*" defined in the context of the definition of "*pecuniary advantage*" has a unanimously accepted meaning in practice as long as the definition of "*pecuniary advantage*" provided by the new CC has precedence, as it was explained above. (see also the comments related to essential criterion c.1.2. supra)

325. It is noted that "*property*" has been defined in relation to the person who acquired "*objects and rights*", respectively the perpetrator or their related party. The related party is defined by Article 3§6 of the Act on Confiscation as follows:

> *"A related party is:*
>
> *a) a person who encourages and assists in the perpetration of the criminal offence,*
> *b) a legal successor of the perpetrator and participant in the criminal offence and*
> *c) another physical or legal entity, whom the court determined, as prescribed by this Act, to have been transferred property or rights representing pecuniary benefit and not to be in good faith related to such acquisition of the respective property or rights"*

The authorities have advised the evaluators that "*objects of enforcement*" are defined by the Execution Act and should be understood as all property and rights, except those determined as not enforceable, such as *rex extra commercium*, military equipment and weapons[12].

Instrumentalities

326. The Act on Confiscation does not provide for confiscation of the instrumentalities used in, or intended for use in commission of ML,TF or other predicate offence as required by the Criteria 3.1.(b), (c).

327. The authorities advised the evaluators that in respect of instrumentalities, Art. 79 of the new CC is applicable. The procedure to be followed for the temporary confiscation of objects is provided by Arts. 261 -271 of the Criminal Procedure Code. Art. 79 states as follows:

Confiscation of Objects

Article 79

The objects and means that were intended to be used or were used in the commission of a criminal offence or which are the product of its commission shall be seized if there is the risk that they will be reused for the purpose of committing a criminal offence. The court may seize objects and means also in cases where this is necessary in order to ensure general safety, public order or for moral reasons.

328. The confiscation of the instrumentalities is conditioned by the supplementary element of the risk that they will be reused in another criminal activity; this is not in line with the FATF essential criterion.

329. The references to the objects and means which are the product of the committed criminal offence raise a question about the essential differences between this category of assets and the pecuniary advantage provided by Art 77.

330. The Croatian authorities have explained that Art. 79 of the Criminal Code classified objects/items, as *instrumenta sceleris* (intended or used for the commission of an offense- tool of crimes) and *producta sceleris* (the product of the commission of a criminal offence - crimes products). The "*product of its commission*" is every object that was produced as a result of a commission of an offence. Such products are also called "*producta sceleris*" and include: forged money; forged document; produced illicit drugs; etc..

331. Differences between confiscation of pecuniary advantage (Article 77 CC) and "*product of its commission*" (used in Art 79 §1) are that property that represents a pecuniary advantage is something that normally exists before the commission of the offence (e.g. a stolen car existed before it was stolen), while the *producta sceleris* in Art 79 §1 do not exist before the commission of the offence (e.g. forged money, drugs, manufactured objects or goods as a result of the criminal offence Trademark Infringement Article 288 CC- that objects are the object of seizure pursuant to Art. 79). However, if the perpetrator acquires a pecuniary advantage by selling or exchanging the

[12] The Means and the Object of Execution and Security
Article 4
(1) The means of execution and security are enforcement actions, that is, security actions, or asystem of actions which by operation of law serve to procure involuntary collection or security on a claim.
(2) The object of execution and security are things and rights that according to law may be subject to execution with the aim of collecting on a claim or securing it.
(3) Enforcement actions or security actions may be also carried out directly against the execution debtor, security debtor and other persons in accordance with this Act.
(4) The object of execution may not be things outside trade or other things regulated as such in a special law.
(5) The object of execution may not be claims arising out of taxes and other fees.
(6) The object of execution may not be facilities, weapons and equipment meant for defence.
(7) Whether a thing or a right may be subject to execution, that is, whether execution on a thing or right is restricted is evaluated based on the circumstances existing at the time of submitting the motion for execution, unless expressly provided otherwise by this Act.

producta sceleris (e. g. puts forged money into circulation as genuine, sells drugs, or objects as a result of Trademark Infringement), the pecuniary advantage shall be confiscated on the basis of the Art. 77. CC.

332. The conclusion here is that the *producta sceleris* represents a pecuniary advantage only if there is an increase in a person's wealth. This conclusion actually enhances the previous conclusion of the evaluators that increase of property needs to be proved to be considered as a "*pecuniary advantage*" and it is not presumed.

Confiscation of property of corresponding value

333. Article 77 §4 of the new CC contains provisions related to confiscation of property of corresponding values of pecuniary advantage: "*Where it has been established that confiscation in full or in part of things or rights acquired as pecuniary advantage is impossible, the court shall order the perpetrator to pay the corresponding money equivalent. It may be ordered that payment be made in instalments.*"

334. There are no such provisions related to instrumentalities (i.e. objects and means that were intended to be used or were used in the commission of a criminal offence) used or intended for use in the commission of any ML, FT or other predicate offence.

Confiscation of funds

335. Art. 98 of the new CC (Financing of terrorism) provides in para. 3 that "*The funds referred to in paragraphs 1 and 2 of this Article shall be confiscated*."

336. There are no special provisions related to possibility to confiscate property of corresponding value of funds.

337. *Criterion 3.1.1 (a)* requires that the confiscation regime should be extended to the property that is derived directly or indirectly from proceeds of crime, including income, profits or other benefits from the proceeds of crime.

338. Regarding the provisions of the Act on Confiscation the definition of pecuniary advantage as "*each increase or prevention of the reduction of assets resulting from criminal offences*" does not appear to cover the indirectly derived property as far as it does not result from crime but from the property resulted from the crime.

339. The provisions of Art. 77 of the Criminal Code taken with the provisions of Art. 87 §21 of the CC cover the possibility to also confiscate property derived indirectly from direct pecuniary advantage or from the property into which the direct pecuniary advantage has been changed or turned into.

340. *Criterion 3.1.1. (b)* requires that confiscation should be extended to the assets held or owned by the third party. This appears to be met according to Croatian legislation.

341. The Act on Confiscation provides for confiscation of pecuniary advantage which, according to Article 3 §2 is "*in the ownership, possession or under the control of the criminal perpetrator or their related party*".

342. The "*related party*" is defined by Art. 3.6 of the same Act. Paragraph (c) of this Article (i.e. *another physical or legal entity, whom the court determined, as prescribed by this Act, to have been transferred property or rights representing pecuniary benefit and not to be in good faith related to such acquisition of the respective property or rights*) covers the concept of "*third party"* and consequently the Essential criterion could be considered as fulfilled regarding the direct proceeds.

343. Article 77 of the CC provides that "*pecuniary advantage shall also be confiscated from the person to whom it was transferred if it was not acquired in good faith*."

344. Article 77, as stated above, also covers indirect pecuniary advantage and for this reason the criteria appears to be met regarding the property derived directly or indirectly from proceeds of crime. The provisions of Art 79 §1 of the CC do not make any distinctions between the objects and means that were intended to be used or were used in the commission of a criminal offence, regarding the person who held or owned them. Furthermore, paragraph 3 of the same article contains references to the owner of the confiscated objects or means, who is not the perpetrator of the offence, and who is entitled to the return of the object or means if he acquired them in good faith. In conclusion the confiscation of the instrumentalities transferred to a third party is possible with the observation of the guarantees for the bona fide third party.

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

345. The Act on Confiscation contains a detailed chapter related to insuring of the confiscation of pecuniary advantage (i.e. Chapter IV, Arts. 11-17).

346. According to Art. 11 of the Act on Confiscation, in order to ensure confiscation of pecuniary advantage the proponent (i.e. the state attorney) is authorised before and after initiation of criminal procedure to propose to secure the property by any provisional measure to achieve that purpose, and especially:

- *prohibition of alienation and encumbrances or real rights registered on the property along with a record of prohibition in the land registry, and seizure of property and entrusting the care and management to the Agency for the State Property*
- *prohibition of the opposing party to alienate or encumber movable, subtracting these things and entrusting the care of their office,*
- *deducting and depositing of cash, securities, and their submission to the Office,*
- *prohibiting the debtor to voluntarily opposing party's obligation to the opposing party and ban the opposing party to receive the fulfilment of these obligations, and that has its claims,*
- *order the bank to the opposing party or a third party, on the order of opposing party refuses to account for the payment of a sum of money which was designated a temporary measure,*
- *prohibitions in the book stocks, shares or holdings, and if necessary, in the public registry, prohibiting the use or disposition of rights based on such stocks, shares or business shares, entrusting shares, or business interests to the administration office, the temporary appointment of the Board,*
- *prohibiting the debtor opposing party to the opposing party before things, the right to transfer or perform other non-cash.*

347. These measures are mentioned only as an example and the Croatian authorities have advised the evaluators that any other measures by which a goal can be achieved, can be defined.

348. At this point the evaluators remain unenlightened about the full range of provisional measures provided by the Croatian law, amenable to be taken in respect of property subject to confiscation.

349. The court shall decide on the proposal arising from Art.11§1 mentioned above.

350. Art. 28 of the Act on Confiscation provides for "*temporarily confiscation by the police*" of the "*objects which were intended or used for the perpetration of a criminal offence or have been created by its perpetration*". The authorities have explained that this provision is related to the procedure of handling of instrumentalities and objects in determining the competent authority for seizing (police) and management (AUDIO - Agency for State Property Management). Confiscation is conducted on the basis of Art 79 CC and provisions of the Criminal Procedure Code.

351. The Criminal Procedure Code provides through Arts. 261-271, under the Title "*Temporary confiscation of object*", the procedural conditions in which objects which have to be confiscated

pursuant to Penal Code or which may be used to determine facts in proceedings shall be temporarily confiscated and deposited for safekeeping.

352. Art. 261 of the CPC contains provisions referring to "objects" as subject matter of temporary seizure (confiscation). It can be concluded from its restrictive language that Article 261 only covers "*objects*" and not "*proceeds*" in a broader sense (or "*pecuniary advantage*" as it is generally used).

353. Only Article 79 of the CC contains the word "*objects*" but not Art. 77 which provides for the confiscation of pecuniary advantage.

354. Art. 271 of the CPC provides that "*upon a motion of the State Attorney, temporary safety measures for confiscation of pecuniary advantage may be ordered in the criminal proceedings pursuant to the provisions on the distraint procedure*". Pursuant to paragraph 2 of the same Article "the *investigative judge shall decide on temporary safety measures until preferring the indictment, the panel examining the indictment upon preferring the indictment, and the trial court after that*". In conclusion the temporary safety measures for confiscation of pecuniary advantage can be taken only based on a judge decision upon a motion of the State Attorney.

355. The Croatian authorities have not indicated to the evaluators what "*the distraint procedure*" is and where it is provided.

356. The assets in the form of money in a bank account could be also subject to a freezing order in accordance with Article 266 of the CPA:

> *(1) Upon the motion with a statement of reasons of the State Attorney the court may order by a ruling a legal entity or a physical person to suspend temporarily the execution of a financial transaction if the suspicion exists that it represents an offence or that it serves to conceal an offence or to conceal the benefit obtained in consequence of the commission of an offence.*
> *(2) By the ruling referred to in paragraph 1 of this Article the court shall order that the financial means assigned for the transaction referred to in paragraph 1 of this Article and cash amounts of domestic and foreign currency temporarily seized pursuant to Article 266 paragraph 2 of this Act shall be deposited in a special account and be kept safe until the termination of the proceedings, or until the conditions are met for their recovery, but not longer than two years.*

357. Specific provisions related to provisional measures and confiscations are applicable in the context of the offences investigated by USKOK, both under the Criminal Code and the USKOK Act.

358. The USKOK Act covers procedures for the mandatory seizure of instruments, income or assets resulting from the list of offences which fall within USKOK's competence. Seizure of instruments, income or assets which are the proceeds of crime are prescribed by the court upon USKOK's proposal if it is determined that:

1) there are grounds for suspicion that the natural or legal person has committed a criminal offence which falls within USKOK's competence;
2) that there are grounds for suspicion that the total instruments, income and assets of that person are the proceeds of crime, and that their value exceeds the total amount of HRK 100,000 (€13,130).

359. The procedure provided in the Chapter IV of the USKOK Act does not constitute criminal proceedings and the provisions of the Execution Act accordingly apply if not otherwise specified by the USKOK Act.

360. The Execution Act is a set of administrative measures governing judicial enforcement. Consequently, Art. 50 of the USKOK Act does not refer to the application of provisional measures (seizure, freezing) which are regulated by the Criminal Procedure Act but to the

additional application of further administrative measures in order to secure assets that constitute proceeds of crime. Such security measures are as follows (Art. 262[1] of the Execution Act):

1. *registration of a lien on real estate of the opposer of the security,*
2. *seizure of real estate not entered in the land register according to the rules by which execution is carried on this real estate for the collection of a monetary claim,*
3. *the seizure of the moveables of the opposer of the security,*
4. *the seizure of the monetary claims of the opposer of the security,*
5. *the seizure of part of the earnings of the opposer of the security on the basis of a contract aboutwork or employment,*
6. *the seizure of a part of a pension, disability pension or compensation for lost earnings,*
7. *the seizure of a claim that the opposer of the insurance has on an account at a bank or on a savings account (book),*
8. *the seizure of a claim that moveables be surrendered or delivered or that real estate be surrendered,*
9. *the seizure of other property or material rights*

Provisional measures related to TF offense

361. Funds involved in a commission of a TF offense, according to c.3.2., should be also property subject to confiscation. As it was said above, Art. 98 contains a special provision for the confiscation of "*funds*". Some questions could be raised related to the provisional measures applicable for the purpose of confiscation of funds because there are no provisions in Croatian legislation related to seizure of funds.

362. To some extent the concept of "*funds*" in the context of the TF offense definition could be deemed as "*pecuniary advantage*" (in the meaning of Art 77 of the CC) or "*objects and means that were intended to be used or were used in the commission of a criminal offense*"(in the meaning of Art.79 of the CC). To the same extent the provisions of Art.261 of the CPC or of Art.271 of the CPC would be applicable.

363. The uncertainties underlined by the evaluators regarding the scope of the concept of "*pecuniary advantage*" (see also R 1 comments) are relevant also when it has to understand if "*funds*" used or intended to be used for the commission of a TF offense could be deemed as "*pecuniary advantage*". That becomes more complicated when the "*funds*" are legally obtained and not came about as a result of the commission of a criminal offence, prerequisite provided by the legal definition of "*pecuniary advantage*" in CC.

364. If the funds used or intended to be used for the commission of a TF offense are deemed as "*objects and means that were intended to be used or were used in the commission of a criminal offense"(Art.79 of the CC)* it remains unclear if the scope of the concept *"objects and means"* cover the scope of *"funds"* as it is defined by the TF Convention and consequently is arguable if the further jurisprudence will unanimously apply the provisions of Art 261 of the CPC for any kind of "*funds*".

365. In conclusion the evaluators consider that the legal provisions related to provisional measures of seizure applicable for "*funds*" used in the commission of a TF offense cover only partially hypothesis in which "*funds*" should be seized as long as the subject matter of these measures provided by the CPC is limited to "*objects which have to be seized* (confiscated) *pursuant to the CC*" (Art 261 of the CPC) and it is unclear if the scope of "*objects*" extends entirely over the scope of "*funds*".

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

366. Art. 12 of the Act on Confiscation provides that the application of a temporary measure pursuant to the Act, "*can also be established before the opposing party* (Art 3 §3 defines "*opposing party*" as the defendant and their related person) *obtained the opportunity to respond to the proponent's proposal* (i.e. state attorney proposal) *to ensure*."

367. The Criminal Procedure Code does not contain any provisions related to the possibility to apply temporary confiscation ex-parte.

368. The evaluators consider that this criterion is partially fulfilled as long as the provisions of the Act on Confiscation are not applicable to any kind of proceeds and to instrumentalities. It is unclear to which extent Art. 12 is applicable to "*funds*" used or intended to be used in TF offense.

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

369. Art. 265 of the Criminal Procedure Act foresees the conditions for lifting bank secrecy for purposes of facilitating the investigation of criminal offences.

> *(1) If access to data considered to be a bank secret is denied, the court may issue a ruling on disclosure of data representing a bank secret upon the motion with a statement of reasons of the State Attorney. The court shall stipulate the term within which the bank must disclose data in the ruling.*
> *(2) When it is probable that a certain person receives, holds or disposes in any other way of income arising from a criminal offence on his bank account and this income is important for the investigation of that criminal offence or it underlies forceful seizure, the State Attorney shall, by a request with a statement of reasons, propose to the court to order the bank to hand over data on that account and income to the State Attorney. The request shall include data on legal entity or physical person who holds these means or this income or disposes of them. A description of income must include the currency designation, but not its exact amount if it is not known. The court shall stipulate a term within which the bank must proceed as ordered.*
> *(3) Before the commencement and during the investigation a decision on the request of the State Attorney referred to in paragraph 1 and 2 of this Article shall be brought by the investigating judge, on indictment by the panel examining the indictment, and after it becomes final by the court before which the hearing is to be conducted.*
> *(4) The investigating judge shall decide on the State Attorney's request referred to in paragraphs 1 and 2 of this Article immediately or within twelve hours at the latest from the receipt of the request. Should the investigating judge deny the request, the State Attorney may file an appeal within twelve hours. The panel shall decide on the appeal within twenty-four hours. An appeal against the ruling of the court brought on indictment shall not be allowed."*

370. Art. 266 of the Criminal Procedure Act provides that the court, upon the motion with a statement of reasons of the State Attorney, may order by a ruling a legal entity, or a physical person to temporarily suspend the execution of a financial transaction if a suspicion exists that it represents an offence or that it serves to conceal an offence or to conceal the benefit obtain in consequence of the commission of an offence.

371. In case of non-compliance with the ruling of the court referred to above (i.e. Arts. 265 and 266 of the Criminal procedure Act), the legal entity shall have a fine imposed on them amounting up to HRK 1,000,000 (€130,000) and a responsible person of the legal entity or a physical person a fine amounting to HRK 200,000 (€26,000). If the decision is not executed even after that, a responsible or physical person may be punished by imprisonment until the decision is executed, but not longer than one month.

372. The Croatian authorities advised the evaluators that in the case of refusal to comply with the obligations imposed by the court, Art. 311 of the CC (Failure to Comply with Safety Measures) is applicable.

373. The police duties and powers Act (O.G. 76/2009), which came into force on 1 July 2009, and which prescribes police duties and powers performed by the Police in order to prevent and remove threats in criminal investigations, prescribes in Art. 3, §1 (5), among other things, police powers concerning search for pecuniary gains acquired through criminal offence.

374. Art. 28 of the Act on Confiscation provides for "*temporarily confiscation by the police*" of the "*objects which were intended or used for the perpetration of a criminal offence*". The authorities have explained that this provision is related to the procedure of handling of instrumentalities in determining the competent authority for seizing (police) and management (AUDIO - Agency for State Property Management).

375. Art. 206 (5) and (6) of the Criminal Procedure Code proscribes as follows:

(5) *Upon the request of the State Attorney, the police authorities, the ministry responsible for finance, the State Audit Office and other state authorities, organisations, bank and other legal entities shall deliver to the State Attorney required information, except the information representing a lawfully protected secret. The State Attorney may request from the aforesaid authorities to control the operations of a legal entity or physical person and, according to the appropriate regulations, to seize temporarily, until a judgement is rendered, of money, valuable securities, objects and documentation that may serve as evidence, to perform supervision and delivery of data that may serve as evidence on the committed criminal offence or property gained by the criminal offence, and to request information on collected, processed and stored data regarding unusual and suspicious monetary transactions. In his request, the State Attorney may in more detail specify the content of the requested measure or action and demand to be informed thereof, in order to be able to attend its execution.*

(6) For failure to comply with the request, the investigating judge may, upon a motion with the statement of reasons by the State Attorney, impose a fine to the responsible person in the amount of up to HRK 50,000.00, and to legal entity in the amount of up to HRK 5,000,000.00, and if even after that such person fails to act upon the request, the person may be punished with imprisonment until the request is complied with, and not longer than one month. The court which rendered the ruling on imprisonment may abolish the ruling if, after the ruling was rendered, the responsible person acts according to the request.

376. Furthermore Art. 9 of the Act on Confiscation prescribes as follows:

(1) Unless otherwise prescribed by law, government bodies, banks and other legal and physical entities shall, upon order of the court, deliver the information related to the establishment of facts necessary for reaching the decisions stipulated by this Act.

(2) When necessary, the court shall order the government bodies and entities from paragraph 1 of this Article to file reports related to the establishment of facts necessary for reaching decisions as described by this Act.

(3) In the order described in paragraphs 1 and 2 of this Article, the court shall define a deadline for delivering the information or filing reports.

(4) For failure to follow the order within the specified period or incomplete execution of the order, the court may, by means of a ruling, sentence a legal entity to a fine in the amount of up to HRK 500,000.00, and a physical entity or a responsible person within a legal entity or government body to a fine in the amount of up to HRK 50,000.00, and if they do not act in accordance with the order even after the described event, they may be sentenced to prison until the fulfilment of the order, for a maximum term of one month.

(5) An appeal against the ruling as described in paragraph 4 of this Article shall not affect its enforcement.

(6) The defendant and their related party cannot be punished for failure to fulfil the order from paragraph 1 of this Article.

377. Bank secrecy is prescribed by Art. 169 of the Credit Institutions Act. According to Art 169, §3, 10, 11 and 12 it was prescribed that commitment of the credit institution to keep bank secrecy does not refer to the following cases:

- *if secret data are communicated to the Croatian National Bank, Finance Inspectorate of the Republic of Croatia or other monitoring authority for the needs of supervision or monitoring, and in the framework of their competence;*
- *if secret data are communicated to the Office for Suppression of Money Laundering,*
- *on the basis of the law which regulates suppression of corruption and organised crime*
- *if secret data are necessary for tax authority in procedure which they carry out in the framework of their legal authorities, and are communicated upon their written request.*

378. In the USKOK Act Art. 49, §1, it is prescribed that as soon as the Office for the Suppression of Corruption and Organised Crime (the Office) becomes aware of the likelihood that a person has in their bank accounts, holds, or otherwise is doing business with the income earned by the offences under Art. 21 of this Act, and these revenues are important to search out and investigate these crimes or subject to seizure under the provisions of the Criminal Code, the Criminal Procedure Act and the Act on the Responsibility of Legal Person for the Criminal Offences, the Office will request the bank to provide data on these accounts.. The application should contain the information specified in Art. 56 §1 of the Act, but the assets, income and property acquired through criminal acts do not have to mark the correct height, if it is not yet fully known. It is surprising for the evaluators, at this point, that the request of the Office has, as a prerequisite, to provide the banks with information related to committed offence (i.e. according to Art.56 §1 "*the request of the Office …shall include a brief description of the facts of the criminal offence and its legal name*").

379. The evaluators consider that this prerequisite for obtaining of the information from the banks could impede the powers of authorities to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime.

380. Furthermore, the bank is responsible for the requested data contained in the request of the Office, delivered within a given application. If a bank fails to comply with the request, the Office will request that the judge decides on the request an investigation. According to the Art. 49 §3 the judge will investigate promptly upon request of the Office of a ruling. The decision shall be immediately submitted to the Office which against the decision may file an appeal within 48 hours. According to the Art. 49 §4 investigating judge may issue a decision to commit the bank to submit information to the Office of balance as persons from paragraph 1 of this article, monitors payment on accounts given person, and that for the time specified on the order tracking payments regularly reports to the Office of transactions in the account that follows.

381. Moreover, in Art 49, §5 of the same Law it is prescribed that in cases of failure to execute the decision of the judge, the responsible person in a bank shall be fined in an amount to HRK 50,000 (€6,500), while the bank can be subject to a fine of up to HRK 5,000,000 (€650,000). If there is still no execution of orders or decisions the responsible person may be sentenced to imprisonment for a maximum of one month. An appeal against a decision imposing a fine or imprisonment is determined, decided by the district court. The appeal against the order of imprisonment shall not stay enforcement. Furthermore in Art. 49, §6 of the same Law it is prescribed that when the investigating judge issued a decision in §4 of this Article, he may, at the request of AMLO "*call and examine the bodies of the bank, shareholders, employees and all other persons who have access to confidential data, for the purpose of collecting information on the circumstances of which the bank has acquired knowledge when providing services and doing business with an individual client"*.

382. At the same time, Art. 73 of the AMLTF Law prescribes that "*at a substantiated written request filed by courts and the competent State Attorney's Office, the Office shall supply them with data on cash transactions referred to in Article 40, paragraph 1 and data on transactions referred to in Article 74 of this Law, which data shall be indispensable for them in establishing circumstances of relevance for confiscating economic benefits or determining provisional security measures in accordance with the provisions of a law providing for criminal proceeding*."

383. In conclusion the evaluators appreciate that the law enforcement authorities are given with adequate powers to identity and trace property that is or may become subject to confiscation.

Protection of bona fide third parties (c.3.5)

384. Art. 3.11 of the Act on Confiscation defines third person as "*a person claiming, in regards to property which is the subject of criminal proceedings in accordance with this Act, to have rights preventing its application and requesting that the insurance or enforcement be pronounced illicit*".

385. Art. 18 of the same Act provides for the protection of third parties:

- The third person has the right to file a complaint until the ruling on the enforcement has been passed, and to demand withdrawal of the temporary measure;
- The court should make a decision on the complaint. This decision may be also a subject for the further appeal. Filing the appeal *per se* does not cancel the freezing; and
- Freezing will be cancelled if "*a third party proves its right by means of a public document or if the existence of such a right can be established based on the rules on legal presumptions*".

386. Art. 79 §3 of the Criminal Code also contains provisions related to the protection of bona fide third parties.

Power to void actions (c.3.6)

387. Art. 11§1 of the Act on Confiscation defines the possible measures that may be applied to safeguard the possible confiscation.

388. According to Art. 11 §(7)-(8) of the same Act, the court ruling for application of the measures "*shall be immediately delivered to the court or another body competent for its enforcement, at the latest on the next working day following the day on which the ruling has been passed*", and the enforcement of the ruling should be urgent.

389. Art. 14 of the same Act provides that "*the legal transaction, by means of which the opposing party disposes of the property or right which is the object of insurance, shall have no legal effect once the temporary measure has been imposed*".

390. The evaluators consider that this criterion is met.

Additional elements (c.3.7)

C.3.7.a – Confiscation of the property of legal entities.

391. The Croatian legislation does not contain provisions related to possible confiscation of the property of organisations that are found to be primarily criminal in nature.

392. The confiscation regime in Croatia is conviction based

393. The Act on the Responsibility of Legal Persons for the Criminal Offences by Art. 3.1 provides that legal person may be punished "*for a criminal offence of a responsible person if such offence violates any of the duties of the legal person or if the legal person has derived or should have derived illegal gain for itself or third person*".

C.3.7.b – Civil forfeiture without a conviction

394. The Act on Confiscation contains provisions related to limited conditions in which a procedure for confiscation of the pecuniary advantage is possible to be followed without a conviction. At the end of this procedure the court shall reach the verdict by means of which it establishes that the defendant has committed a criminal offence, that by this criminal offence pecuniary advantage has been acquired and which property or rights represent pecuniary advantage resulting from this offence and its monetary equivalent.

395. Art. 5.2 of the Act on Confiscation provides that "*Unless otherwise prescribed by law, in the verdict by means of which the defendant is acquitted from the charges for criminal offences, or the charges have been dropped except in the case from Article 6 of this Act, the proposal for the confiscation of pecuniary benefit resulting from criminal offences shall be rejected*"

396. Alternatively, Art. 2.2. of the same Act provides that "*if criminal proceedings cannot be initiated for a criminal offence, because the defendant has died or other circumstances exist which exclude the possibility of criminal prosecution, upon proposal by the state attorney, the injured person as plaintiff or a private plaintiff, the court shall take actions in accordance with Article 6 of this Act, if the probable value of the pecuniary benefit resulting from criminal offences, with respect to which the actions are taken, is at least HRK 5,000.00*".

C.3.7.c – Reversed burden of proof

397. Specific provisions related to provisional measures and confiscation are applicable in the context of the offences investigated by USKOK, both under the Criminal Code and the USKOK Act.

398. The Criminal Code also regulates the extended confiscation of pecuniary gain. It relates to pecuniary gain acquired by some criminal offences under the competence of USKOK, where the mentioned gain is usually enormously large. In this case, if the perpetrator had or has property which is disproportionate with the his/her incomes (this disproportion between the incomes and property shall be shown by the State Attorney's Office) it will be presumed that all the property of the perpetrator derives from criminal offences, unless the perpetrator makes it credible that its origin is legal (article 78 CC). Thus, the burden of proof is divided between the state attorney and the perpetrator. In fact, when the State Attorney's Office proves that the property of the perpetrator of the criminal offence under the competence of USKOK is not proportionate with his/her incomes, the burden of proof of the credibility of legal origin of the property is transferred to the perpetrator. The entire property of the perpetrator is taken into consideration, the one s/he has and the one s/he has ever had and it is compared with his/her incomes in order to determine whether there is proportionality between the property and incomes. Moreover, it is also envisaged the confiscation can occur in cases of mixed legal and illegal acquisition of property. Pecuniary gain may be confiscated from a member of the family regardless of the legal basis by which it is in his/her possession and regardless of whether s/he lives in the same household with the perpetrator. Pecuniary gain may be confiscated from the person who acquired pecuniary gain in good faith if s/he does not make credible that s/he has acquired it at a reasonable price.

Recommendation 32 (statistics)

399. A detailed list setting out Confiscation of Pecuniary Gain Acquired by a Criminal Offence in 2011 is set out in ANNEX XXI.

Table 10: Provisional measures and proceeds confiscated in money laundering cases

	Proceeds frozen		**Proceeds confiscated**	
	cases	**Amount** (€)	**cases**	**Amount** (€)
2007	1	3,000,000	2	25,000
2008			2	325,000
2009	3	4,050,000	1	1,100,000
2010	1	65,000	2	165,000
2011	7	18,740,000	1	4,000,000
2012	2	500,000	3	1,590,000

Effectiveness and efficiency

400. As the statistics provided by the Croatian authorities related to seizure and confiscation of pecuniary advantage by a criminal offence contain information only for 2011 (see table 11 below) it was not possible for the evaluators to understand the trends of the effectiveness of the confiscation regime in Croatia.

401. On the positive side the evaluators welcome the improvement achieved by the Croatian authorities in the overall confiscation regime. Procedural tools intended to enforce the general principle established by the CC according to which "*No one may retain a pecuniary advantage acquired through illegal means",* largely cover the needs of the system in this respect and the trend of the amounts of seized and confiscated property appear to be improving.

402. A very welcome step is represented by the detailed statistics filled since 2011 related to seized and confiscated assets, which might be a helpful support for the Croatian authorities to take proper decision for enhancing the effectiveness of the confiscation regime.

403. As stated by the authorities, police and public prosecutors are actively engaged in the effective implementation of the provisions regarding confiscation.

404. Based on the above mentioned information could be observed that in 2011 the figures would be summarised as follow:

Table 11: Amount of money seized and confiscated by the USKOK and the State Attorney's Office

2011	No. of security measures	Amount secured through freezing	No. court rulings	Amounts confiscated
County and municipal State Attorney's Offices	68	€27,000,000	965	€7,902,082
USKOK	14	€6,075,560	55	€2,379,841
TOTAL	82	€33,224,558	1020	€10,281,923

405. Taking into consideration that, according to information provided by the Croatian authorities, the approximate economic loss or damage of all criminal offences in the country in 2011 was €340,615,990 (i.e. 2,620,123,700 HRK * 0,13 Euro), the total amount of confiscations of €10,281,293 appears to be low. It represents only 3% of the approximate economic loss or damage of all criminal offences in the country. This conclusion is even clearer when the results in ML cases are considered.

406. Also, if the number of all criminal offences in the country (75,620 - according to the police statistics) are taken into consideration, the number of security measures (i.e. 82) appear to be very low.

407. The amount of seized assets mentioned in the table above for 2011 might be an encouraging indicator for the direction in which the effectiveness of the confiscation regime is heading but the number of cases in which security measures have been taken raise concerns. The Croatian authorities have not provided the evaluators with any explanations about the reasons of this quite modest number and the conclusions of the evaluators are that the Croatian system is still unaccustomed to work with the specific tools of the confiscation regime on a daily basis. No statistics have been provided in respect of the extended confiscation of pecuniary advantage to understand to what extent these procedures are effective.

2.3.2 Recommendations and comments

408. The current legal framework applicable to confiscation and provisional measures seems rather complicated. There are parallel regimes both in terms of criminal substantive and procedural law, namely a different set of rules are applied for proceeds of crime another for pecuniary advantage or for instrumentalities etc. The respective measures are not only inaccurately and inconsequently formulated but also their scopes often overlap and to such an extent that makes the assessment of their interconnection and mutual applicability very difficult.

409. Parallel provisions for confiscation of "*pecuniary advantage*" (i.e. Art. 77 of the CC) on one hand and for confiscation of "*objects which are the product of the commission of a criminal offence*" (i.e. Art. 79 of the CC) on another hand, generate confusion related to the subject matter of seizure and confiscation in ML cases. The situation becomes more complicated when provisions of the CPC, the Act on Confiscation, the USKOK Act, and the Act on Responsibility of Legal Person are considered to determine the subject matter of provisional measures of seizing and of confiscation (e.g. pecuniary advantage defined by the new CC and the Act on Confiscation, the subject matter of confiscation indicated by the USKOK Act as "*instruments, income or assets resulting from the list of offences*"; pecuniary advantage defined by the Act on the Responsibility of Legal Person for the Criminal Offences). All these provisions should be revised by the Croatian authorities to harmonise the system and to eliminate the inadvertent and inconsistent provisions, to eliminate overlaps or apparent duplications in the regulation and to standardise (and reduce the number of) legal terms used to designate issues related to seizure and confiscation.

410. The provisions of the CC related to confiscation should contain clear references to the scope of the word "*property*" used to define the concept of "*pecuniary advantage*" so clearly include incorporeal assets and legal documents or instruments evidencing title to, or interest in such assets.

411. The wording "*increase or prevention of decrease in the property which came about as a result of the commission of a criminal offence*" used to define "*pecuniary advantage*" adds supplementary features and an additional burden of proof, to determine the property laundered and proceeds from ML, subject to confiscation regime. No such features are envisaged by the FATF standards when they are referring to property subject to confiscation, especially when property laundered and proceeds from ML are considered and, consequently, the Croatian legislation should be revised to comply with the international standards at this point.

412. The confiscation of the instrumentalities is conditioned by the supplementary element of the risk that they will be reused in another criminal activity and this is not in line with the FATF standards. The provisions related to confiscation of instrumentalities should be amended accordingly.

413. Provisions related to confiscation of property of corresponding values of instrumentalities used or intended to be used or were used in the commission of any ML, FT or other predicate offence should be introduced within the legal system of confiscation in Croatia.

414. The provisions related to provisional measures are heterogeneous and the references to property subject to confiscation in different pieces of legislation are done using different terminology:

the CPC uses :
- "*objects*" but not "*proceeds*" in a broader sense, in Art. 261;
- "*pecuniary advantage*" in Art. 271; and
- no references for "*instrumentalities*".

the Act on Confiscation uses "*pecuniary advantage*"; and
the USKOK Act uses "*instruments, income or assets*".

This situation should be changed observing the scope of the subject matter of the provisional measures envisaged by the FATF standards.

415. The provisions related to the possibility to apply temporary confiscation ex-parte should be introduced into the CPC. The FATF standards, at this point, are just partially fulfilled as long as the provisions of the Act on Confiscation are not applicable to any kind of proceeds and to instrumentalities.

416. The legal provisions related to provisional measures of seizure applicable for "funds" used in the commission of a TF offense, cover only partially hypothesis in which "funds" should be seized, as long as the subject matter of these measures provided by the CPC is limited to "*objects which have to be seized* (confiscated) *pursuant to the CC*" (Art 261 of the CPC) and it is unclear if the scope of "objects" entirely extends over the scope of "funds".

417. The evaluators encourage the Croatian authorities to put more emphasis on confiscation and resources into financial investigation to improve the current results. The evaluators recommend continuing to raise the awareness of/train the criminal prosecution authorities and judges on seizure and confiscation issues. Periodic and systematic analyses of the results in this area obtained by law enforcement and prosecutors could help the decisional factors to better understand what are the real causes for lack of effectiveness of some units and to act accordingly regarding the need of training, of resources for financial investigations and of a better coordination between all the authorities involved. Greater emphasis should be placed on a proactive approach to identify and trace property that is, or may become subject to confiscation, in the major generating proceeds crimes, especially on economic and organised crimes. Manuals or guidance related to practical and theoretical issues of the confiscation regime would be very welcome for the law enforcement and prosecutors.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• The definition of the pecuniary advantage, as the subject matter of confiscation, provided by the new CC, does not explicitly cover incorporeal assets and legal documents or instruments evidencing title to, or interest in such assets; • The concept of "*pecuniary advantage*" adds supplementary features and an additional burden of proof, to determine proceeds of crime, property laundered and proceeds from ML, subject to confiscation regime, in comparison to property subject to confiscation in the meaning of the FATF standards; • The confiscation of the instrumentalities is conditioned by the supplementary element of the risk that they will be reused in another criminal activity; • The confiscation of property of corresponding value of the instrumentalities is not provided; • The provisions related to provisional measures are heterogeneous; the references to property subject to confiscation in different pieces of legislation are done using different terminology; • The possibility to take provisional measures ex-parte is explicitly provided only by the Act on Confiscation and consequently it is related only to pecuniary advantage in the meaning of this Act; **Effectiveness** • Limited effectiveness of the general confiscation regime; • The parallel and inadvertent provisions related to proceeds and laundered property, subject to confiscation create confusion in the understanding of the scope of the confiscation regime; • Ambiguities regarding the scope of provisional measures related to "*funds*" used or intended to be used in TF offense;

		• No comprehensive tools (e.g. manuals, guidance) for the practitioners to ease the application of different and parallel provisions related to confiscation regime.

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

2.4.1 Description and analysis

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

Summary of 2008 factors underlying the rating

418. Special Recommendation III was rated NC in the 3rd round report based on the following conclusion:

- A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place.

Legal framework

419. Since the previous evaluation Croatia has made substantive progress in addressing the important gaps in respect of SR III and the legal framework has been changed to a large extent. The main legal acts adopted in this field are as follows:

- Act on International Restrictive Measures (O.G. 139/08, "IRM Act");
- The Government decision establishing the Standing Coordination Group for Monitoring the Implementation of International Restrictive measures and for Monitoring and Coordinating the Application of the Restrictive Measures was adopted and entered into force on 16 July 2009;
- The Government decision implementing Art. 4 of the Act was adopted on 1 July 2010 (No. 2516/2010); and
- Two other Government decisions were adopted on the 8 April 2011. The first one (No. 1651/2011) related to the database on restrictive measures (implementing Art. 6 of the Act) and another (No. 1652/2011) on the manner of implementing international restrictive measures against asset disposal (implementing Art. 11 of the Act-published in the OG on 8 July 2011).

420. The Act on International Restrictive Measures (O.G. 139/08, "IRM Act") - was adopted and entered into force on 11 December 2008. The IRM Act sets out the procedures for introducing, applying and discontinuing the application of restrictive measures by Croatia.

421. Croatia may introduce the restrictive measures:

- to fulfil its obligations under relevant legal acts of the United Nations, of the EU and other international organisations (Art.2.1.a of the IRM Act); and
- by Croatia own decision (Art.2.1.b of the IRM Act).

422. According to Article 2 §2 "*Restrictive measures may be as follows*:

a) severance of diplomatic relations,
b) total or partial termination of economic relations,
c) total or partial restriction of import, export, transit, provision of services, and of transport, mail and other communications,
d) arms embargo,
e) restriction upon entry into the country,
f) restricted disposal of assets, and
g) other measures in line with international law."

423. The IRM Act includes a number of provisions which cover inter alia:

- the creation of a Standing Group for Monitoring the Implementation of the International Restrictive measures is established, headed by a representative of the Ministry of Foreign Affairs and European Integration;
- the establishment of a database on restrictive measures, which shall include information on natural persons, legal persons and other entities and rules covering the access to the database information by third parties, data protection aspects, etc.;
- the obligations of all entities and persons to implement the requirements under the act and submit information to the relevant Ministry, upon its request, for the database;
- the process for the implementation of the restricted disposal of assets;
- the exemptions for which the Court can decide upon in the context of the restricted disposal of assets; and
- the sanctions applicable in case of violation of obligations under the act to natural and legal persons (fines or imprisonment).

424. Implementation of the provisions of this act involved the adoption of several decisions by the Government, as follows:

- pursuant to Art. 4, a decision on the introduction of restrictive measures to prescribe the application of the measures on a case by case basis and determining the type of restrictive measure, the manner of its application, the duration period and supervision of application and as relevant any subsequent related decision abolishing the restrictive measure; and
- pursuant to Art. 5, a decision to establish the Standing Coordination Group for monitoring the implementation of International restrictive measures pursuant to Art. 6, a decision to establish the database on restrictive measures.

425. The Government decision establishing the Standing Coordination Group for Monitoring the Implementation of International Restrictive measures and for Monitoring and Coordinating the Application of the Restrictive Measures was adopted and entered into force on 16 July 2009. According to the Governmental decision of the Republic of Croatia a Standing Coordination Group for Monitoring the Implementation of International Restrictive Measures has been adopted sharing the competence of monitoring and coordination the application of the restrictive measures referred in the Act among several key Croatian authorities.[13]

426. The President of the Standing Coordination Group may, where necessary, include in the work of the Standing Coordination Group representatives of other competent bodies. The Ministry of Foreign Affairs and European Integration is responsible for the coordination activities of the Standing Coordination Group as well as for database keeping and maintenance.

427. The Government decision implementing Art. 4 of the Act was adopted on 1 July 2010 (No. 2516/2010). This relates to the implementation of measures imposed by resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1373 (2001), 1390 (2002), 1452 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009) of the UN Security Council regarding sanctions against the members of the Al-Qaida organisation, Usama bin Laden and the Taliban and other individuals, groups, undertakings and entities associated with them.

428. The Ministry of Foreign and European Affairs in application of the Government decision of July 2010, is the competent authority for keeping an updated list of restrictive measures referred to in the UN resolutions.

429. Competencies of state administration bodies and public authority bodies for monitoring the implementation of relevant freezing obligations are prescribed in Art. VI of the Decision No 1652/2011.

[13] Ministry of Foreign Affairs and European Integration, as the Chairperson; Ministry of Foreign Affairs and European Integration; Ministry of Interior; Ministry of Defence; Ministry of Justice; Ministry of Finance; Ministry of the Economy, Labour and Entrepreneurship; Ministry of Sea, Transport and Infrastructure;
State Attorney's Office; Croatian National Bank.

430. On 11 November 2011, AMLO sent "*Guidelines on proceedings in the field of combating the financing of terrorism"* to reporting entities and supervisory bodies. The AMLO Guidelines are aimed at clarifying the checks to be conducted in respect of the Al-Qaida Sanctions List and the 1988 Sanctions lists and the scope of periodical checks that should be conducted in terms of verification of existing customers and of new entries to the terrorist lists, including that searches should be made with respect to all the variations of names. In case of positive hits, reporting entities are instructed to urgently notify AMLO. In addition, reporting entities (banks and savings banks) should notify to AMLO on a quarterly basis about making the searches and negative results.

431. The Guidelines for the implementation of restrictive measures against asset disposal by the Standing Coordination Group for Monitoring the Implementation of International Restrictive Measures were published on 27 February 2012 on the Ministry of Foreign and European Affairs website. These guidelines are aimed at raising awareness on the relevant legislation, the persons obliged to implement asset freezing measures, the notifications to be made to the concerned entity when assets are frozen and relevant notifications to the Ministry of Foreign and European Affairs as well as sanctions applicable for non-compliance with the freezing obligations.

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

Implementation of S/RES/1267(1999) and successor resolutions (C.III.1 and C.III.4)

(i) Freezing of terrorist funds or other assets specified by the Sanctions Committee

Funds or other assets

432. Art. 2 section (f) of the Act on International Restrictive Measures (O.G. 139/08, "IRM Act") reads as follows: "*Restrictive measures are: f) restricted disposal of assets*,".

433. The IRM Act defines "*assets*" and "*funds*" through Art. 3, as follows:

(1) Assets, for the purposes of this Act, are all means, tangible or intangible, movable or immovable, as well as documents or instruments in any form, including the electronic and digital form, which prove the ownership or right to ownership of assets.

(2) Funds, for the purposes of this Act, are financial means and benefits of any kind, including the following:

a) cash, cheques, financial claims, bills of exchange, remittances and other methods of payment,

b) funds invested with liable persons referred to in Article 10 paragraph 1 of this Act,

c) financial instruments determined by the law regulating the capital market, used for trading in public or private offerings, including shares, certificates, debt instruments, bonds, guarantees and derived financial instruments,

d) other documents proving the right to financial means or other financial resources,

e) interest rates, dividends and other funds-related income,

f) claims, loans and letters of credit.

434. Of relevance at this point are the provisions of Art. 11 of the IRM Act :

(1) Restricted disposal of assets shall be implemented by applying the following measures for freezing the assets:

a) freezing of all the assets owned, held or belonging in any other way to the entity to whom the measures are applied, or controlled or supervised by that entity,

b) making the assets unavailable, directly or indirectly, to the entity to whom the measures are applied,

435. Art. 4 of the IRM Act provides that the Government shall issue a decision on the introduction of restrictive measures, prescribing the application of the restrictive measures on a case–by-case basis and determine the type of the restrictive measures, the manner of its application, the duration period and supervision of its application.

436. The Government decision implementing Art. 4 of the Act was adopted on 1 July 2010 (No. 2516/2010). Art. II of this Decision provides that "*the Republic of Croatia shall freeze without delay all the funds and other financial assets or economic resources of persons, groups, undertakings and entities, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) (hereinafter: the Consolidated List), including funds derived from property owned or controlled directly or indirectly by them or by persons acting on their behalf or at their directions and ensure that neither these nor any other funds or other financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by the nationals of the Republic of Croatia or by persons within its territory*." To define the subject matter of the freezing action the Government Decision 2516/2010 uses the terms "*funds and other financial assets or economic resources*". "*Economic resources*" are not defined by the IRM Act. It is noted that this Governmental Decision refers to the obligations of "*the Republic of Croatia*"

437. The Governmental Decision on the manner of implementing international restrictive measures against asset disposal issued on April 2011(No. 1652/2011) provides as follows:

I

This Decision shall regulate:

a) the manner of implementing and applying international restrictive measures against asset disposal as referred to in Article 11, in conjunction with Article 2, paragraph 2, item f), of the Act on International Restrictive Measures (Official Gazette 139/2008, hereinafter referred to as: the Act), in accordance with the decisions of the Government of the Republic of Croatia, adopted pursuant to the Act,

b) the provision of information about the accompanying lists of all entities to which the restrictive measures apply (hereinafter referred to as: the List),

c) jurisdiction over the implementation, application, monitoring and receipt of notifications concerning international restrictive measures against asset disposal (hereinafter referred to as: the Measures).

II

All the assets defined in Article 3 of the Act, of all the entities on the List, shall be frozen without delay and measures shall be taken to ensure that the said assets are neither directly nor indirectly available for use to the said entities.

IV

All physical and legal persons, state administration bodies and public authority bodies shall implement the Measures directly by freezing all the assets that are the property of, are in the possession of or otherwise belong to the entities on the List or that are under their control or surveillance and shall notify the said entities thereof.

438. The definition of funds used by the IRM Act appears to be to some extent in line with the FATF definition. In FATF terminology, the term "*funds or other assets*" means "*financial assets, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets*".

439. Reading all the legal provisions quoted above the conclusion is that the subject matter of the freezing mechanism in Croatia is "*the assets*" defined in Art. 3 of the IRM Act, respectively "*all means, tangible or intangible, movable or immovable, as well as documents or instruments in any form, including the electronic and digital form, which prove the ownership or right to ownership of assets*".

440. The category of assets defined by Art. 3 of the IRM Act appears not to include legal documents or instruments in any form, including electronic or digital, evidencing any kind of title to, or interest in funds or other assets but only the ownership or right to ownership of assets.

441. Reading the original text of Art.3 the evaluators have observed that the Croatian authorities provided an inaccurate English version of it. In this version in Art.3 para.1 "*sva sredstva*" has been translated as "*all means*" and in paragraph 2 "*sredstva*" has been translated as "*funds*".[14]

442. Replacing the word "*means*" in Art.3 §1 with the word "*funds*" the scope of the concept of "*assets*" as it is defined by the IRM Act has become clearer.

443. Art. 3 §2 defines "*sredstva*" (funds) as "*financial means and benefits of any kind*"

444. In conclusion "*assets*" are limited to financial means and benefits of any kind, which is much narrower than the scope of the concept of "*funds or other assets*" used by the FATF Recommendation.

445. The Governmental Decision on the manner of implementing international restrictive measures against asset disposal issued on April 2011 provides as follows:

I

This Decision shall regulate:

a) the manner of implementing and applying international restrictive measures against asset disposal as referred to in Article 11, in conjunction with Article 2, paragraph 2, item f), of the Act on International Restrictive Measures (Official Gazette 139/2008, hereinafter referred to as: the Act), in accordance with the decisions of the Government of the Republic of Croatia, adopted pursuant to the Act,

446. The Government decision implementing Art. 4 of the Act, adopted on 1 July 2010 (No. 2516/2010) refers to *all the funds and other financial assets or economic resources* of persons, groups, undertakings and entities, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000). This concept (i.e. *all the funds and other financial assets or economic resources)* appears to be broader then the concept of "*assets*" used by the IRM Act. If the concept of "*economic resources"* includes any kind of property then the provisions might be in line with the FATF requirement.

447. However, as long as The IRM Act limits the scope of the subject matter of the freezing mechanism to "*assets*" as they are defined by Art. 3 of the same Act, it is debatable if a Governmental Decision can establish obligations beyond these limits.

Funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations.

448. Under S/RES/1267(1999), funds or other assets owned or controlled, directly or indirectly, by the listed persons or entities or by persons acting on their behalf or at their direction, must be

[14] The original text (in Croatian language) of Art. 3 of the IRM Act is as follows:
Članak 3.
(1) Imovina u smislu ovoga Zakona jesu sva sredstva, [AUTHORITIES' COMMENT: "all means"] materijalna ili nematerijalna, pokretna ili nepokretna te isprave ili instrumenti u bilo kojem obliku, uključujući elektronički ili digitalni, kojima se dokazuje vlasništvo ili pravo vlasništva nad imovinom.
(2) Sredstva [AUTHORITIES' COMMENT: "funds"] u smislu ovoga Zakona jesu financijska sredstva i koristi bilo koje vrste uključujući i:
a) gotovinu, čekove, novčana potraživanja, mjenice, novčane doznake i druga sredstva plaćanja
b) uložena sredstva kod obveznika iz članka 10. stavka 1. ovoga Zakona,
c) financijske instrumente određene zakonom koji uređuje tržište kapitala kojima se trguje javnom ili privatnom ponudom, uključujući dionice i udjele, certifikate, dužničke instrumente, obveznice, garancije i izvedene financijske instrumente,
d) ostale isprave kojima se dokazuju prava na financijskim sredstvima ili drugim financijskim izvorima,
e) kamate, dividende i druge prihode od sredstava,
f) potraživanja, kredite i akreditive.

frozen. SR III speaks in this respect of "*possession or control, directly or indirectly, wholly or jointly*". Of relevance at this point are the provisions of Art. 11 of the IRM Act :

(1) Restricted disposal of assets shall be implemented by applying the following measures for freezing the assets:
a) freezing of all the assets owned, held or belonging in any other way to the entity to whom the measures are applied, or controlled or supervised by that entity,
b) making the assets unavailable, directly or indirectly, to the entity to whom the measures are applied.

449. Art. II of the Governmental Decision No. 2516/2010 does not refer explicitly to the funds or assets "*wholly or jointly owned or controlled*". Neither does the Decision on the manner of implementing international restrictive measures against asset disposal, issued on April 2011, (No. 1652/2011) refer to the funds "*wholly or jointly owned or controlled*".

450. According to the Croatian authorities, the notion of freezing introduced in the IRM Act is understood very broadly and in a non-limiting manner, such that it covers, without exception, the hypotheses set out in SR.III (freezing of funds that are owned or controlled, whether wholly, jointly, directly or indirectly). The evaluators consider that the expression "*belonging in any other way*" used by Art.11 of the IRM Act has a broad enough meaning to encompass the modalities enumerated by the essential criterion III.4(a) in relation to the assets owned by designated persons. The IRM Act does not provide for freezing measures concerning terrorist, those who finance terrorism or terrorist organisations.

451. The lack of an explicit provision related to the assets controlled indirectly or jointly raises doubts about compliance with the S/RES/1267(1999).

Funds or other assets owned or controlled, directly or indirectly, by persons acting on behalf of or at the direction of the designated persons.

452. The IRM Act includes specific provisions regarding the "*restricted disposal of assets*", under Art. 11, covering the freezing of all the assets owned, held or belonging in any other way to the "*entity*" to whom measures are applied or which are controlled or supervised by that "*entity*". It is assumed in this context that the term "*entity*" covers both natural and legal persons, as the provisions related to restrictive measures clearly referred to "*natural and legal persons and other entities*".

453. The freezing actions referred to under Art. 11 of the IRM Act extend only to assets owned, held or belonging in any way to the subject to whom restricted measures are being applied, and to assets controlled or supervised by that subject. The situation envisaged by the UN resolutions in terms of control or possession of funds by persons acting on behalf of the subject or acting at their direction does not appear to be explicitly covered, including funds derived or generated from assets owned or controlled directly by individuals and entities associated with that subject.

454. The authorities pointed out that the AMLO Guidelines specifically indicated that "*it is of utmost importance to pay attention to persons acting on behalf of or at the direction of the subject included on the list of terrorists, i.e. to all the funds in control or possession of such persons, including the funds derived or generated from assets owned or controlled directly by individuals and entities associated with subjects included on the lists of terrorists*". According to the Croatian authorities the provisions included in these guidelines are of a binding nature for reporting entities in those cases where the AMLTF Law clearly sets out punitive measures if the reporting entity did not implement a specific course of action (i.e. urgent notification set out above). Non-compliance with obligations set out in the guidelines represents a failure to comply with Art. 7 §3 of the AMLTF Law which is a misdemeanour prescribed with Art. 90 §1 item 1 and Art. 90 §2, taking the form of a fine (ranging from €1,000 to €4,000 for natural persons and €10,000 to €100,000 for legal persons).

455. However, the binding nature of the requirement to extend the scope of the search, as recommended by the Guidelines to cover persons acting on behalf of the subject or acting at their direction including funds derived or generated from assets owned or controlled directly by individuals and entities associated with that subject, is debatable as it is unclear whether there is any ground for sanctions, should the reporting entities not undertake such extended searches. This must be highlighted as a gap, as it was not explicitly covered under the scope of assets to be frozen in Art. 11 of the IRM Act and it is questionable whether the AMLO guidelines can include additional restrictive measures obligations which are not set out in the primary legislation.

456. Thus, it remains to be demonstrated, in case of positive searches, whether a freezing action could be initiated over such funds based on Art. 11 of the Law and whether this would be acceptable for the Croatian courts. The authorities indicated that, in such cases, they consider the requirement of extended search to be also punishable as a misdemeanour, as indicated above.

Funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly, wholly or jointly, by designated persons, terrorists, those who finance terrorism or terrorist organisations. (mix of III.1 and III.4(b))

457. According to Art. II of the GD 2516/2010 "*The Republic of Croatia shall freeze without delay all the funds and other financial assets or economic resources of persons, groups, undertakings and entities, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) (hereinafter: the Consolidated List), including funds derived from property owned or controlled directly or indirectly by them or by persons acting on their behalf or at their directions and ensure that neither these nor any other funds or other financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by the nationals of the Republic of Croatia or by persons within its territory."*

458. The GD No. 1652/2011 does not provide in respect of this category of funds but only related to the assets defined in Article 3 of the IRM Act.

459. As stated above, this GD is the legal act which establishes explicit obligations for all physical and legal persons, state administration bodies and public authority bodies. (The GD No 2516/2010 provides that the Republic of Croatia alone shall freeze but not the various persons noted above). As long as Art. 1 §(a) of the GD 1652/2011 provides that the Decision shall be implemented "*in accordance with the decisions of the Government adopted pursuant to the Act*" it may be sustained that these two decision should be read in conjunction with one another. However, it remains unclear how the obligations of the Republic of Croatia are transformed into the obligations of different persons if there are no explicit references in this respect.

460. Furthermore, there is the issue of the extent to which a Governmental Decision can go beyond the scope of the IRM Act.

Funds made available, directly or indirectly, to designated persons.

461. In accordance with Art. II of the GD 2516/2010 the Republic of Croatia shall ensure that neither these (*all the funds and other financial assets or economic resources including funds derived from property owned or controlled directly or indirectly by them or by persons acting on their behalf or at their directions*) nor any other funds or other financial assets or economic resources are made available, directly or indirectly, for such (*persons, groups, undertakings and entities, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000)*) persons' benefit, by the nationals of the Republic of Croatia or by persons within its territory.

462. Art. II of the GD No. 1652/2011 provides that "*measures shall be taken to ensure that the said assets (*i.e. all the assets defined in Art. 3 of the Act*) are neither directly nor indirectly available for use to the said entities*"

463. This obligation is limited to the scope of the concept of assets as it is defined by Art. 3 of the IRM Act as discussed above.

Conclusion

464. The legal system is still incomplete and does not comply with C.III.1 and CIII.4, since funds or other assets owned or controlled, wholly or jointly, directly or indirectly, by persons acting on behalf of or at the direction of designated persons are not directly affected by freezing measures implemented.

(i) Freezing procedures without prior notification

465. Both decisions on the implementation of restrictive measures (July 2010 and April 2011) require that funds and assets were frozen without delay. There are no explicit provisions related to the obligation to freeze assets without prior notice to the designated persons involved.

466. However Section 7 of the Guidelines for the Implementation of Restrictive Measures against Asset Disposal Pursuant to the Act on International Restrictive Measures provides in this respect:

7. Implementation of measures of asset freezing

Persons obliged to implement measure of asset freezing implement this measure within their scope of activities directly, without delay, and without prior notice to the designated entity against whose assets the measure is to be implemented.

467. Section 10 of the Guidelines provides as follows:

10. Sanctions on non-compliance with the obligations to implement the measures of asset freezing

Any person obliged to implement the measures of asset freezing not acting in accordance with the regulations governing the implementation of these measures shall be subject to sanctions pursuant to the provisions of Article 15 and 16 of the Act on International Restrictive Measures.

468. Art. 15 of the IRM Act provides as follows:

(2) Any person not acting in accordance with the Government's decision determining the restrictive measures referred to in Article 2 paragraph 2 items a), b), e) and f) of this Act shall be punished by a fine or prison sentence lasting up to three years.
(3) Any person committing the criminal act referred to in paragraphs 1 and 2 of this Article by negligence shall be punished by a fine or prison sentence lasting up to six months.
(4) For the attempted crime referred to in paragraph 2 of this Article, the perpetrator shall be punished.

469. Non-compliance with obligations set out in the guidelines represents a failure to comply with Art. 7 (3) of the AMLTF Law which is a misdemeanour prescribed with Art. 90 (1) item 1 and Art. 90 (2), taking the form of a fine (ranging from €1,000 to €4000 for natural persons and €10,000 to €100,000 for legal persons).

470. In conclusion, the condition which is reaffirmed in c.III.1 (freezing to take place without prior notification) is approached only at the level of guidelines and freezing assets with prior notice to the designated persons involved is not punishable. Safeguards are not strong enough to maintain the surprise effect intended by the UN Resolution.

(iii) Procedures for freezing without delay

471. The communication of actions taken under the freezing mechanism was undertaken through publication of information on the Ministry of Foreign and European Affairs, which was responsible for keeping updated lists, as well as additionally, through the website of the Croatian National Bank. The Guidelines for the implementation of restrictive measures against asset disposal adopted by the Standing Coordination Group for Monitoring the Implementation of International Restrictive Measures also included information and the link to the Ministry's website where the sanctions lists were published and updated.

472. As mentioned above, the decisions issued to implement the IRM Act and the additional guidance prepared by AMLO and the Standing Coordination Group do include further clarifications, which may serve as guidance on the obligations arising from the restrictive measures legislation for the various entities concerned.

473. Art. II of the GD 1652/2011 provides that the assets defined in Article 3 of the IRM Act shall be frozen without delay. Art. 5 of the Guidelines contains references to the necessity of freezing "*without delay assets of designated individuals, groups, undertakings and entities included on the lists*".

474. According to Art.4 of the IRM Act all Croatia Government decisions adopted on the basis of the IRM Act should be published in the Official Gazette. As far as the Decision 2516 directly refers to the UNSCRs there is no need for the Croatia Government to issue the separate decision on each new person listed by UN Security Council. Therefore Art.4 of the IRM Act does not provide for the publication of listings in the Official Gazette. The lists are published on the website of the Ministry of Foreign and European Affairs.

Implementation of S/RES/1373(2001) (C.III.2 and C.III.4)

(i) Effective laws and procedures to freeze terrorist funds or other assets of persons designated in the context of S/RES/1373(2001)

475. According to Art. 1 of the IRM Act, this Act sets out the procedures for introducing, applying and discontinuing the application of restrictive measures by Croatia including those set up by UNSCR 1373(2001). According to Art. 4 of this Act:

(1) The Government of the Republic of Croatia (hereinafter: the Government) shall issue a decision on the introduction of restrictive measures, prescribing the application of the restrictive measures on a case-by-case basis and determining the type of the restrictive measure, the manner of its application, the duration period and supervision of its application.
(2) Restrictive measures shall be abolished by the Government's decision.
(3) The decisions referred to in paragraphs 1 and 2 of this Article shall be published in the Official Gazette.

476. The Government decision implementing Art. 4 of the Act was adopted on 1 July 2010 (No. 2516/2010). Although the title of this Governmental Decision includes a reference to UNSCR 1373(2001) and Section I of the Decision contains references to UNSCR 1373(2001) and also to the EU Common Position 2001/931/CFSP and the further resolution which updated it, which was adopted to implement this resolution at the EU level, its provisions refer only to funds and other financial assets or economic resources of the entities on list created pursuant to UNSCRs 1267/1999 and 1333/2000.

477. Art. X of the Government Decision No. 2516/2010 sets out that the Ministry of Foreign Affairs and European Integration shall be responsible for keeping an updated list of restrictive measures referred to in UNSCRs 1267 (1999), 1333 (2000), 1363(2001), 1373 (2001), 1390 (2002), 1452 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1699(2006), 1735 (2006), 1822 (2008), 1904 (2009) and shall, in accordance with the IRM Act, report to the competent bodies.

478. No lists in respect of UNSCR 1373(2001) are kept by the Ministry of Foreign Affairs and European Integration.

479. The GD No. 1652/2011 (Decision on The Manner of Implementing International Restrictive Measures Against Asset Disposal) provides that:

This Decision shall regulate:

a) the manner of implementing and applying international restrictive measures against asset disposal as referred to in Article 11, in conjunction with Article 2, paragraph 2, item f), of the Act on International Restrictive Measures (Official Gazette 139/2008, hereinafter referred to

as: the Act), in accordance with the decisions of the Government of the Republic of Croatia, adopted pursuant to the Act,

b) the provision of information about the accompanying lists of all entities to which the restrictive measures apply (hereinafter referred to as: the List),

c) jurisdiction over the implementation, application, monitoring and receipt of notifications concerning international restrictive measures against asset disposal (hereinafter referred to as: the Measures).

II

All the assets defined in Article 3 of the Act, of all the entities on the List, shall be frozen without delay and measures shall be taken to ensure that the said assets are neither directly nor indirectly available for use to the said entities.

480. In conclusion there is no effective mechanism in place to designate persons in the context of UNSCR 1373(2001).

481. According to the legislation the procedure for listing persons by the decision of the Croatia authorities (e.g. listing of domestic terrorists) as well as the procedure for listing of persons based on foreign countries designations are not provided for. The Ministry of Foreign Affairs and European Integration is responsible for keeping and updated list of restrictive measures referred to in UNSCR 1373(2001) but no governmental body is specifically responsible for designation. In the absence of other legally binding documents UNSCR 1373 cannot be considered as implemented by Croatia.

482. The Croatian authorities informed the evaluators that all existing points of contact are in use to receive and respond to specific notification or communication regarding particular subjects that are suspected of terrorist financing or other forms of terrorist support. These comprise AMLO's international exchange of financial intelligence with foreign FIUs, Interpol, Europol, direct police cooperation on the basis of international agreement, mutual legal assistance etc..

483. When a specific notification or communication is sent and the Croatian authorities (i.e. the AMLO) are satisfied that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee is a terrorist, one who finances terrorism or a terrorist organisation, there is also a legal basis to postpone execution of suspicious transaction according to Art. 60 of AMLTF Law which prescribes as follows:

(1) Should it be necessary to take urgent action to verify data on a suspicious transaction or a person or when AMLO shall judge that there are grounded reasons that a transaction or a person is linked with money laundering or terrorist financing, AMLO may issue a written order to instruct the reporting entity to temporarily suspend the execution of the suspicious transaction for a maximum period of 72 hours.

(5) The Office shall without any undue delay notify the State Attorney's Office of the Republic of Croatia and/or the competent State Attorney's Branch of the issued orders referred to in paragraphs 1 and 2 of this Article.

484. Taking into consideration the provisions of Art. 60 §6 of the AMLTF Law which established that after the expiry of the deadline referred to in paragraph 1 of this article, the transaction may be suspended only on the basis of a court decision in agreement with the provisions contained in a law providing for criminal procedure, the evaluators consider that this mechanism is not in line with c.III.2 of the FATF standards since the requirement to freeze assets should apply indefinitely in time.

485. The FATF requirements provides "*When (i) a specific notification or communication is sent and (ii) the country receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee is a terrorist, one who finances terrorism or a terrorist organisation, the country receiving the request must ensure that the funds or other assets*

of the designated person are frozen without delay". To satisfy this requirement, the Croatian authorities only indicated the criminal proceedings mechanism, as described above. This mechanism does not provides adequate provisions to freeze (or seize) all the funds of a designated person but only those funds amenable to be confiscated or seized according to Title VI of the Criminal Code, respectively pecuniary advantage (Art. 77 and further) and the objects and means that were intended to be used or were used in the commission of a criminal offence or which are the product of its commission (Art. 75).

486. Thus, the freezing obligations as required under UNSCR 1373 are not fully covered.

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

487. As it was mentioned for c.III.2, neither the IRM Act nor any decisions of the Government provide a procedure to examine and give effect to, if appropriate, the actions initiated under the freezing mechanism of other jurisdictions.

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

488. The definition of the IRM Act Art.11 §1 misses several categories of assets covered by UNSCR 1267 and its successors and by UNSCR 1373 (i.e. assets owned or controlled directly or indirectly by designated persons acting on their behalf or at their directions). These categories of assets have been covered by the Government Decision 2516, namely in Art. II.

489. See the comments made at C.III.1, C.III.2 and C.III.3 above.

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

490. Art. X of the G.D. 2516/2010 provides that The Ministry of Foreign Affairs and European Integration shall be responsible for keeping an updated list of restrictive measures referred to in UNSC Resolutions 1267, 1333 (inter alia) and their successors and shall, in accordance with the IRM Act report to the competent bodies.

491. Art. XI provides that the competent bodies shall be responsible for the implementation of the measures referred to the Decision.

492. According to Art. III of the Decision on the manner of implementing international restrictive measures against asset disposal (No. 1652/2011), supervisory bodies referred to in Art. 13 of the IRM Act (excerpt from Art. 13: "*competent state administration bodies and holders of public authorities competent for the area to which the restrictive measures refer*") shall monitor the enforcement of the ACT and the implementation of the Measures and "*shall inform physical and legal persons and other entities that are under the obligation to ensure, through their activities, direct implementation of the Measures*" (international restrictive measures against assets disposal).

493. The Ministry of Foreign Affairs and European Integration publishes the references to the lists on its website but there is no procedure for the consolidated list to be sent to the reporting entities. According to the Decision there is no procedure for publication of the list of designated person which is maintained by the Ministry of Foreign Affairs and European Integration or other ways for making the list available to the reporting entities. No other legally binding documents which lay out the procedure for making the list available to the reporting entities have been provided.

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

494. On 11 November 2011, AMLO sent to reporting entities and supervisory bodies "*Guidelines on proceedings in the field of combating the financing of terrorism*". The AMLO Guidelines are aimed at clarifying the checks to be conducted in respect of the Al-Qaida Sanctions List and the 1988 Sanctions lists and the scope of periodical checks that should be conducted in terms of verification of existing customers and of new entries to the terrorist lists, including that searches should be made with respect to all the variations of names. In cases of positive hits, reporting entities are instructed to urgently notify AMLO. In addition, reporting entities (banks and savings

banks) should notify to AMLO on a quarterly basis about making the searches and negative results.

495. Though this recommendation is helpful for the reporting entities in practical implementation of the Government Decision 2516, it contradicts the role of the consolidated list which should be maintained by the Ministry of Foreign Affairs and European Integration (i.e. Art. X of GD no. 2516/2010).

496. It should be noted that these Guidelines are not mandatory for reporting entities. Art.57 of the AMLTF Law, which defines the powers of AMLO, does not provide it with the authority to issue mandatory regulations on the implementation of the restrictive measures. The IRM Act, through Art. 4, provides such authority to the Government of Croatia.

497. There is no provision relating to the obligation to freeze the assets and for this reason the evaluators consider that these guidelines are incomplete and could generate confusion among reporting entities related to their obligations.

498. The Guidelines for the implementation of restrictive measures against asset disposal pursuant to the Act on International Restrictive Measures were published on 27 February 2012 by the Standing Coordination Group for Monitoring the Implementation of International Restrictive Measures, on the Ministry of Foreign and European Affairs website. These guidelines are aimed at raising awareness on the relevant legislation, the persons obliged to implement asset freezing measures, the notifications to be made to the concerned entity when assets are frozen and relevant notifications to the Ministry of Foreign and European Affairs as well as sanctions applicable for non-compliance with the freezing obligations.

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

499. Art. VII of GD 2516/2010 regulates the obligation of the Republic of Croatia that, after the notification received from the Secretariat of the United Nations that a certain individual who is Croatian national, or entities situated on the territory of the Republic of Croatia, are going to be listed in the Consolidated list, in a timely manner notify those individuals or entities or inform them on the fact that they are proposed to be listed on the Consolidated list. With that information, the following documents will be enclosed:

- *a copy of the explanation on the subject (which can be made public),*
- *all the data on reasons for listing that are available on web-site of the Committee of the Security Council,*
- *description of the expected effects of listing in the Consolidated list, as provided in the relevant resolutions*
- *procedures of the Committee for considering a request for removal from the list, and*
- *provisions of the Resolution 1452 (2002) on available exceptions.*

500. The Republic of Croatia will inform the Committee on the above mentioned actions.

501. According to Art. IX of the Decision "*The state administrative bodies responsible for the application of international restrictive measures shall supply the information on the measures taken to the Standing Coordination Group, which shall in turn report on those measures to the Government of the Republic of Croatia and prepare reports for the UN Security Council."*

502. The Croatian authorities informed the evaluators that, after receiving all relevant above-mentioned information, documentation and explanations, which include procedures of the Committee for considering a request for removal from the list, an individual or an entity can take action according to Art. 8 of the IRM Act.

503. According to Art. 8 of the IRM Act, in the procedure of deciding upon petitions submitted by persons pursuant to regulations passed on the basis of that Act, provisions of the Act on General Administrative Proceedings shall apply. The petitions shall be decided upon by the ministry competent for the area to which the petitions refer to. The Ministry of Foreign Affairs and

European Integration deciding on the petitions may, prior to making the decision, request the opinion of Standing Coordination Group for Monitoring the Implementation of IRM regarding the petition. The Croatian authorities stated that this petition could be related to de-listing, unfreezing, or any other issue in relation to the application of international restrictive measures. In a concrete situation, according to Art. 101 §(1) and (3) of the Act on General Administrative Proceedings, if a person or entity sends a petition to the competent ministry, this ministry shall decide on the petition and send a decision to that person or entity without delay, but no later than 30 days after the submission of the petition. In the case of the competent ministry not deciding on the petition within the legally prescribed deadline and not sending a decision to that person or entity, this person or entity can appeal or initiate a procedure in front of the Administrative Court of the Republic of Croatia.

504. It remains unclear if these provisions are available in relation to assets frozen based on the list created pursuant to UNSCRs 1267(1999) and 1333(2000) (the Consolidated list) or only for other categories of listed persons.

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

505. There are no explicitly provisions in this respect. It is supposed that Art. 8 of the IRM Act and the provisions of the Act on General Administrative Proceedings could be applied accordingly for these situations.

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

506. Art. 12 of the IRM Act establishes the courts as the competent bodies to authorise access to frozen assets for humanitarian purposes or for the payment of certain types of fees, expenses and service charges or for extraordinary expenses:

(1) By way of derogation from the provisions of Article 11 paragraph 1 of this Act, the court may allow the frozen assets to be released or the funds in question made available if it has been established that they are necessary for covering the basic costs of living, rent, lease or mortgage on a house of flat, medicines and treatment, taxes and insurance, or costs of public utility services.

(2) By way of derogation from the provisions of Article 11 paragraph 1 of this Act, the court may allow the frozen assets to be released or made available if it has been established that the assets are:

a) intended exclusively for payment of fees for regular maintenance of the frozen assets,

b) necessary due to extraordinary expenses, such as expenses related to childbirth, death in the family or a similar event.

(3) When deciding pursuant to paragraphs 1 and 2 of this Article, the court may determine conditions under which the release or the making available of assets will be approved.

(4) The competent court shall inform the Ministry about the approval referred to in this Article eight days after the issuance of the approval at the latest.

(5) The Ministry shall inform competent bodies of international organisations which apply the same restrictive measures towards the same entities about each approval decided upon pursuant to this Article."

507. According to Art. III of the GD 2516/2010, in respect of assets belonging to the listed persons pursuant to UNSCR 1267(1999), a notification of its intention to grant access to frozen assets, where appropriate, shall be submitted to the UN security Council Committee. If the Committee does not inform about a negative decision within two working days following the receipt of such notification the access would be authorised. Related to the assets that are necessary for covering extraordinary expanses the Committee should explicitly approve the decision to release them.

Review of freezing decisions (c.III.10)

508. As it has been stated previously according to Art. 8 of the IRM Act, in the procedure of deciding upon petitions submitted by persons pursuant to regulations passed on the basis of that Act, provisions of the Act on General Administrative Proceedings shall apply. The petitions shall be decided by the Ministry of Foreign Affairs and European Integration. The Ministry of Foreign Affairs and European Integration deciding on the petitions may, prior to making the decision, request the opinion of Standing Coordination Group for Monitoring the Implementation of IRM regarding the petition.

509. These petitions could be related to de-listing, unfreezing, or any other issue in relation to the application of international restrictive measures. In a concrete situation, according to the Art. 101 §(1) and (3) of the Act on General Administrative Proceedings, if a person or entity sends a petition to the competent ministry, this ministry shall decide on the petition and send a decision to that person or entity without delay, but no later than in 30 days after the submission of the petition. In the case of the competent ministry not deciding on the petition within the legally prescribed deadline and not sending a decision to that person or entity, this person or entity can appeal or initiate a procedure in front of the Administrative Court of the Republic of Croatia.

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

510. The provisions of the Criminal Procedure Code, the Act on Confiscation, the Act on the Office for the Suppression of Corruption and Organised Crime(Chapter IV, Securing the Seizure of Instruments, Income, or Assets which are the Proceeds of Crime), the Act on the Responsibility of Legal Person for the Criminal Offences (Art. 19-Confiscation and Art. 20-Confiscation of illegally gained benefit) are applicable related to the funds which represent the subject matter of the Financing of Terrorism offense (Art. 98 of the Criminal Code).

511. That means that, with the limits described at the proper sections of this report (i.e. R3, SR II), the seizing measures can be imposed on funds that are suspected to represent a financing of terrorism in the understanding of Art. 98 of the Criminal Code. Only in the case of a final conviction for this offense should the funds be confiscated. Otherwise the funds should be released.

512. Articles 60 and 61 of the AMLTF Law provides the freezing procedure for a maximum period of 72 hours if should it be necessary to take urgent action to verify data on a suspicious transactions or a person or when the Office shall judge that there are grounded reasons that a transaction or a person is linked with terrorist financing. After the expiry of this deadline the transaction may only be suspended on the basis of a court decision in agreement with the provisions contained in the criminal procedure laws.

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

513. As it has been mentioned for c.III.10 above, there are no specific measures for the protection of the bona fide third parties affected by sanctions, and the general administrative procedures for appeal and review of the state authorities' decisions are applied.

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

514. The IRM Act contains provisions which create the legal framework for enforcement of the obligations related to the implementation of international restrictive measures.

515. The competent authorities to supervise the implementation of the international restrictive measures are determined. In case of suspicion that violation or attempted violation of restrictive measures contains elements of a criminal act or any other punishable act the necessary information and data shall be delivered to state bodies competent for detection of misdemeanours or crimes and for initiating proceedings.

516. According to Art. 15 (2) of the IRM Act Any person not acting in accordance with the Government's decision determining the restrictive measures referred to in Article 2 paragraph 2

items f) of this Act shall be punished by a fine or prison sentence lasting up to three years. Attempting is also punishable. If the criminal act was committed by negligence it shall be punished by a fine or prison sentence lasting up to six months.

517. The IRM Act provides also sanctions for the legal persons and for the members of the management board or another responsible person in the legal person, for breaching of the provisions of Art.10 paragraph 1 and 2.[15]

518. The Decision on the Implementation of Measures Imposed by Resolutions 1267 (1999), 1333 (2000) provides that the Standing Coordination Group for Monitoring the Implementation of International Restrictive Measures and for Monitoring and Coordinating the Application of the Restrictive Measures shall be responsible for monitoring and coordinating the implementation and for reporting on this Decision.

519. The Decision on the Manner of Implementing International Restrictive Measures against Asset Disposal provides that supervisory bodies shall monitor the enforcement of the IRM Act and the implementation of the Measures and shall inform physical and legal persons and other entities that are under the obligation to ensure, through their activities, direct implementation of the Measures of the necessity and importance of the said Measures implementation.

520. State administration bodies and public authority bodies are responsible, as authorised under the law, for checking Lists and/or monitoring the implementation of the IRM Act[16]. During their regular supervision of the legality of operations of entities under their supervision, state administration bodies and public authority bodies shall also supervise the implementation of Measures and inform as appropriate the entities under their supervision of applicable regulations. In case of doubt as to whether a misdemeanour or a criminal act as referred to in the IRM Act has been committed, the competent supervisory body shall inform the supervised entity of the urgent need to implement the Measures and shall act as provided for in the IRM Act.

[15] Article 10 of the IRM Act:

(1) Natural and legal persons and other entities shall be obliged to act in line with this Act, to ensure direct application of restrictive measures within their scope of activities, and to notify the Ministry thereof.

(2) The natural and legal persons and other entities referred to in paragraph 1 of this Act, as well as state administration bodies, shall submit to the Ministry, at its request, the data referred to in Article 6 paragraphs 3 and 4 of this Act, which are at their disposal.

[16] *1. This shall, in particular, refer to:*

- *the Croatian National Bank – with respect to the supervision of legal persons which it supervises under the law;*
- *the Croatian Financial Services Supervisory Agency – with respect to assets on the capital market, insurance market and funds market;*
- *the Central Depository and Clearing Company and the Croatian Financial Services Supervisory Agency - with respect to capital market stocks;*
- *the Ministry of Justice – with respect to interests in companies and stocks that are not on the capital market;*
- *the Ministry of Finance – Financial Inspectorate – with respect to assets with non-financial professions, such as attorneys-at-law and notaries public;*
- *notaries public when authenticating or notarising contracts on real estate disposal, the Ministry of Finance – Tax Administration, Ministry of Justice – with respect to real estate and land registers;*
- *the Ministry of Finance – Tax Administration, the Ministry of Finance – Customs Administration, the Ministry of Interior – with respect to vehicles;*
- *the Ministry of the Sea, Transport and Infrastructure, port authorities, the Ministry of Finance – Tax Administration, the Ministry of Finance – the Ministry of Interior – Customs Administration – with respect to vessels;*
- *the Ministry of the Sea, Transport and Infrastructure, the Croatian Civil Aviation Agency, the Ministry of Finance – Tax Administration, the Ministry of Finance – the Ministry of Interior – Customs Administration – with respect to aircraft;*
- *everybody responsible for supervising legal and physical persons – with respect to other forms or owners of property.*

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)

521. The additional element in the implementation of SRIII is the establishment of the Interagency Committee for Implementation of Sanctions as well as a clear definition of state agencies responsible for supervision of the compliance with the restrictive measures requirements.

522. The procedure for access to the frozen funds is implemented through the court decision as described in the c.III.9.

Recommendation 32 (terrorist financing freezing data)

523. Since the last evaluation, in the Republic of Croatia there have not been any cases of freezing of assets pursuant to UN resolutions relating to the financing of terrorism.

Effectiveness and efficiency

524. There are no legislative provisions regarding the communication actions in cases of prompt subsequent freezing of related funds or other assets without delay upon determination that such grounds or basis for freezing exist. During the on-site, mission the evaluators were informed about a foreign request, received by law enforcement authorities in 2009, to take measures against an associated natural person with a designated person. The Croatian authorities indicated that such actions could not be applicable according to the existing procedures.

525. As there have not been any cases of freezing of assets pursuant to UN resolutions relating to the financing of terrorism is not possible to assess effectiveness.

2.4.2 Recommendations and comments[17]

526. Based on the provisions of the IRM Act "*assets*" are limited to financial means and benefits of any kind, which is much narrower than the scope of the concept of "*funds or other assets*" used by the FATF Recommendation. Parallel references to the subject matter of the freezing mechanism (i.e. "*assets*" in the IRM Act, "*funds and other financial assets or economic resources*" in the Government Decision No. 2516/2010) in different pieces of legislation should be avoided.

527. The establishment of the Interagency Committee on implementation and monitoring of compliance with restrictive measures could ensure a well-established mechanism. The IRM Act provisions relevant for UNSCR 1373 should be effectively implemented through a further Government Decision which should clearly provide for the procedure for listing persons by the decision of the Croatian authorities in respect of domestic terrorists as well as the procedure for listing of persons based on foreign countries designations. These persons should be included, according to this procedure, in the consolidated list which should be made available to reporting entities.

528. The Croatian authorities should establish a publicly available consolidated list of persons designated under the IRM Act (especially those who have been listed domestically or based on foreign designations).

529. The Croatian authorities should implement UNSCR 1373, establish a procedure for consideration of foreign designations and develop a procedure for making the consolidated list of designated persons available to reporting entities.

530. There is a general lack of understanding by reporting entities about the mechanism of freezing of funds used for terrorist financing. Appropriate training and awareness raising for all reporting entities needs to be established. In particular, an effective system of communication with the DNFBP sector in respect to the obligation under SR.III should be established.

[17] Considering that Croatia joined the EU on 1 July 2013, most of the issues recommended to be addressed by the Croatian authorities are covered by EU Regulations to some extent, which are now directly applicable to Croatia.

531. The condition which is reaffirmed in C.III.1 (freezing to take place without prior notification) is approached only at the level of guidelines and freezing assets with prior notice to the designated persons involved is not punishable. Safeguards should be strong enough to maintain the surprise effect intended by the UNSCRs.

532. The freezing actions referred to under Art. 11 of the IRM Act extend only to assets owned, held or belonging in any way to the subject to whom restricted measures are being applied to, and to assets controlled or supervised by that subject. Assets controlled jointly and indirectly should be covered.

533. The situation envisaged by the UNSCRs in terms of control or possession of funds by persons acting on behalf of the subject or acting at their direction should be explicitly covered by the Croatian legislation.

534. Funds derived or generated from assets owned or controlled directly by the designated persons, terrorist, those who finance terrorism or terrorist organisations, should be fully covered by the Croatian legislation.

535. The guidelines issued by the AMLO and by the Standing Coordination Group for Monitoring the Implementation of International Restrictive Measures should be collaborated to fully and clearly comprise the obligations of reporting entities in respect of assets of the listed persons.

536. There is a need to adopt a detailed procedure (guidance) with regard to all steps needed to be taken after the freezing in order to ensure the un-freezing and clarifying their obligations according to the freezing mechanism.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• The scope of "assets", subject matter of the freezing mechanism in Croatia is narrower than the scope of "funds or other assets" as it is provided by the FATF standards; • The freezing actions referred to under Art. 11 of the IRM Act extend only to assets owned, held or belonging in any way to the subject to whom restricted measures are being applied to, and to assets controlled or supervised by that subject. Assets controlled jointly or indirectly are not explicitly covered; • The situation envisaged by the UNSCRs in terms of control or possession of funds by persons acting on behalf of the subject or acting at their direction does not appear to be explicitly covered; • Funds derived or generated from assets owned or controlled directly by the designated persons, terrorist, those who finance terrorism or terrorist organisations, are only partially covered (art. 3 para 2 (c), (e), (f) of the IRM Act); • The obligation to not make funds available, directly or indirectly, to designated persons is limited to the scope of funds as they are defined by the IRM Act; • The condition which is reaffirmed in c.III.1 (freezing to take place without prior notification) is approached only at the level of guidelines and freezing assets with prior notice to the designated persons involved is not punishable. Safeguards are not strong enough to maintain the surprise effect intended by the UN Resolution; • There is no effective mechanism in place to designate persons in the context of UNSCR 1373(2001); • There is no legal procedure to examine and give effect to, if

		appropriate, the actions initiated under the freezing mechanism of other jurisdictions; • There is no procedure the consolidated list to be sent to the reporting entities; • Unclear provisions for funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly, wholly or jointly, by designated persons, terrorists, those who finance terrorism or terrorist organisations. (mix of III.1 and III.4(b)); **Effectiveness** • There is a general lack of understanding by the reporting entities about the mechanism of freezing of funds used for terrorist financing.

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

2.5.1 Description and analysis

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

Summary of 2008 factors underlying the rating

537. In the 3rd evaluation round Croatia was rated 'Largely Compliant' with respect to Recommendation 26 based on the following deficiencies:

- The competence of the FIU under the AML Law did not clearly extend to terrorist financing activities. This was deemed to potentially have a negative effect on the FIU's overall efficiency as the national centre for receiving, analysing and disseminating all potential disclosures concerning suspected terrorist financing activities;
- The suspicious transaction report form issued by the FIU did not cover terrorist financing;
- The high rate of staff turnover was considered to potentially hinder the efficient performance of the FIU's functions.

Legal framework

538. The major legal change since the 3rd evaluation round has been the introduction of the new AMLTF Law, which came into force on 1 January 2009. Chapter IV of the AMLTF Law prescribes in detail all competences and responsibilities of the Anti-Money Laundering Office (AMLO).

539. AMLO is designated as the Croatian financial intelligence unit. It was established in 1998 within the Ministry of Finance, and at that time was known as the Anti-Money Laundering Department (AMLD). AMLO is an administrative-type FIU and has no investigative powers.

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

540. Pursuant to Art. 56 §1of the AMLTF Law, AMLO is an administrative organisation within the structure of the Ministry of Finance. It is responsible for the prevention of money laundering and terrorist financing. As a Financial Intelligence Unit and the Central National Unit, AMLO collects, stores, analyses and submits data, information and documentation on suspicious transactions to competent government bodies for further investigation for the purpose of preventing and detecting money laundering and terrorist financing.

541. The other core functions of AMLO, according to Art. 57 §1 of the AMLTF Law, are the following:

- Acquiring and analysing information, data and documentation supplied by the reporting entities and other competent bodies in relation to money laundering and terrorist financing and issuing orders to reporting entities on the temporary suspension of the execution of a suspicious transaction;

- Requesting data or other documentation necessary for money laundering and terrorist financing detection purposes from all government bodies, local and regional self-government units and legal persons having a public function;
- Co-operating with all competent government bodies involved in the field of money laundering and terrorist financing prevention and detection;
- Reporting information to competent government bodies and foreign financial intelligence units where there are grounds indicating the existence of a suspicion of money laundering and terrorist financing in relation to a transaction or a person in or outside Croatia;

542. According to Art. 57 §2 of the AMLTF Law, AMLO is also responsible for the following functions::

- Making proposals to any competent body concerning amendments to regulations applicable to money laundering and terrorist financing prevention and detection;
- Jointly with the supervisory bodies, cooperating with reporting entities to produce a list of indicators for the detection of transactions and customers which may give rise to suspicions of money laundering or terrorist financing;
- Jointly with the regulatory and supervisory bodies referred to in Art. 83 of the AMLTF Law, issuing guidelines for a uniform implementation of the AMLTF Law, and any regulations issued thereunder, for the reporting entities;
- Participating in the professional training of employees of reporting entities, government bodies and legal persons with public authorities;
- Publishing statistical data relative to money laundering and terrorist financing at least once a year;
- Adequately informing the public on the various forms of money laundering and terrorist financing.

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

543. According to Arts. 40 and 42 of the AMLTF Law, the Minister of Finance may issue guidance to financial institutions and other reporting entities regarding the manner in which cash and suspicious transactions are to be reported. On that basis the following binding documents were issued by the Ministry of Finance:

- Rulebook on reporting suspicious transactions and persons to the Anti-Money Laundering Office (O.G. 01/09) (hereinafter – STR Rulebook);

- Rulebook on reporting cash transactions equal to or greater than HRK 200,000 to the Anti-Money Laundering Office and on the conditions under which the reporting entities shall not be obliged to report cash transactions for designated clients to AMLO (O.G. 01/09) (hereinafter – CTR Rulebook).

544. The AMLTF Law prescribes the obligations and deadlines for reporting suspicious transactions and persons for all reporting entities referred to in Art. 4 §2 of the Law. In this way Art. 54 §1 extends the reporting requirement of Art. 42 to lawyers, public notaries, auditors, accountants and tax advisers when they establish reasons for suspicion of money laundering or terrorist financing related to transactions or persons.

CTR guidance

545. Art. 1 of the CTR Rulebook prescribes the manner of reporting to AMLO, the additional information that should be obtained by reporting entities and the conditions under which the reporting entities shall not be obliged to report to AMLO on cash transactions for designated clients. A cash transaction is defined in Art. 3 §19 of the AMLTF Law.

546. According to Art. 2 of the CTR Rulebook, in addition to information referred to in Art. 16 §1 items 1, 3, 5, 6, and 9 of the AMLTF Law, reporting entities should acquire:

- for a natural person requesting or conducting a transaction: the country which issued the identification documents;
- for a client who is a natural person on whose behalf a transaction shall be conducted: the country which issued the identification documents, account number and name of bank;
- for a client who is a natural and legal person and other legal person and an entity made equivalent to it to which the transaction is intended: account number, name of bank, and country of the bank.

547. With respect to the manner of reporting of CTRs, reporting entities shall report to AMLO through their authorised persons or his/her deputies using one of the following ways:

- electronically, using electronic data transmission means;
- in paper format by registered mail;
- via fax;
- in paper format by courier.

548. A specific reporting form and instructions to complete the form are provided for in the CTR Rulebook.

549. Where a form is submitted with incomplete or inaccurate information, AMLO may request reporting entities to submit a correctly completed form with full and accurate information within the set deadlines and in the manner defined by AMLO. The representatives of AMLO confirmed that in these instances reporting entities are required to submit information immediately and without delay.

550. According to Art. 5 §2 of the CTR Rulebook, if the electronic capture and data transfer via an electronic form is impossible due to technical impediments, the reporting entities shall notify AMLO without any undue delay, by telephone or in writing (by fax or e-mail) and shall provide for the data delivery in hard copy format or in another manner prescribed in Art. 3 of CTR Rulebook or on another data carrier (e.g. CD-ROM, USB), i.e. via e-mail which states "*A suspicious transaction shall be any transaction for which a reporting entity and/or a competent body shall deem that there shall be reasons for suspicion of money laundering or terrorist financing in relation to a transaction or a person conducting the transaction, i.e. a transaction suspected to involve resources from illegal activities"*.

STR guidance

551. Art. 1 of the STR Rulebook prescribes the manner in which STRs are to be reported to AMLO and the additional information that should be obtained by reporting entities. The definition of a suspicious transaction is provided for in Art. 3 §20 of the AMLTF Law.

552. According to Art. 2 of the STR Rulebook, in addition to information referred to in Art. 16 §1 of the AMLTF Law, reporting entities should obtain to following information which should support any STR submitted:

- for a natural person requesting or conducting a transaction: the country which issued the identification documents;
- for a client who is a natural person on whose behalf a transaction shall be conducted: the country which issued the identification documents, account number, account opening date, name of bank, and country of the bank;
- for a client who is a natural person to whom the transaction shall be intended: date of birth, place of birth, personal identification number, type and name of the identification document, name and country of the identification document issuer, account number, account opening date, name of bank, and country of the bank;

- for a client which is a legal person and other legal person and an entity made equivalent to it for whom the transaction shall be conducted: account number, account opening date, name of bank, and country of the bank;
- for a client which is a legal person and other legal person and an entity made equivalent to it to whom the transaction shall be intended: identification number, account number, account opening date, name of bank, and country of the bank.

553. With respect to the manner of *ex-ante* reporting of STRs according to Art. 3 §1of the STR Rulebook, (see ANNEX XXXV) reporting entities shall report to AMLO by phone, fax or in any other adequate manner.

554. With respect to *ex-post* reporting of STRs, according to Art. 3 §3, reporting entities shall report to AMLO in one of the following manners:

- electronically, using electronic data transmission means;
- in paper format by registered mail;
- via fax;
- in paper format by courier.

555. The STR Rulebook provides for a specific reporting form and instructions for the completion of the reporting form. A copy of the reporting form is set out in ANNEX XXXVI.

556. Where a form is submitted with incomplete or inaccurate information, AMLO may request reporting entities to submit a correctly completed form with full and accurate information within the set deadlines and in the manner defined by AMLO. AMLO representatives confirmed that in such instances reporting entities are required to submit information immediately and without delay. It was also pointed out that the receipt of an incomplete reporting form does not delay the initiation of the analytical process.

557. According to Art. 5 §2 of the STR Rulebook, if the electronic capture and data transfer via an electronic form is impossible due to technical impediments, the reporting entities shall notify AMLO without any undue delay, by telephone or in writing (by fax or e-mail) and shall provide for the data delivery in hard copy format, in another manner prescribed in Art. 3 of the STR Rulebook or on another data carrier (e.g. CD-ROM, USB).

558. The evaluators were satisfied that the Rulebooks issued by the Ministry of Finance provide clear guidance to all reporting entities, including DNFBPs, regarding the manner of reporting, the specification of reporting forms and the procedures that should be followed. It is, however noted that neither the Rulebook nor the reporting form provide details of the address to which the report should be submitted.

559. During the on-site interviews the evaluation team was informed that AMLO, in addition to having issued Rulebooks, organises regular training activities for authorised personnel of reporting entities who report to AMLO electronically.

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

560. Art. 58 §3 of the AMLTF Law provides for AMLO's access to financial, administrative and security data, information and documentation, which is necessary for the performance of AMLO's functions, including the analysis of suspicious transactions. The law states that access must be timely and may be direct or indirect.

561. AMLO has direct access to the following databases:

- Information System of the Ministry of the Interior (Police database);
- National Border Management Information System (NMBIS, Border Police database);
- Tax Administration Information System;
- FINA single register of accounts.

562. In order to improve mutual inter-agency cooperation, the Ministry of the Interior and AMLO signed an Addition to the Protocol on cooperation and exchange of information on 23 November 2011. Based on this additional protocol, both parties have provided direct access to the data contained in their information systems. Data is directly accessible through a secure communication system for data transfer which utilises encrypted telecommunication channels for data exchange. It should be noted that the Ministry of the Interior only has access to data relating to cases that have already been disseminated to them. This mechanism enables the exchange of certain information in a more rapid manner. This increases the efficiency of both AMLO and the Ministry of the Interior.

563. A number of employees (11) of AMLO have access to the following databases of the Ministry of Interior:

- General alphabetic records;
- Records on criminal activities and reported persons;
- Warrant records and notices for people;
- Records on lost and found objects;
- Identification records of natural persons;
- Records of the state border supervision;
- Records of residency in Croatia;
- National Information System for State Border management;
- Records of certain foreigners.

564. In addition to the direct access to different databases, AMLO has indirect access to all other data kept by other government bodies and other state authorities and legal persons with public authorities.

565. Additionally, AMLO maintains the following databases:

- STR database;
- CTR database (cash transactions over threshold of 200.000,00 HRK (approximately €26,000));
- Cross border cash transfer database;
- Real estate database;
- Motor vehicles database;
- Cases database (contains data on cases, subject persons, connected persons, transactions etc. from the establishment of AMLO).

566. In the course of an analysis, AMLO also uses the following publicly-available databases, including a number of commercial databases:

- Court register;
- Register of craftsmen;
- Register of associations.

Additional information from reporting parties (c.26.4)

567. Art. 59 §2&3 of the AMLTF Law set out the powers of AMLO to request information, including additional information. AMLO may order reporting entities to supply all data required for money laundering and terrorist financing prevention and detection in those instances where a suspicion of money laundering or terrorist financing exists. The reporting requirement applies to all entities not just the entity submitting the report. Requests for information may be made when AMLO receives:

- a cash or suspicious transaction report from a reporting entity;
- a written request or a suspicious transaction report or a notification on a suspicion of money laundering or terrorist financing from a foreign financial intelligence unit;

- a written report on a suspicion of money laundering and terrorist financing from a body referred to in Art. 58, §1 of the AMLTF Law;
- a written report on a suspicion of money laundering and terrorist financing from government bodies, courts, legal persons with public authorities and other entities referred to in Art. 64 of the AMLTF Law, as well as from the supervisory body referred to in Art. 83, §1, items b) to e) of this Law.

568. AMLO may require reporting entities to supply other data necessary for money laundering and terrorist financing prevention and detection purposes, such as:

- data on customers and transactions which the reporting entities shall gather in accordance with Art. 16 of the AMLTF Law;
- data on the status of funds and other customer's property held by the reporting entity;
- data on the customer's funds and property turnover held by the reporting entity;
- data on other business relationships of the customers established with the reporting entity;
- all other data and information obtained by the reporting entity in compliance with the AMLTF Law, which data and information shall be required for money laundering or terrorist financing prevention and detection purposes.

569. According to Art. 59 §6 of the AMLTF Law, reporting entities are required to forward data, information and documentation referred to in Art. 59 to AMLO without any undue delay, and no later than fifteen days after the date of the receipt of the request. In exceptional circumstances, pursuant to Art. 59 §7, AMLO may set a shorter time limit for the submission of information where this is necessary for the purpose of determining circumstances of relevance for the issuance of a temporary suspension order of a suspicious transaction, for referring data to a foreign financial intelligence unit, and in other necessary instances when such a course of action shall be required to prevent the causing of economic damage.

570. Art. 59 §8 allows reporting entities to request an extension of the time limit in those cases where large volumes of data are required or for other justified purposes.

571. The AMLO representatives provided the following statistics to the evaluation team with the statistics on additional requests sent to reporting entities.

Table 12: Number of requests for additional information that AMLO sent to reporting entities

YEAR	Number of requests for additional information that AMLO sent to reporting entities
2012.	1184
2011.	1482
2010.	1650
2009.	1469
2008.	2305
2007.	1849
TOTAL	**9939**

572. Additionally, according to Art. 63 of the AMLTF Law, AMLO may request state bodies, local and regional self-government units and legal persons with public authorities to supply data, information and documentation necessary for money laundering or terrorist financing prevention and detection purposes should AMLO deem that reasons for suspicion of money laundering or terrorist financing shall exist in relation to a transaction or a person. The Following table sets out the number of responses to written requests for information submitted to the state bodies and legal persons with public authorities.

Table 13: number of responses to written requests for information submitted by AMLO to the state bodies and legal persons with public authorities

	Responses submitted
2007	200
2008	183
2009	218
2010	220
2011	210
2012	61
TOTAL	1,092

Dissemination of information (c.26.5)

573. According to Art. 65 of the AMLTF Law, AMLO shall disseminate an analytical report in writing to a competent state body or a foreign financial intelligence unit, where, following the analysis of a STR, it determines that there are reasons for suspicion of money laundering or terrorist financing in connection with a transaction or a person in or outside of Croatia. Such reports shall contain all necessary documentation. The AMLO representatives informed the evaluators that "all necessary information" includes the analytical products of AMLO. It is noted that the term "*competent state body*" is not defined in the AMLTF Law, in practice this would be the bodies referred to in Art. 58 (e.g. the State Attorney's Office of the Republic of Croatia, the Ministry of the Interior – the Police Directorate, the supervisory services of the Ministry of Finance (the Financial Inspectorate, the Customs Administration, the Tax Administration and the Financial Police), the Croatian Financial Services Supervision Agency, the Croatian National Bank, the Security-Intelligence Agency, the Ministry of Foreign Affairs and European Integration, the Ministry of Justice and with other state bodies). In practice this lack of definition does not appear to have limited AMLO's ability to disseminate reports.

574. During the on-site visit, the evaluators were informed that in cases of spontaneous dissemination, the Director of AMLO decides which authority is to receive the analytical report. In a situation of suspicion of any criminal or fiscal offence the case is disseminated by AMLO to the State Attorney's Office as well as to USKOK, which is also a prosecuting authority, as well as to other law enforcement bodies that that are authorised to initiate a criminal investigation. The State Attorney's Office is responsible for the onward dissemination of reports at their discretion. If AMLO possesses any information which can be useful for the collection of tax revenues, the case is sent to the tax authorities.

575. Additionally, AMLO may disseminate information to the state bodies referred to in Art. 58 of the AMLTF Law after commencing the analytical process. In particular, pursuant to Art. 64 §1 of the AMLTF Law, AMLO may commence the analytical processing of suspicious transactions at substantiated written proposals of the State Attorney's Office of the Republic of Croatia, the Ministry of the Interior – the Police Directorate, the supervisory services of the Ministry of Finance (the Financial Inspectorate, the Customs Administration, the Tax Administration and the Financial Police), the Croatian Financial Services Supervision Agency, the Croatian National Bank, the Security-Intelligence Agency, the Ministry of Foreign Affairs and European Integration, the Ministry of Justice and with other state bodies as well as of courts and legal persons with public authorities. Such proposals must contain reasons for suspicion of money laundering or terrorist financing with explanation, including the information stated in Art. 64 §.

576. Art. 64 §4 states that if the written proposal falls short of the explanation and information, AMLO shall refer the written proposal back to the body or person which submitted it for further completion. According to Art. 64 §5, if the written proposal was not supplemented within 15 days or if the proposal again fails to substantiate the reasons and indicate information in keeping with the provisions contained in Art. 64 §3, AMLO shall notify the supplier of the proposal in writing

as to the invalidity of the written proposal for the analytical processing purposes, indicating the reasons for which the proposal was not subject to analytical processing procedure.

577. Exceptionally and if the circumstances surrounding the specific case allow so, according to Art. 64 §6, AMLO may commence the suspicious transactions analytical processing also on the basis of available data on persons and transactions. As was stated previously if AMLO deems that, on the basis of analytical processing of data, there are reasons for a suspicion of money laundering or terrorist financing then it shall accordingly and in writing report to the competent state bodies. AMLO always sends a report to the requesting authority with a copy of the report to the State Attorney's Office (if they are not the requesting authority). The State Attorney's Office coordinates the involvement of all other state authorities including, when necessary, the Tax Administration.

578. At the request of AMLO, the bodies that can submit substantiated written proposals shall be obliged to supply information, data and documentation pointing to the suspicion of money laundering or terrorist financing.

579. Additionally, under Art. 73 of the AMLTF Law, on receipt of a substantiated written request filed by courts and the competent State Attorney's Office, AMLO shall supply them with data on cash transactions and data on cash cross-border transactions.

580. AMLO maintains statistics on the results of its analytical work and cases subject to dissemination.

Table 14: Statistics on dissemination of information by AMLO to different state authorities

AMLO disclosures						
	2007	**2008**	**2009**	**2010**	**2011**	**2012***
Police	31	47	53	74	48	32
Tax administration	42	14	16	8	21	10
State attorney's office	33	14	19	16	15	7
USKOK	6	10	5	28	18	8
Financial inspectorate	7	7	19	22	12	2
Security intelligence agency		6	15	6	3	1
Foreign FIUs	1	5	6	6	4	1
Customs			1	1		
CFSSA				1		1
Financial police				1		
CNB				1		
Total	**120**	**103**	**134**	**164**	**121**	**62**

* To 30 June 2012

581. The statistics provided by AMLO clearly show that the total number of disseminations made by AMLO to law enforcement authorities between 2007 and 2012 remained more or less constant. According to the statistics, the largest number of disseminations was sent to the Police. This prompts the evaluators to conclude that, since a significant portion of AMLO information is being utilised by the Police, these reports might probably be linked to proceeds-generating cases which is a very positive signal.

582. Other counterparts that also receive a significant number of disseminated reports are the Tax Administration, State Attorney's Office and USKOK.

Operational independence and autonomy (c.26.6)

583. AMLO was created as a special organisational unit within the Ministry of Finance and is composed of the Director and permanent staff. The Director of AMLO is appointed by the Minister of Finance with the approval of the Government.

584. The decision on the appointment of the Director of AMLO is made pursuant to Art. 127 §1 of the Public Servants Act (Official Gazette number 92/05,107/07, 27/08, 49/11,150/11 and 34/12) and the Rulebook on the Internal Order of the Ministry of Finance class: 023-03/12-01/37 reference number: 513-03/12-20 adopted by the Minister of Finance on 27 April 2012, a part of which refers to the systematisation of positions within the Ministry of Finance.

585. The civil servant is assigned to the work post of the Director of AMLO within the Financial Management, Internal Audit and Supervision Administration of AMLO.

586. The AMLTF Law does not itself provide any fixed term of office for the Director and any specific formal grounds for his transfer or dismissal. However, as the Director is a senior civil servant the terms for transfer or dismissal can be found in Art. 132 and following articles of the Civil Servants Act (Gazette: 92/2005) (See ANNEX XXII).

587. The evaluation team was informed that AMLO does not have its own separate budget. AMLO's total financial budget is decided at ministerial level. Costs of personnel are paid by the Ministry of Finance, from the overall budget of the Ministry. The Croatian authorities stated that AMLO is fully supported by the Secretariat of the Ministry of Finance in securing funds for AMLO to fully and effectively perform its functions and has never encountered any difficulties in the allocation of its annual budget from the Ministry.

588. According to Articles 58 and 59 of the AMLTF Law, AMLO can request any information, including additional information from reporting entities and state authorities necessary to carry out its tasks in the field of combating ML and TF.

589. Pursuant to Article 65 of the AMLTF Law, AMLO can disseminate analytical reports to state bodies. The evaluation team was informed that notifications (disseminations of STR disclosures) to law enforcement authorities are subject to review and approval of the Director of AMLO and there are no other officials within the Ministry of Finance authorised to provide instructions to AMLO in relation to its operational activities. This contributes towards the FIU's operational independence and autonomy.

590. All MoUs are signed by the Director of AMLO.

591. During the on-site visit, the evaluators were assured by senior staff from the FIU that they are not subject to any undue influence or interference.

592. The evaluators believe that AMLO has sufficient operational independence and autonomy and is free from undue influence and interference.

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

593. Information held by AMLO is securely protected (it is marked as classified data). According to Art. 4, §2 of the AMLTF Law, AMLO is allowed to use data, information and documentation it gathered in accordance with the Law only for the money laundering and terrorist financing prevention and detection purposes, unless prescribed otherwise.

594. In order to protect information and data AMLO has implemented measures for technical protection (burglar alarms, fire alarms, cameras) and physical security (guards). Access to all IT systems is password protected. The secure facilities for storing data, both in hard copy and electronic form were reviewed by the evaluators during the on-site visit.

595. Certain employees of AMLO are certified for access to classified data "RESTRICTED", CONFIDENTIAL", "SECRET" and "TOP SECRET" classification and "RESTRICTED", CONFIDENTIAL" and "SECRET" for the EU and NATO classified documents. The level of classification determines who has access to each category of document.

596. AMLO exchanges data with other state bodies solely on the basis of the AMLTF Law (Art. 58, Art. 65, etc.)

597. Regulations governing the protection of the ALMO data are:

- Internal interim guidance on confidentiality of the Anti-Money Laundering Act (in force from 14 October 2008. to 3 October 2012.) - provides a procedure for classification of data, etc.;
- Instruction on the protection of confidential information, the procedure with documents, protective measures for workspace and documents and maintain order at AMLO (in force from 18 December 1998. to 1 October 2012.);
- Instruction on the use and on obligatory measures of protection of intelligent information system of AMLO (effective from 19 January 2001. to 1 October 2012.);
- Instruction on confidentiality of AMLO information, in force from 1 October 2012;
- Instruction on measures and procedures for access, handling and storage of classified and unclassified information of AMLO in force from 1 October 2012;
- Work procedures of AMLO in force from 1 October 2012

598. Furthermore, Art. 75 §2 of the AMLTF Law states "*The Office shall not be allowed to communicate the collected data, information and documentation and the course of action on the basis of this Law to persons to which data, information and documentation or action shall pertain, or to third persons.*"

599. The FIU has a dedicated office which is physically separate from the rest of the government building where it is situated. Access to AMLO's office is possible only with a personalised card.

Publication of periodic reports (c.26.8)

600. Art. 56 §3 of the AMLTF Law requires the Ministry of Finance to submit the AMLO Performance Report at least once a year to the Government of the Republic of Croatia.

601. Additionally, the report on the work of AMLO is an integral part of the Report on work of the Ministry of Finance and it is published regularly on the web-site of the Ministry of Finance. The report on the work of AMLO for 2011 was published on the web-site of the Croatian Government and AMLO's page on the Ministry of Finance website[18]. This report contains the following information:

- The AML/CFT system in Croatia;
- The role of AMLO as a Financial Intelligence Unit;
- Duties and responsibilities of AMLO;
- Key indicators on the work of AMLO in 2011;
- Key indicators on the work of AMLO;
- Cases submitted by AMLO to the competent authorities;
- Analytical intelligence work of AMLO: application of specific measures;
- Anti-corruption cases of AMLO: AMLO's inter-institutional cooperation in the implementation of anti-corruption measures in 2011;
- Prevention and administrative supervision of reporting entities by AMLO;
- Activities of AMLO in the implementation of anti-corruption measures;
- Action Plan for the Anti-Corruption Strategy;

[18] http://www.mfin.hr/en/anti-money-laundering-office and http://www.mfin.hr/adminmax/docs/AMLO_Annual_report_for_2011.pdf

- Activities of AMLO in the Suppression of the Financing of Terrorism in 2011;
- Inter-agency cooperation;
- International cooperation;
- Evaluation of AMLO by international institutions;
- Work on AMLO on suspicious and cash transactions;
- Analytical intelligence work of AMLO;
- Strategic Analysis;
- Statistics;
- Presentation of cases with suspicion of money laundering submitted by AMLO to supervising authorities.

602. It appears that the annual report of AMLO contains quite comprehensive and accurate information. However, the annual report does not clearly specify any ML/TF trends.

603. Additionally, it should be mentioned that AMLO also publishes separately annual ML/TF typologies reports, which specifically describe and interpret the Croatian legal framework and provide case-studies[19].

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

604. AMLO has been an Egmont Group member since 1998 and participates in its working groups. It follows the Egmont Group principles regarding the exchange of information among FIUs. The AMLO representatives are members of the Operational Working Group, Legal Working Group, Charter Review Legal Working Group and they are members of the Regulatory Project Team.

605. In the course of exchanging financial intelligence with foreign counterparts AMLO always takes into consideration the Egmont Group Statement of Purpose and its Principles for Information Exchange between Financial Intelligence Units. Exchange of information with foreign counterparts is carried out through the Egmont Secure Web (ESW).

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

606. AMLO is a special organisational unit within the Ministry of Finance, established by the AMLTF Law. Its structure and scope of work are defined by Art. 19 of the Decree on internal organisation of the Ministry of Finance of 8 March 2012 (NN 32/12).

607. Since the 3rd evaluation round an institutional progress review of the Croatian FIU was carried out through structural reorganisation. In line with the Law on amendments to the AMLTF Law, a new Regulation on Internal Organisation of the Ministry of Finance, adopted in March 2012, established a new structure for AMLO with a total number of 36 positions.

608. The Head of AMLO is the Director. The structure of AMLO comprises two services within which two specialised departments are set up, as indicated below:

a) Service for financial intelligence analytics

Department of suspicious transactions;
Department for strategic analysis and information system.

b) Service for prevention and supervision of reporting entities

Department of financial and non-financial institutions;
Department for inter-institutional and international cooperation.

[19] http://www.mfin.hr/adminmax/docs/Tipologije%20FT-EN.pdf

609. The Service for Financial Intelligence and Analytics analyses the STR data received based on a specific expertise, analyses the CTR database on certain criteria, and identifies, tracks and analyses the occurring types of money laundering.

610. The Department of suspicious transactions performs intelligence analysis based on reports received from reporting entities, proposals from the State authorities and requests from foreign FIUs.

611. The Department for Strategic Analysis and Information System analyses and prepares reports on types of money laundering and terrorism financing. The department also provides feedback to reporting entities about the received STRs and results of the cases based on these STRs. The department is also in charge of designing and maintaining AMLO IT system.

612. The Service of Prevention and Supervision of Reporting entities performs AML/CTF expert and administrative activities in cooperation with reporting entities, prescribed by the AMLTF Law and performs activities in relation to planning and implementation of off-site supervision. The Service also cooperates with competent authorities and takes part in the work of different International bodies with the aim of AML/CFT. It also organises seminars, working meetings and presentations in the country and abroad with regard to the development of the preventive strategy in the area of AML/CFT.

613. The Department of Financial and Non-financial institutions performs off-site (administrative) supervision over reporting entities (financial and non – financial institutions), proposes targeted on-site supervision with respect to the implementation of AML/CFT measures and proposes and prepares legal, subordinate legislation ("sub legal") and internal acts in the area of AML/CFT.

614. The Department for Inter-agency and International cooperation cooperates with competent state authorities with the aim of mutual assistance in achieving AML/CFT strategic and operational goals and takes an active role in the work of the corresponding working bodies of the European Commission and other international bodies (Egmont Group, MONEYVAL).

615. During the 3rd evaluation round the number of employees in AMLO was 17. It should be noted that the number of employees has increased since the last evaluation. Currently there are 22 employees, of whom 10 staff members (analysts) are in charge of tactical analysis, including:

- 8 senior inspectors
- Head of the Service for Financial Intelligence Analytics (for cases with higher degree of classification)
- Head of the Department for Suspicious Transactions (for cases with higher degree of classification).

616. The Croatian authorities informed the evaluation team that in the last 5 years the number of employees was maintained at 22. They emphasised that the world economic crisis had a negative impact on Croatia as well. In this respect since 2008 there has been a restriction on the employment of new staff in public administration. The other negative impact on the turnover of staff is higher salaries paid in the private sector in comparison with salaries in the public administration.

617. During the on-site visit, the evaluators were given a general introduction to the functionality of the software used by AMLO. The analytical intelligence work of AMLO is developed for the purpose of more efficient operational work on prevention of organised crime, money laundering and financing of terrorism. The technological basis for the development of the analytical system is the most modern software from eminent American and world-renowned producers of such technologies (Oracle, Microsoft, i2, Computhink, Quest, Dell, and others). As stated by the Croatian authorities, the technological upgrading of the analytical system will ensure greater safety of collecting, a higher degree of automation in the delivery of confidential data and information processing and integration of data from different source - databases in order to

increase the degree of quality and efficiency of analytical work with the aim of combating money laundering and terrorist financing.

618. The system consists of:

- an Internet system for collecting notification forms from reporting entities - Web 2010 system;
- an analytical system of AMLO, where with the application of modern technology-assisted analytical processes and procedures, analytical intelligence processing and analysis of data is performed;
- Data collected and processed in this way is exchanged within the framework of the Croatian system of prevention of money laundering.

619. Transactions data is collected, analysed and stored in the information system of AMLO, called "NAOS" (new analytical intelligence system), which is based on programs such as Oracle - Database, Decision Support System; i2 - Analysts Notebook; Computhink - ViewWise. Further details of the NAOS System are set out in ANNEX XXIII.

620. The Croatian authorities provided the evaluators with a number of explanations on how software can be used, and how information protection mechanics (in the software part) complies with international requirements. The evaluators were informed about the functioning of the protection mechanism against arbitrary modification and deletion of data collected by AMLO.

Integrity of FIU authorities (c.30.2)

621. The Civil Service Act sets out the requirements for hiring staff as well as regulating conduct and duties. AMLO employees maintain high professional standards, including standards concerning confidentiality. All employees hired by AMLO must pass a security clearance.

622. With the aim of protection of official data and the process of actions of AMLO and fostering the ethics conduct of its employees and protection of institutional integrity of AMLO, based on the demand of AMLO and through the National Security Council Office, a process of security clearance checks was initiated and conducted, in order to manage AMLO officers who have access to the classified data and to be certified with the security clearance of the highest security level.

623. Art. 75 §2 of the AMLTF Law stipulates that AMLO shall not be allowed to communicate the collected data, information and documentation and the course of action on the basis of this Law to persons to which data, information and documentation or action shall pertain, or to third persons.

624. Article 21 of the Civil Servants Act covers non-disclosure of official secrets and respect for privacy. In particular, civil servants are obliged to maintain as secrets all data to which they gain knowledge during procedures concerning external third parties and their rights and obligations and legal interests pursuant to law. The obligation to maintain official or other secrets is required to continue for a period of five years after departure from the civil service, unless specified otherwise by separate legislation. Considering that AMLO staff are all civil servants, the requirement to keep confidentiality according to Article 21 of the Civil Servants Act applies to everybody.

625. Furthermore, Article 26 of the Data Secrecy Act requires that State officials and employees, local and regional self-government bodies, legal persons with public authority as well as legal and natural persons who gain access or handle classified and unclassified data shall keep the classified data secret during the time and after the cessation of their duty or work until the data is declassified or until by the decision of data owner they are free from the duty of keeping the secrecy thereof. When a person is being employed in AMLO, that person must sign a Statement on proceedings with classified information, which also states that obligation of keeping the classified data secret during the time and after the cease of their duty or work until the data is classified or until by the decision of data owner they are free from the duty of keeping the secrecy thereof. This statement is one of the annexes to the Regulation on Classified Information Marking,

the Content and the Form of Security Clearance and the Statement on Classified Information Handling.

Training of FIU staff (c.30.3)

626. Since the 3rd evaluation round AMLO staff members have attended numerous seminars, conferences, courses and training sessions. They regularly participate in training on combating money laundering and financing of terrorism held in Croatia and abroad.

627. AMLO's training covers all important fields of the work of the FIU. In particular, training is related to STR analysis, new ML and TF trends and typologies, IT issues, co-operation with other supervisory bodies, co-operation with the police, new legislative initiatives, international cooperation, financial investigation, new investigative methods and seizure of illegally derived assets. The employees of AMLO also take part in study visits at the premises of foreign counterparts in order to exchange experiences and gain new knowledge.

628. A detailed list of training supplied is set out in ANNEX XXIV.

Recommendation 32 (FIU)

629. In order to assess the effectiveness of the overall system for combating money laundering and terrorist financing, the State Attorney's Office branches, the courts and other state authorities undertake to keep comprehensive statistics and to supply AMLO with data on proceedings concerning money laundering and terrorist financing offences which have been instituted. Data is also provided on proceedings concerning the misdemeanours prescribed by the AMLTF Law.

630. State authorities are obliged to supply AMLO twice a year with data on investigations, indictments, and convictions of money laundering and terrorist financing and on other predicate offences of money laundering, in the manner and within deadlines to be prescribed by the Minister of Finance in a Rulebook (the Rulebook on the manner of and deadlines for supplying the Anti-Money Laundering Office with data on the money laundering and terrorist financing offences).

631. The statistics kept by AMLO are comprehensive and include:

- STRs received by the FIU (including a breakdown of the type of financial institution, DNFBP, or other business or person submitting the STR);
- STRs analysed and disseminated;
- STRs resulting in investigation, prosecution, or convictions for money laundering, financing of terrorism or an underlying predicate offence;
- CTRs received; and
- requests for international cooperation made or received by the FIU.

Effectiveness and efficiency

632. The vast array of databases directly available to AMLO constitutes an effective mechanism for the collection of information for analytical purposes. This ensures that the analysis of a case is conducted rapidly and without any undue hindrances. The analysis is also enhanced through the use of different analytical software available to the analysts.

633. With respect to the analytical process of AMLO a special methodology is established for analysts. In particular, these work procedures describe a list of processes, description of such processes (phases of actions) and responsibilities and obligations.

634. A New analytical case can be opened in the following situations:

- based on the information received from reporting entities about suspicious transactions;
- based on the notification from competent authorities;
- based on a written request or notification of a suspicious transaction from a foreign financial intelligence unit.

635. All STRs received by AMLO are prioritised based on pre-analytical processing of data.

636. In some circumstances a new case can be independently opened by a Head of Department in the absence of the Head of Service. The Head of Service will report on-line on all new opened cases to the Director of AMLO, if necessary this can be done more frequently.

637. The Head of Department purposes to the Head of Service to open a new cases for analytical data processing based on a report of results of pre-analytical processing of data, based on a search of the AMLO transactions database (database of cash transactions, database of cash transfer across the border) using pre-set parameters/criteria (criterion of frequency, value of transaction, residency, records of persons already in the pending cases, etc.).

638. According to the criteria of availability and specialisation of individual inspectors, the Head of Department and the Head of Service determine to whom the new case should assign. The inspector confirms the receipt of a new case by signing in the book of assigned cases. Inspectors record assigned cases in the Inspectors' Book, indicating the date of receipt and the Head of Service puts in the same Inspectors' Book the date of ending of the case and archiving.

639. Before opening a new case and assigning it to an inspector, the Head of Service checks whether a person (natural or legal) who is subject to the report (from RE, local government bodies or foreign financial intelligence units), appears in some other earlier pending cases that are on-going or in already archived cases.

640. After being assigned with a case, an inspector begins with an analytical processing that is performed in stages. The first phase includes an internal analysis and external processing for which there is a prescribed deadline. The second phase of the analytical processing starts if, within the prescribed deadlines for internal and external processing, the inspector doesn't suggest an OST (case referral report) or closes the case. In both phases of the analytical processing, if there are legal grounds, the inspector recommends a motion for issuing an order for on-going monitoring of the customer's financial operations and/or an order to temporarily suspend suspicious transactions.

641. The internal analytical process involves checking of all AMLO databases and supplementary database to which AMLO has on-line access. In particular the following databases are checked:

- Transactions databases;
- Customs database for period from 2009 (CARINA09);
- DNFBP database;
- Real-estate database;
- The AMLO cases database.
- ISPU - Tax Administration information system;
- Ministry of the Interior : MOI databases (IS MOI, NBMIS (National Border Management Information System));
- FINA Database;
- On-line register of the Croatian Commercial Court;
- Business Croatia;
- The Dow Jones Watchlist;
- World Check;
- Dun & Bradstreet database.

642. The deadline for internal analysis is five (5) days from the date of case assignment, and if necessary immediately. Regarding the results of the internal processing the inspector prepares a report in which a proposal for further action is given (undertaking of external processing, the proposal to close the case, the proposal for the preparation of OST, a proposal of response to/request for information from a foreign FIU and/or relevant authorities). The inspector then submits a report on the results of the internal processing to the Head of Department and to the Head of the Service for approval.

643. With respect to the external analysis, this involves collecting additional data from reporting entities, competent government bodies, legal persons with public authorities and foreign financial intelligence units under the conditions prescribed by the AMLTF Law.

644. The external analytical process involves checking of the following databases:

- Commercial Court database, if necessary;
- Foreign financial intelligence units database, if necessary;
- Supervisory bodies of the Ministry of Finance (Tax Administration, Customs Administration, the Financial Inspectorate) and other government agencies if necessary;
- Banks database and other RE for the particular case;
- The Central Depository and Clearing Company Inc. (CDCC) database, if necessary.

645. Regarding the results of the external processing, the inspector prepares a report in which a proposal for further action is given (undertaking of broadening of external processing, the proposal to close the case, the proposal for the preparation of OST, a proposal of response to/request for information from foreign FIU and/or relevant authorities). The inspector then submits a report on the results of the internal processing to the Head of Department and to the Head of the Service for approval.

646. If after collection of all necessary information, data and documents there is no suspicion of money laundering, the inspector writes a report with a proposal to close the case and submits it for approval to the Head of Department and to the Head of the Service. The Head of Service will report on-line on all closed cases to the Head of AMLO, if necessary this can be done more frequently.

647. If it is determined that there are reasons for suspicion of money laundering (if analytical results of data processing indicate that regarding certain suspicious transactions there is an economic-financial illogic and the possible connection of the transactions with typologies of money laundering and / or criminal activities), in this case, the inspector will submit a proposal for OST to the Head of the Department and to the Head of Service for approval (who signs the OST) and the proposed accompanying memorandum with which the competent national authorities shall be inform about the delivery of the OST for further action, (signed by the Head of AMLO).

648. The Croatian authorities informed the evaluation team that on-line feedback has been developed to follow-up on analytical reports in order to assess whether they are effectively used.

649. Based on the comments made to the evaluators by law enforcement authorities during the on-site visit, it appears that the analytical output of AMLO is routinely used as a basis for the initiation of an investigation. This suggests that the analytical reports prepared by AMLO are considered to be of a good quality.

650. Referring to the statistics provided by AMLO (Table 15 below), the number of cases opened by AMLO appears to have remained largely constant between 2007 and 2010, relating to approximately 30-40% of STRs received. However in 2011 and 2012 (first six months) number of disseminated cases to law enforcement dropped, but the number of cases opened by AMLO remained unchanged. AMLO explained that the figures set out below were merely the disseminations to law enforcement and criminal prosecution agencies; other disseminations to non-judicial authorities (including the Tax Inspectorate, HANFA, Foreign FIUs, etc.) are not reflected in the table below.

651. Also considering that the number of cases opened by AMLO remained constant, this led the evaluators to the conclusion that irrespective of the number of reports submitted by reporting entities, the working capacity of the analytical units of AMLO remains the same. This therefore raises questions as to the ability of the analytical units, as they are currently staffed, to effectively manage the number of reports received on an annual basis. For instance, in 2007 2,688 STRs were received and 143 cases opened by AMLO, whereas in 2011, 323 STRs were received and 174 cases opened, this figures indicates that physically it is not possible to analyse more than a certain

number of STRs. Considering that the possible working capacity of AMLO is 36 employees, AMLO should consider hiring more persons, which might have a positive impact on the analytical work of the Croatian FIU.

652. On a positive note, the number of notifications sent to law enforcement authorities and prosecutors is quite high considering the number of cases opened by the FIU and taking into account a comprehensive and accurate procedure for analysts, the evaluation team believes that the quality of the analytical work of AMLO is high.

Table 15: Statistics on STRs received, cases opened, notifications disseminated and judicial proceedings

	Receipt of STRs			Cases opened by FIU			notifications to law enforcement/prosecutors			Judicial proceedings			
							ML		FT	Indictments		Convictions	
	ML	TF	Total	ML	TF	total	LEA	Prosecutors /USKOK		ML	TF	ML	TF
2007	2688	0	**2688**	142	1	**143**	119	39	1	2	0	2	0
2008	2153	4	**2157**	116	6	**122**	97	24	6	11	0	2	0
2009	411	3	**414**	144	3	**147**	106	24	8	4	0	2	0
2010	400	6	**406**	152	4	**156**	109	44	7	3	0	1	0
2011	329	5	**334**	174	3	**177**	63	33	2	1	0	0	0
2012*	189	2	**191**	83	1	**84**	27	15	1	0	0	1	0

*To June 2012

653. In conclusion, although there has been a reduction in the number of STRs received, AMLO considers that this is compensated for by an overall improvement in the quality of reports. This is reflected in the increased number of cases opened. A significant number of cases are subsequently notified to law enforcement agencies and prosecutors and, as previously stated, the evaluators consider that the quality of the analytical work by AMLO is high. During the on-site visit the representatives of law enforcement agencies met confirmed that cooperation with AMLO was "exceptionally good" and that they were satisfied with the information received from AMLO. The State Attorney's Office made similar statements and also commented that both the quality and speed of responses was very good. It is therefore concluded that AMLO is effectively fulfilling the function of an FIU.

2.5.2 Recommendations and comments

Recommendation 26

654. The AMLTF Law defines AMLO as the national unit for the prevention and detection of money laundering and terrorist financing. It is worth to mention that all authorities confirmed the leading position of AMLO within the national system of combating money laundering and terrorist financing.

655. In the opinion of evaluators AMLO has sufficient structural and operational independence, and sufficient financial resources that confirm its ability to effectively perform many FIU tasks.

656. The annual report should contain an analysis of trends in money laundering and terrorist financing that have been identified by AMLO set out in such a way as to assist reporting entities to develop their internal risk procedures.

Recommendation 30

657. The Croatian authorities should consider allocating further resources to both services of AMLO in order to support better performing of their work in all areas described under the AMLTF Law.

658. The Croatian authorities should consider taking measures to reduce the level of turnover of staff in AMLO.

Recommendation 32

659. AMLO should maintain statistics on additional requests made by AMLO for supplementary information broken down by reporting entities and authorities according to Arts. 59 and 63 of the AMLTF Law.

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)

Summary of 2008 factors underlying the rating

660. Croatia was rated 'Partially compliant' for Special Recommendation IX based on the following deficiencies:

- In the case of discovery of a false declaration of currency or bearer negotiable instruments or a failure to declare them, Customs authorities have the authority only in limited situations to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use;
- When it comes to legally carrying things in or out of the Republic of Croatia and there is a suspicion of criminal activity, Customs does not have the power to seize these things;
- There is no explicit provision allowing Customs to stop/restrain currency or bearer negotiable instruments in the case there is a suspicion of money laundering or terrorist financing.

Legal framework

661. The Croatian legal rules governing the transfer of currency and bearer negotiable instruments across borders are the following:

- Foreign Exchange Act (OG 96/03 – 145/10);
- Anti-Money Laundering and Financing of Terrorism Law (OG 87/08, 25/12);
- Rulebook on Controls of Cross-border Cash Movements in Domestic and Foreign Currency (1/09);
- Customs Service Act (OG 83/09, 49/11, 34/12).

662. In 1 January 2010, the Regulation on Amendments to the Foreign Exchange Act entered into force, hence Arts. 36, 37, 38 and 68 of aforementioned Act had ceased to apply and subsequently Decision on Governing the Taking In and Out of the Country of Cash, Cheques and Materialized Securities (OG, 111/03).

Criterion IX.1

663. Croatia has a declaration system for monitor incoming and outgoing cross-border transportations of cash. According to Art. 40 §1 of the Foreign Exchange Act, residents and non-residents shall be obliged, when crossing the state border, to declare to the customs officer any amount of domestic or foreign cash and checks that is being taken into or out of the country that is governed by the act regulating the prevention of money laundering. Additionally, paragraph 2 of this Article also obliges the representative, responsible person or proxy, taking into or out of the country domestic or foreign cash and checks on behalf of any legal person, to declare domestic or foreign cash and checks. The AMLTF Law prescribes abovementioned value at HRK equivalent of €10,000 or more.

664. Article 4 of the Foreign Exchange Act provides for definitions of "*foreign cash*" and "*check*". In particular, "*foreign cash*" shall mean banknotes, coins, monetary claims on a central bank or government of a country of issue. "*Checks*" shall mean monetary claims on their issuers. As could be seen from the definition of "*checks*" it goes beyond the definition of "*bearer negotiable instruments*" as required by the FATF Standards.

665. However, the manner of declaration (oral or written form) it is not stipulated by the Croatian national legislation. Nevertheless, residents and non-residents are obliged to provide all relevant data, including:

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

666. According to Article 74 §1 of the AMLTF Law, bodies of the Customs Administration of the Republic of Croatia shall be obliged to immediately notify AMLO of any declaration of cash entering or leaving across the state border amounting to HKR equivalent of €10,000 or more, no later than within three days from the date of cash crossing the state border.

667. Also Article 74 §2 of the AMLTF Law obliges bodies of the Customs Administration of the Republic of Croatia to notify AMLO within a maximum of three days from the date of cash entering or leaving across the state border in instances when such cash entering or leaving or attempted cash entering or leaving across the state border involves cash amounts less than HKR equivalent of €10,000.00, should reasons be established for suspicion of money laundering or terrorist financing in relation with the person carrying cash, the manner of such cash carrying or other cash carrying circumstances.

668. Art. 74 of the AMLTF Law specifically refers to cash declarations, however pursuant to Art. 81 §6 the Ministry of Finance issued the Rulebook on Controlling Domestic or Foreign Exchange Cash Carrying across The State Border that defined "*cash*" used in Art. 74 of the AMLTF Law. "*Cash*" should be understood to be:

- banknotes and coins in circulation as legal means of payment in the country or abroad;
- bearer-negotiable instruments such as traveller's cheques, negotiable instruments (including cheques, bills of exchange, blank promissory notes and money orders and other) issued either to a bearer, endorsed without restriction, made out to a fictitious recipient or otherwise in such form that title thereto shall pass upon delivery as well as incomplete instruments (including cheques, blank promissory notes, money orders and other), signed but with the recipient's name omitted.

669. It appears that a declaration system in Croatia applies to both "*cash*" and "*bearer negotiable instruments*" as required by the FATF Recommendations.

670. Based on data provided by declarant, the customs officers are required to AMLO of cross-border cash movements using the Notification Form stipulated by the Regulation on Controls of Cross-border Cash Movements in Domestic and Foreign Currency.

671. At the on-site visit, the evaluators noticed that at the airport of Zagreb there were no posters or brochures or any other notifications related to the obligation to make a declaration. They were also no requirements to make such a declaration upon arrival and departure from Croatia. Nonetheless, the Croatian authorities have assured the evaluators that, at the airport of Zagreb, as well as at the airports of Split and Dubrovnik, there are posters related to the obligation to make a declaration at the arrival and departure points (arrival: after passport control, immediately before customs counter; departure: at the customs counter) and next to information counter also (centre of the airport). The posters were donated by European Commission and were posted in 2011.

Criterion IX.2

672. The Customs Service Act stipulates that authorised customs officers execute supervision and control of taking in and out of the Croatian customs area the domestic and foreign means of payment, in accordance with foreign exchange regulations. During the performance of this supervision and control they are entitled to inspect the persons in cross-border traffic and to inspect and search the luggage and other items that such persons carry therewith (Art. 21 of Customs Service Act). These actions also include the right to check and verify the identity of persons. When carrying out supervision and control authorised customs officers are entitled to inspect and search conveyance and means of transportation at any location.

673. The Customs Service Act further refers to the implementation of foreign exchange regulations in those cases when domestic or foreign means of payment are found in an amount larger than permitted in trans-border traffic.

674. In accordance with Art. 18 of the Customs Service Act (See ANNEX XXV) while supervising the implementation of the law and other regulations, authorised customs officers execute customs and excise controls, prevent and detect offences and criminal acts under the provision of Customs Service Act and other acts, they have power to:

1. *follow, stop, inspect and search vehicles, means of conveyance and goods;*
2. *check and verify an identity;*
3. *search a person;*
4. *inspect and search business premises, facilities, documentation, examine the authenticity and veracity of documents submitted in the customs procedure;*
5. *temporarily seize the items and documents;*
6. *temporarily restrict the freedom of movement;*
7. *summon a person;*
8. *collect, process, record and use personal and other data;*
9. *use means of coercion.*

675. According to Article 31 of the Customs Service Act the authorised customs officers can examine the documents submitted in the customs and tax procedure and the data stated in such documents. They are entitled to request from a person who is under the law bound to provide the data or fulfil certain obligation, to present thereto within certain deadline and at a designated place any bookkeeping document, contract, business correspondence, records or any other document deemed necessary for exercising customs and tax control.

676. Authorised customs officers are entitled to use means of coercion only if assigned to a position determined as such by the Ordinance on Internal Order and have passed the exam in accordance with the prescribed training program. Furthermore, authorised customs officers who are appointed as investigators are entitled to conduct evidence recovery operations conferred by the State Attorney's Office under the Criminal Procedure Act and rules of their profession.

677. According to Art. 24, §2 of Customs Service Act, authorised customs officers are entitled to summon the participants in customs and tax procedure and other persons for whom it may be presumed to have access to information with the scope of discovering facts relevant for establishing the criminal liability for acts featuring violation of customs regulations, and other regulations falling within the competence of Customs Administration.

Criterion IX.3

678. Authorised customs officers are entitled to inspect the persons in cross-border traffic and to inspect and search the luggage and other items that such persons carry therewith. These actions also include the right to temporarily restrict freedom of movement, pending completion of statutory customs procedures, or if the offence perpetrated by violating the customs or tax regulations, but for no longer than six hours.

679. If the reason of temporary restraint is committing or attempting to commit an offence stipulated by other laws or by a criminal act, the responsible police department is required to be notified without delay.

680. Should any domestic or foreign means of payment that is found during the inspection of the persons in cross-border traffic, their luggage and other items they carry therewith in amounts exceeding the limit prescribed for cross-border traffic, a procedure shall be undertaken in compliance with the foreign exchange and other regulations.

681. If the passenger fails to declare domestic and foreign cash amounting HRK equivalent of €10,000 or more, the whole amount intended to be carried across the border will be temporary seized, except for the symbolic amount necessary for the continuation of the journey.

682. The means of payment which are not declared or are subject to the offence shall be temporary seized by authorised customs officers and paid to a special separate account of the Financial Inspectorate. Furthermore, an indictment proposal to initiate infringement proceedings is to be forwarded to the Financial Inspectorate, along with the record of the temporary seized means of payment.

683. The assessment team was advised by interveners that random checks, based on a risk analysis are performed on persons crossing the border via the green corridor.

Criterion IX.4

684. As was previously stated, the following information should be provided by the declarant:

- full name;
- date and place of birth and nationality;
- owner of the cash;
- intended recipient of the cash;
- amount and nature of the cash;
- provenance and intended use of the cash; and
- transport route and means of transport.

685. In accordance with Art. 81 (4) of the AML/CFT Act, the Customs Administration bodies keep the following records:

- *records on the declared and undeclared cash in domestic or foreign currency amounting to HRK equivalent of EUR 10,000 or more, entering or leaving across the state border;*
- *records on cash entering or leaving or attempted cash in the domestic or foreign currency in an amount less than HRK equivalent of EUR 10,000 entering or leaving across the state border, where there is reason for suspicion of money laundering or terrorist financing.*

686. However, there is no specific requirement to retain the identification data of the bearer(s).

Criterion IX.5

687. Pursuant to the Art. 74 of the AMLTF Law, the Ministry of Finance – Customs Administration is obliged to notify AMLO, immediately and no later than within three days from the date of cross-border cash movements, of:

- *any declaration of cash, in domestic or foreign currency, entering or leaving across the state border amounting to HRK equivalent of EUR 10,000.00 or more;*
- *any cash entering or leaving across the state border in instances when such cash carrying is not declared to customs;*
- *in instances when cash entering or leaving or attempted cash entering or leaving across the state border involves cash amounts less than HRK equivalent of EUR 10,000.00 if there reasons for suspicion of money laundering or terrorist financing are established in relation with the person carrying cash, the manner of such cash carrying or other cash carrying circumstances.*

688. Methods of notification are stipulated by the Rulebook on Controls of Cross-border Cash Movements in Domestic and Foreign Currency issued by the Minister of Finance, as following:

- in electronic form using electronic data transmission;
- in printed form using registered mail;
- in printed form using fax; and
- in printed form using courier.

689. The notification must include information about:

- the person who; for himself or another person; transferred or attempted to illegally transfer cash or checks across a state border;
- time and place of state border crossing;
- type and amount of cash;
- information on whether there is suspicion on money laundering or terrorist financing;
- data on use of cash or checks;
- the type of vehicle and date of transfer; and
- date of notification to AMLO.

Criterion IX.6

690. At the domestic level, it appears that there is adequate co-ordination among customs, AMLO, police, Financial Inspectorate and other related authorities on issues related to the implementation of Special Recommendation IX.

691. The evaluation team was informed that there is a written Protocol on Cooperation and Establishment of Inter-Institutional Working Group for the Prevention of Money Laundering and Terrorist Financing which entered into force on 1 March 2007. The goal of the Protocol is to strengthen cooperation in the field of money laundering and terrorist financing aiming to contribute to the development of efficient anti-money laundering and terrorist financing system in the Republic of Croatia.

692. Furthermore, at the end of 2007 the Protocol on Cooperation and Exchange of Information between Ministry of Interior, Ministry of Finance – Customs Administration, Tax Administration, Financial Police, Financial Inspectorate and Anti-Money Laundering Office was signed. The mentioned Protocol includes among other cooperation and data exchange between aforesaid bodies.

693. The evaluation team was advised that the Ministry of Finance – Customs Administration continuously exchange information with AMLO and the Financial Inspectorate regarding possible cases and suspicions on illegal trans-border cash movements.

694. Additionally, the Ministry of Finance – Customs Administration holds Intra-Agency meeting as needed and especially before and during international joint customs operations aimed to prevent money laundering and to control legal trans-border cash movements. On those occasions Ministry of Finance – Customs Administration requests help and support primarily from Ministry of Interior, Financial Inspectorate and Anti-Money Laundering Office.

Criterion IX.7

695. During the interview with the Customs Administration its representatives informed the evaluation team about their international cooperation and information exchange with international bodies. The Ministry of Finance – Customs Administration realises its international cooperation with the customs services of the EU Member States on the basis of the Protocol 5 on the Stabilisation and Association Agreement between the European Countries and their Member States and the Republic of Croatia (OG International Agreements 14/01) as well as on the basis of the bilateral contracts on the custom cooperation entered into with some of EU Member States.

696. Concerning the Central European Free Trade Agreement (CEFTA) members, international cooperation is realised on the basis of the mutual assistance concerning custom issues within the Middle-European Contract on Free Trade (OG IA 4/03), while international cooperation with EFTA members is realised within the Agreement between EFTA States and the Republic of Croatia – Annex IV – Mutual Administrative Assistance in Customs Matters (OG IA 12/01).

697. At the same time, cooperation with the members of the Southeast European Law Enforcement Center (SELEC) is realised on the basis of the Convention of the Southeast European Law Enforcement Centre (OG IA 5/11).

698. The Ministry of Finance – Customs Administration participates in the international joint customs operations aimed to prevent money laundering and to control legal trans-border cash movements (ATHENA, ATLAS).

699. Furthermore, the Ministry of Finance – Customs Administration enters data regarding all illegal trans-border cash movement, in accordance with required parameters and excluding all personal data, in the database of the World Customs Organisation through its Customs Enforcement Network (CEN) system.

700. Additionally, AMLO can exchange information received from the Customs with foreign FIUs according to Art. 69 §1 of the AMLTF Law. In particular, AMLO can submit data, information and documentation on customers or transactions in respect of which reasons for suspicion of money laundering or terrorist financing exist, and which AMLO shall collect or keep in line with the provisions contained in the AMLTF Law, to a foreign financial intelligence unit at such unit's request sent in writing on the basis of the effective reciprocity.

Criterion IX.8

701. According to Art. 69 of the Foreign Exchange Act, a fine of HRK 5,000 to 50,000 can be imposed for an offence made by a foreign or national natural person, foreign or natural legal person, representatives, responsible persons or proxies of national or foreign persons who try to transfer or are transferring across state borders, without declaration it to the Customs, cash or checks in excess of the value prescribed by law governing money laundering. It does, however, appear that there are no powers provided to the Croatian authorities to apply sanctions to persons who made a false declaration.

702. At the time of the on-site visit, the evaluators were advised that between 2007 and June 2012 244 administrative penalties had been imposed in the amount of HRK 2,100,700 (approximately €275,000).

Criterion IX.9

703. There are no specific sanctions, other than those as detailed in IX.8, applicable for cross-border physical transportation of payment instruments for the purposes of ML or FT. Criminal

sanctions set forth in the criminal legislation, as discussed in earlier sections of this report, are available to deal with natural persons that fail to comply with AML/CFT requirements.

Criterion IX.10

704. The measures in the context of Recommendation 3 (Criteria C.3.1 to C.3.6) apply to persons who physically transport cash or bearer negotiable instruments related to terrorism financing or money laundering operation. The relevant deficiencies identified in section 2.3 of the report apply in this context.

Criterion IX.11

705. Measures in connection to SR.III (criteria III.1 to III.6) apply to persons who physically carry cash or bearer negotiable instruments related to terrorism financing operations. The relevant deficiencies identified in section 2.4 of the report apply in this context.

Criterion IX.12

706. The evaluation team has not identified any formal obligations in the legislation which would require the Customs authorities to notify the foreign counterparts in cases of unusual cross-border movement of gold, precious metals or precious stones. The authorities advised that such co-operation would be undertaken on the basis of bilateral agreements.

707. In cases of detection of an usual cross-border movement of gold, precious metals and precious stones, the Ministry of Finance - Customs Administration cooperates with all relevant authorities at national level, including those responsible for permit issuing and law enforcement bodies, particularly with the Ministry of Interior, while at the same time cooperating with customs services from other countries

708. In particular, the Ministry of Finance – Customs Administration conducts its international cooperation with the custom services of other EU Member States on the basis of the Protocol 5 on the Stabilization and Association Agreement between the European Countries and their Member States and the Republic of Croatia (OG International Agreements 14/01) as well as on the basis of the bilateral contracts on custom cooperation with some of EU Member States. On the basis of international cooperation agreements the Customs Authority can exchange information and notifications with their counterparts.

709. At the same time, the cooperation with the members of SELEC is exercised on the basis of the Convention of the Southeast European Law Enforcement Centre (OG IA 5/11).

710. In the framework of international and bilateral agreements Ministry of Finance – Customs Administration continuously cooperates with international organisations, such as the World Customs Organisation, SELEC, OLAF and INTERPOL, as well with customs services of other countries, and regularly exchanges data related to detecting and combating all forms of trans-border crime, including the related example of Kimberly Process.

Criterion IX.13

711. The evaluators were informed that notifications on cross border cash movements as described by the AMLTF Law are forwarded electronically by customs officers who enter the required data directly into the database of AMLO. In order to do so, customs officers have to be specifically authorised. Access to this database is available only with assigned user name and password.

712. A notifications sent to AMLO can be reviewed and corrected only by customs officers and officers of AMLO who are specifically authorised for that purposes and only with assigned user name and password.

713. Authorised customs officers in the Central Customs Office (4 of them at the time of the on-site visit) have signed an Agreement on Data Confidentiality Protection relating to the submission of data on legal and illegal trans-border cash movements to AMLO.

714. The Croatian system for reporting cross border transactions appears to be subject to adequate safeguards to ensure the proper use of the information or data that is reported or recorded. Only a limited number of AMLO and Customs Administration officials have full access to the database. In accordance with the AMLTF Law the illegal dissemination of information is prohibited.

Criterion IX.14

715. Pursuant to the Educational Program for Training and Professional Specialisation for Officials of the Ministry of Finance – Customs Administration, trainings is carried out each year. This Educational Program includes the training program for customs officers with respect to controls of cross-border cash movements and prevention of money laundering and financing of terrorism. Moreover, training regarding accessibility and entering data on trans-border cash movements in the databases of AMLO are provided for contact persons including customs officers of the Ministry of Finance – Customs Administration, as needed.

716. With respect to data collection, all required data regarding legal and illegal trans-border cash movements are collected immediately and distributed accordingly. Thus gathered data are compiled by the 15th of each month for the previous month for further analysis and preparation of statistics.

Additional elements

717. Some of the elements of the Best Practices Paper are in place, such as inspections of a person, baggage or mode of transport, profiling of passengers, threshold limit, and international co-operation.

718. Croatia is still in the process of implementation of some measures set out in the Best Practices Paper for SR IX.

719. Notifications of declared and non-declared trans-border cash movements are maintained in the computerised database of AMLO. Customs officers who are authorised to have access to this database have signed confidentially agreement with AMLO and can check this database when required.

Recommendation 30 (Customs authorities)

720. The Customs Administration is an organisational unit of the Ministry of Finance. The Customs Administration is organised into a Central Office, and 7 Customs Houses as internal organisational units and 106 Customs Offices.

721. The Customs Offices are established in order to perform all or some of the work of Customs Houses. On the customs territory of the Republic of Croatia 70 of the customs offices of are border customs points. Of the 3,017 customs officials, 1,467 are working on border customs offices, and among other things they carry out the control of the trans-boundary transfer of cash.

722. Within the Central Office, a Service for Mobile Units has been established within the Sector for Control. As part of Service for Mobile Units there are Departments for Mobile Unites, which operate throughout the customs territory of each Customs House. The Service for Mobile Units employs 140 customs officers whom among others are entitled to carry out the control of trans-boundary transfer of cash.

723. The Service for Customs Investigations operates within the Sector for Control and employs customs officers who are contact persons for AMLO – customs officers authorised to submit data on both legal and illegal cross-border cash transfers to AMLO.

724. At least 4 times each year the Ministry of Finance – Customs Administration holds training seminars at Regional customs centres for education. Thematic training is focused on controls of cross-border cash movements and prevention of money laundering and financing of terrorism.

This training is intended for authorised customs officers at border customs offices as well as for the authorised customs officers of Department for Customs Controls within Customs Houses and authorised customs officers of Departments of Mobile Units. Additionally, similar training is held for trainees before taking their customs expert exams.

725. AMLO also provides training for authorised customs officers on the money laundering and terrorism financing prevention system in the Republic of Croatia. In addition and as needed training regarding accessibility and entering data on trans-border cash movements in databases of AMLO are provided for contact persons of Ministry of Finance – Customs Administration.

726. Additional training is conducted occasionally by other state bodies, such as by Ministry of Justice which recently organised 4 seminars in cooperation with the Embassy of the United Kingdom. These seminars were organised within the Project "Strengthening of Institutions of the Republic of Croatia in Implementing the Procedures on Forfeiture of the Proceeds of Crime" and was also intended for and attended by customs officers.

Recommendation 32

727. Statistics from the FI's Misdemeanour Departments about submitted indictment proposals for not declaring the cash amounts of €10,000 or more when crossing the state border, for the period from 2007 to 30 June 2012 are in the table as follows:

Table 16: Number of submitted indictment proposals for not declaring the cash amounts of €10,000 or more when crossing the state border

Year	Number of submitted indictment proposals			Final Misdemeanour Proceedings			
	Customs administration	Police administration	Financial inspect.	Number of subjects	Penalties imposed (kn)	Seized money (€)	Returned money (€)
2007	46	3		51	410,100	346,367	388,552
2008	51	4		46	413,100	281,099	387,094
2009	37	2	1	45	291,500	784,177	378,121
2010	26	1		37	461,000	1,049,191	483,204
2011	25	1		28	308,000	369,263	293,374
2012*	20			17	217,000	316,484	382,290
Total	205	11	1	224	2,100,700	3,146,583	2,312,638

*To June 30

728. The requirement to maintain records of cross-border cash movements is set out in Art. 81 of the AMLTF Law and in the Rulebook on Controls of Cross-border Cash Movements in Domestic and Foreign Currency, which entered into force on 1 January 2009.

729. Records required by law are kept and maintained in appropriate electronic or paper form and contain the following data:

- name and surname of the person who transfer the cash;
- type and amount of cash;
- information whether there is suspicion on money laundering or terrorist financing;
- date of transfer; and
- date of notification of Anti-Money Laundering Office.

730. As stipulated by Art. 79 of the AMLTF Law, the bodies of the Customs Administration are obliged to keep the required records and data for a period of twelve years from the collection date. Upon the expiration of the period, data and information shall be destroyed pursuant to the law regulating archive contents and archives. The following tables set out a summary of the legal and illegal cash movements recorded.

Table 17: Amount money legal transferred

Legal Transfer						
Year	**Declare**	**Entry**	**Amount - €**	**Exit**	**Amount - €**	**Total - €**
2010	1,077	641	1,825,428,073	416	1,957,390,490	3,782,818,563
2011	1,280	741	565,790,074	541	2,035,024,716	2,608,682,385
2012*	508	385	258,275,057	105	323,965,497	582,240,555
Total	2,865	1,767	2,649,493,205	1,062	4,316,380,703	6,973,741,504

Table 18: Amount money illegal transferred

Illegal transfer						
Year	**Misdemeanour**	**Entry**	**Amount - €**	**Exit**	**Amount - €**	**Total - €**
2010	20	11	341,150	9	234,440	575,590
2011	28	17	611,166	11	279,286	890,452
2012*	19	14	519,415	5	80,200	599,615
Total	67	42	1,471,731	25	593,926	2,065,658

*To June 30

Effectiveness and efficiency

731. The following table sets out the number of declarations and illegal transfers in the period 2010 to 30 June 2012. Information from declarations and controls is retained by Customs and send to AMLO on an ongoing basis (in case of a ML/TF suspicion and any declared and undeclared cash carrying in and out in domestic or foreign exchange across the state border equal to or greater than Kuna equivalent of €10,000).

Table 19: Number of declarations and illegal transfers

	Declarations	**Illegal transfers**
2010	1,077	20
2011	1,280	28
2012*	508	19

*To 30 June 2012

732. If non-declared cash, amounting to Kuna equivalent of €10,000 or greater, is found during such controls the person will be fined.

733. The Croatian Customs Services exchange information on the domestic and international level. Domestically, the Customs Administration co-operates with AMLO, the Financial Inspectorate, Police and the prosecution authority. Internationally, they exchange information on cash controls using different channels. They also participate in the international joint customs operations aimed to prevent money laundering and to control legal trans-border cash movements (ATHENA, ATLAS).

2.6.2 Recommendations and comments

734. The Croatian Authorities have established a border control system which allow for screening of the cash imports and exports.

735. The data on cash entering and leaving Croatia are registered and forwarded to AMLO and sanctions have been applied for misdemeanours.

736. A requirement to retain the identification data in instances when a declaration exceeds €10,000, where there is a false declaration or where there is a suspicion of ML or TF, should be introduced.

737. Powers should be introduced to apply sanctions to persons who make a false declaration.

2.6.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**LC**	• No requirement to retain the identification data in instances when a declaration exceeds €10,000, where there is a false declaration, where there is a suspicion of ML or TF; • No powers to apply sanctions to persons who make a false declaration.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Scope of coverage of AML/CFT preventive measures as they apply to the financial sector i.e. what sectors are covered and to what extent

738. The preventive measures for the Croatian financial sector are primarily set out in the Anti-Money Laundering and Terrorist Financing Law ("AMLTF Law"). This new law came into effect on 1 January 2009. The AMLTF Law introduces complete CDD procedures according to the 3rd EU Directive as well as requirements relating to PEPs, restrictions in cash operations and a prohibition of the use of anonymous products.

739. Additionally relevant primary legislation to which the AMLTF Law makes reference and which supplies additional requirements to reporting entities and to supervisory authorities, for example regarding their sanctioning power, exits, e.g. the Credit Institutions Act (CIA), Insurance Act, Securities Market Act, etc. has been introduced. Primary legislation in many cases gives the authority to create secondary legislation regarding specific subsets of the subject matter of the primary legislation. The Ministry of Finance has adopted nine different rulebooks and for the purpose of a uniform application of the provisions of the AMLTF Law and regulations adopted pursuant to this Law, the CNB, HANFA and FI have adopted the Guidelines for reporting entities.[20]

740. Art. 4 of the AMLTF Law defines the "reporting entities" under the Law, to which the requirements set out in the AMLTF Law apply. The Law sets out a number of provisions which apply equally to DNFBP and financial institutions. Art. 3 §12 of the AMLTF Law refers to the definition of a *credit institution* as provided for by the CIA. Other financial institutions as set out in Art. 3 of the AMLTF Law are similarly cross referenced. It is obvious that the law drafters of the AMLTF Law have covered all the kind of financial activities as described by the FATF Methodology.

741. A detailed description of the financial institutions covered by the AMLTF Law and their principal supervisors is set out under section 1.3 above.

Other Enforceable means

742. The AMLTF Law of Croatia sets out a framework for the AML/CFT regime in Croatia however the detailed provisions for obliged entities ("reporting entities") are set out in sectoral guidance. Thus many of the detailed requirements of the FATF Recommendations are set out in guidelines issued by the competent supervisory bodies as designated by Art. 83 of the AMLTF Law, namely:

a) AMLO;
b) the Financial Inspectorate of the Republic of Croatia;
c) the Tax Administration;
d) the Croatian National Bank; and
e) the Croatian Financial Services Supervision Agency.

743. This gives rise to the question of whether the guidelines issued by the competent supervisory bodies can be considered other enforceable means (OEM) in accordance with the FATF Methodology.

[20] Guidelines for reporting entities subject to control by the financial inspectorate in relation to the enforcement of the AMLTF Law were adopted by the FI on September 10, 2010 with revised guidelines being published on the Ministry of Finance's website in September 2011. In June 2012 the CNB adopted new CNB Guidelines for the implementation of the Anti-Money Laundering and Terrorist Financing Law with respect to credit institutions, credit unions and electronic money institutions. On the date of adoption of these Guidelines, the Guidelines for the analysis and assessment of money laundering and terrorist financing risks for credit institutions and credit unions of 9 July 2009, ceased to have effect. HANFA has issued in April 2009, and updated in September 2009, Guidelines for the Implementation of the Anti-Money Laundering and Terrorist Financing Act for the reporting entities falling within the competence of the Croatian Financial Services Supervisory Agency (HANFA)

744. The evaluators have been provided with Guidelines issued by the Financial Inspectorate of the Republic of Croatia, the Croatian National Bank and the Croatian Financial Services Supervision Agency (see ANNEXEs XXVII to XXIX). These Guidelines are comprehensive and the AML/CFT requirements are clearly set out and appear to be are understood be the reporting entities as being enforceable. Art 88 of the AMLTF Law provides the authority for issuance of such guidelines. Art. 7 (3) requires that reporting entities shall undertake to *align* the risk analysis and assessment with the guidelines passed by the competent supervisory bodies. The requirement to "*align*" gives a clear indication that the requirement is for reporting entities to apply all of the aspects of the guidelines to their internal procedures.

745. Art 90 (1). 1 then sets out sanctions[21] for "*failure to develop a risk analysis, i.e. failure to make a risk assessment for individual groups or types of customers, business relationships, products or transactions or failure to make the risk analysis and assessment compliant with guidelines passed by the competent supervisory body (Article 7, paragraph 2, 3 and 5)*." Although the term "risk analysis" is used in the context of the both the AML TF Law and the guidelines themselves, it is clear that this applies to the range of AML/CFT requirements as set out in the guidelines.

746. The sanctions are regarded as being effective, proportionate and dissuasive. In the period from 2009-2011, The Financial Inspectorate have instituted 11 indictment proposals with regard to Art 7 (3) a number of which related to breaches in the requirements as set out in the Guidelines. As at 1 June 2013, 5 misdemeanour orders were subsequently issued resulting in aggregate fines of HRK 280,000 (€34,400) against obliged entities and HRK 12,000 (€1,560) against responsible persons. In addition a significant number of warning letters, setting out required remedial action, have also been sent out.

747. Additionally, certain requirements are set out in Rulebooks issued by the Ministry of Finance. These Rulebooks clarify a number of issues including requirements relating to suspicious transaction reporting. Further details of these Rulebooks are set out in Section 1.5 d above. These Rulebooks also carry sanctions details of which are set out in ANNEX XXXII.

748. It would thus appear that:-

1. The Guidelines and Rulebooks set out and underpin requirements addressing the issues in the FATF Recommendations;
2. The Guidelines and Rulebooks are issued by a competent authority; and
3. There are sanctions for non-compliance.

749. It is therefore concluded by the evaluators that the Guidelines and Rulebooks can be accepted as other enforceable means.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering /financing of terrorism

750. The evaluators welcome the improvement brought to the AML/CFT legislation since the 3rd round report by introducing the risk-based approach. The risk-based approach is embedded in the AMLTF Law and in related guidance and regulations. According to the legal requirements, reporting entities are obliged to develop a risk analysis and apply it to rate risks of individual groups or types of customers, business relationships, products or transactions in respect of possible abuse relative to money laundering and terrorist financing taking account of the specificities of the reporting entity and its operations, e.g. the reporting entity's size and composition, scope and type of business matters performed, types of customers it deals with and products it offers. The purpose of introducing the risk-based approach in Croatia is to ensure that anti-money laundering and terrorist financing measures applied by banks and other financial institutions are proportionate to the identified risk. This approach provides for determining

[21] A pecuniary penalty ranging from HRK 50,000 to HRK 700,000 (€6,500 to €91,000).

potential money laundering and terrorist financing risks and enables the institutions to focus on those customers, business relationships, transactions or products which pose the greatest risk. An enhanced scrutiny regarding establishing relations with high-risk customers, such as foreign correspondent banks and PEPs, is required by law and regulations.

751. The evaluators were advised during on-site meetings that more than twenty different risk indicators are used in practice, i.e. list on high risk countries.

752. According to Art. 39 of the AMLTF Law transactions using cash, exceeding the amount of HRK 105,000 (c. €15,000) or in the arrangements with non-residents valued in excess of €15,000, are not permitted for: selling goods and rendering services; sales of real-estate; receiving loans; selling negotiable securities or stakes. However, there are provisions in Art 14 of the AMLTF Law which provide blank exemptions from conducting due diligence measures for some financial services/products. This approach is largely modelled on the EU Third AML Directive. This regulation is not fully in line with the FATF standard whereby minimum CDD (i.e. less detailed CDD) should nevertheless be accomplished, including in circumstances where the risk of money laundering and terrorist financing is low.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

753. Croatia has taken significant steps to remedy the deficiencies of preventive measures i.e. customer due diligence measures, identified in the third round. Reporting entities identify and verify their customers and the system is generally in line with the international standards; however some deficiencies against international standards still remain.

754. All three main stages of FATF Rec 5, (which could be summarised as the customer *due diligence* process, the *risk* element, and the *verification* process) are implemented in Croatian legislation.

755. In accordance with Art. 30 (3) and Art. 35 (1) 4) of the AMLTF Law, a reporting entity is required to apply an enhanced due diligence measure or measures in accordance with the risk associated to each type of client, business relation, property or transaction, when it shall deem the risk to be in accordance the types of ML/TF risk as set out in Art. 7 of AMLTF Law. Reporting entities are obliged to develop a risk analysis, taking account the entities own specificities, size and composition and its operations and apply the risk analysis to rate risks of individual groups or types of customers, business relationships, products or transactions in respect of possible abuse relative to money laundering and terrorist financing. Furthermore, Article 90 §1 1. makes failure to develop a risk analysis,(i.e. failure to make a risk assessment for individual groups or types of customers, business relationships, products or transactions) or failure to make the risk analysis and assessment compliant with guidelines passed by the competent supervisory body a sanctionable offence.

Recommendation 5 (rated NC in the 3rd round report)

Summary of 2008 MER factors underlying the rating

756. The third round MER had concluded a 'NC' rating for Recommendation 5 on the basis that:

- Anonymous accounts and accounts in fictitious names were prohibited for only certain types of accounts and it was unclear how many of these accounts existed before 2003 and how many of them were closed afterwards.
- There was no legal obligation which covers customer identification:
    - when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII;
    - when the financial institution has doubts about the veracity or adequacy of previously obtained identification data; or

- when there is a suspicion of terrorist financing.

- Croatian legislation does not provide for a concept of "beneficial owner" as required by the Methodology.
- The documents which can be used for verification of identification are not sufficiently determined by Croatian Law.
- There were no requirement regarding:
  - the purpose and nature of the business relationship;
  - ongoing CDD;
  - enhanced CDD; or
  - conducting CDD on existing customers.
- The Croatian preventive system did not provide a "risk based approach", requiring financial institutions to perform enhanced CDD measures for higher risk categories of customers, business relationships, transactions and products.
- The exemptions from identification which were stipulated by the AML Law and the AML By-law raised concerns.

Anonymous accounts and accounts in fictitious names (c.5.1)

757. According to Art. 37 of the AMLTF Law there is a clear provision that the reporting entities are not allowed to open, issue or keep anonymous accounts, coded or bearer passbooks for customers, i.e. other anonymous products which would indirectly or directly enable the concealment of a customer's identity. This provision applies to all credit institutions and financial institutions and concerns all accounts in Kuna and in foreign currency.

758. According to the transitional provisions of the AMLTF Law (Art. 103 (1)) the reporting entities were obliged to close all anonymous accounts, coded or bearer passbooks as well as all other anonymous products, including accounts registered to false names that directly or indirectly enable the concealment of customers' identity within 30 days upon the effective date of AMLTF Law; not later than 31 January 2009. For those anonymous accounts, coded or bearer passbooks as well as other anonymous products which were existing on that date, the reporting entities were obliged to conduct customer or other product user due diligence, during the first transaction by the customer or if it was impossible the funds were transferred to special accounts.

759. Art 49 §4 of the Constitution of the Republic of Croatia prescribes that the rights acquired by investing capital cannot be diminished by any law or other legal act. This provision is related to protection of rights acquired by investing capital; it does not provide a basis for anonymous products, which are banned with a law. The Croatian authorities have confirmed that all anonymous accounts or anonymous savings books which existed in banks, credit unions and saving banks have been closed.

760. The evaluators were told that it has not been banking practice to use anonymous products (anonymous accounts, savings books and so on) since 1999. The private sector representatives confirmed this information during the on-site visit meetings.

761. The CNB monitors compliance with the afore-named provisions as part of on-site examinations. On-site examinations of credit institutions established that no anonymous accounts were being kept in credit institutions in the Republic of Croatia. HANFA has confirmed that this is also true for non-credit financial institutions.

Customer due diligence

When CDD is required (c.5.2)*

762. Art.9 of the AMLTF Law sets out the requirements for CDD. The basic requirement is to conduct CDD when establishing a business relationship with a customer. In addition, the reporting entities are obliged to conduct customer due diligence: in cases when there are doubts about the

credibility and veracity of the previously obtained customer or customer beneficial owner information; in all instances when there are reasons for suspicion of money laundering or terrorist financing in relation to a transaction or a customer, regardless of the transaction value; and when carrying out each transaction totalling HRK 105,000 (c. €14,000) or more, regardless of whether the transaction is made as a single operation or as several transactions.

763. Art. 15 §1 of the AMLTF Law requires that credit and financial institutions, including payment service providers are obliged to collect accurate and complete data on the payer and include them in a form or a message accompanying the wire transfer, sent or received in any currency. Arts. 3 & 4 of the Rulebook on the Content and Type of Information on Payers Accompanying Cash Wire Transfers, on Duties of Payment Service Providers and Exceptions from the Cash Wire Transfer Data Collection Obligation issued by the Ministry of Finance then sets out requirements for identification and verification of customer data. Additional information is set out under section 3.11 below.

764. The on-site interviews showed that the financial institutions were well aware of the customer identification requirements.

Identification measures and verification sources (c.5.3)*

765. According to Art. 8 of the AMLTF Law, unless otherwise prescribed in AMLTF Law, CDD measures shall encompass the identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a credible, reliable and independent source. The reporting entities are obliged to define the procedures for the implementation of these measures in their respective internal enactments.

766. Arts. 17-22 of the AMLTF Law set out the rules for verification of the presented information for the identification of the customers. It distinguishes procedure between:

i. Natural persons (Art.17);

ii. Legal Persons (Art.18);

iii. Legal person's legal representative (Art.19);

iv. Persons with a power of attorney for legal or natural persons (Art.20): and

v. Other legal persons and entities made equal to them (e.g. NGOs, etc.) (Art.21).

767. With regard to legal persons the requirement includes general provisions about identification and verification of the legal person's identity. There are also provisions about identification and verification relating to NGOs, endowments and foundations and other legal persons who do not perform economic activity, as well as in cases of religious communities and NGOs without the properties of a legal person and other entities without legal personality but independently appearing in legal transactions.

768. For a customer which is a natural person, a natural person's legal representative, or for a customer who is a craftsman or a person involved in the performance of another independent business activity, the reporting entity shall identify the customer and verify the customer's identity through the examination of official customer's personal identification document in customer's presence. During the course of conducting CDD, the reporting entity shall obtain the data about the natural person: name and surname; permanent address; date of birth; place of birth; personal identification number; and name and number of the identification document issuing entity.

769. It is important to note that on 1 January 2011, the new Law on Personal Identification Number (OG 60/08) came into force. The aim of introducing the Personal Identification Number is to provide information for public administration, connection and automated data exchange among public administration institutions, as well as providing a better overview of the property and income of the natural and legal entities and the flow of money, as a key feature of a transparent economy and for the systematic suppression of corruption.

770. In Croatia biometric passports are compliant with EU standards, but the old ID cards issued before 2003 are still in circulation. In August 2012 the Government adopted a decision that they cannot be used as valid travel documents although they are still regarded as being valid identification documents. Further steps are still needed to reach full alignment with the EU *acquis* on visa requirements and travel documents and the list of countries whose nationals require a visa to enter Croatian territory is not yet fully aligned with that of the EU.

771. According to Croatian legislation the verification process is identified as being separate from and complementary to the identification process. Should the reporting entity be unable to collect the prescribed data from the official personal identification document submitted, the missing data shall be collected from other valid public documents submitted by the customer, i.e. directly from the customer. If the reporting entity has a suspicion during the course of identifying the customer and verifying the customer's identity as to the veracity of data collected or credibility of the documents and other business documentation from which data was collected, the reporting entity is obliged also to require the customer to give a written statement.

772. During the on-site interviews the Croatian authorities and private sector representatives assured the evaluators that credit institutions and other financial institutions only accept for the examination of official customer's personal identification a valid passport or a personal I.D card.

Identification of legal persons or other arrangements (c.5.4)

773. As required by Art. 16 §1.1 of the AMLTF Law, the identification and verification of the representative of the legal person or identity of a person authorised by power of attorney before establishing a business relationship on behalf of a legal person follows the same procedure as identification of a client who is a natural person as set out above. If the documents are not sufficient to enable the collection of all prescribed data, the missing data shall be collected from other valid public documents proposed by the customer, i.e. supplied by the legal representative. The reporting entity may also require the legal representative to give a written statement. The reporting entity is required to collect data on the legal representative who issued a power of attorney on behalf of the legal person on the basis of data included in the notarised power of attorney. However, it appears that there is no requirement to verify whether any person purporting to act on behalf of a person is so authorised.

774. Criterion 5.4b covers issues in relation to the verification process for legal persons. Art.18 of the AMLTF Law obliges the reporting entities to identify any customer who is a legal person, and to verify their identity through the collection of data by examining an original or notarised photocopy of documentation from the court or other public register presented by the legal person's legal representative or person authorised by power of attorney. This documentation must not be more than three months old. The reporting entity has to obtain the name, seat (street and number, place and country) and business registration number (for a legal person, whereas the registration number is to be included for a craftsman or a person carrying out other independent business activity if such a number has been assigned to such a person). However, financial institutions are not required to obtain from customers information on a legal person's or legal arrangement's form, directors and powers to bind.

775. The reporting entity is required to identify the legal person and verify the legal person's identity through a direct examination of the Court or other public register (for further details see Section 5.1 below). The reporting entity must first check the nature of a register from which the reporting entity shall take data for the identity verification purposes. The date, time, name and surname of the examiner are required to be entered by the reporting entity on the excerpt from the register examined. The reporting entity may also require the legal representative or the person authorised by power of attorney to give a written statement.

776. In cases of NGOs, endowments and foundations and other legal persons who do not perform economic activity, as well as in cases of religious communities and NGOs without the properties of a legal person and other entities without legal personality but independently appearing in legal

transactions, the reporting entities are obliged to identify the person authorised to represent the customer,(i.e. a representative) and verify the representative's identity and obtain a power of attorney for representation purposes (Art. 21 of the AMLTF Law). In cases of NGOs, endowments and other above-mentioned entities, reporting entities should collect data about:

- the legal representative or a person authorised by power of attorney who shall establish a business relationship or conduct a transaction on behalf of the legal person or entity (name and surname, permanent address, date of birth, place of birth, personal identification number, name and number of the identification document issuing entity);
- natural person who is a member of another legal person or an entity (name and surname, permanent address, date of birth, place of birth);
- a legal person or a craftsman to whom the transaction shall be intended (name and seat).

777. Art. 18 §7 states that the reporting entity shall identify the foreign legal person and its branch and verify their respective identities. It is possible to get on-line information form the court register about branches of the foreign legal persons performing a business activity in the Republic of Croatia

778. During the on-site interviews the Croatian authorities and private sector representatives assured the evaluators that it is possible to verify the legal person's identity through a direct examination (electronically) of the court register.

Identification and verification of the beneficial owner (c.5.5)*

779. Art. 3 §24 of the AMLTF Law defines the beneficial owner as a natural person who is the ultimate owner of a customer or who controls or otherwise manages the legal person or other entity (if the customer is a legal person) or a natural person who shall control another natural person on whose behalf a transaction is being executed or who performs an activity (if the customer is a natural person). As set out under c.5.3 above, Arts. 17 to 21 set out the identification and verification requirements for all categories of customer. In particular Arts. 19 and 20 require the identification of legal and natural persons acting on behalf of the beneficial owner as well as the beneficial owners themselves.

780. Art. 23 of the AMLTF Law clarifies/specifies that the beneficial owner is the natural person who ultimately owns or controls a legal entity through direct or indirect ownership or a natural person who controls a sufficient percentage of shares of voting rights in that legal person, and a percentage of 25 per cent plus one share shall be deemed sufficient to meet this requirement or the natural person who otherwise exercises control over management of a legal person in case of legal persons, branches, representative offices and other entities subject to domestic and foreign law made equal with a legal person. The beneficiary owner shall be in case of legal persons, such as endowments and legal transactions such as trust dealings which administer and distribute monies:

- where the future beneficiaries have already been determined, the natural person who is the beneficial owner of 25% or more of the property rights of the legal transaction;
- where natural or legal persons who will benefit from the legal transactions have yet to be determined, the persons in whose main interest the legal transaction or legal person is set up or operates;
- natural person who exercises control over 25% or more of the property rights of the legal transaction.

781. A natural person who is controlling another natural person on whose behalf a transaction is being conducted or an activity performed is treated as a beneficial owner.

782. According to Art 8 of the AMLTF Law, the CDD measures shall encompass the obligation to identify the beneficial owner of the customer and verify the beneficial owner's identity unless otherwise prescribed in AMLTF Law. Art. 18 §4 and Art. 24 include amongst the identification requirements the identification and verification of the identity of the beneficiary owner on the basis of the original documents or notarised photocopies of documents from a court or other

public register, and other business documentation which may not be more than three months old. The reporting entity is obliged to collect data about name and surname, permanent address, date of birth and place of birth of the ultimate beneficial owner. The reporting entity is required to check the collected data in a manner that enables the reporting entity to have knowledge of the ownership structure and control of the customer to an extent that meets the criterion of satisfactory knowledge of beneficial owners, depending on risk assessment.

783. If some documents are not sufficient, the reporting entity shall collect the missing data, save for data on beneficial owner, directly from the legal representative or the person authorised by power of attorney. If data is missing for objective reasons and cannot be collected from the official registers, the reporting entity shall collect this data directly from a written statement given by the customer's legal representative or the person authorised by power of attorney.

784. The CNB Guidelines provided to credit institutions also provide guidance on assessing risks, inherent in establishing relations with legal persons that have the organisational structure or nature of the legal personality of which makes it difficult or impossible to identify the beneficial owner or foreign legal persons carrying out the operations of trusts and company service providers and having unknown or hidden owners and secret investors or managers or customers whose beneficial owners are subject to sanctions imposed in the interest of international peace and security in accordance with the legal acts of the EU and resolutions of the UN Security Council.

785. Art. 19 of the AMLTF Law requires that the reporting entity shall identify a legal person's legal representative and verify the legal representative's identity. Art. 20 then goes on to require that reporting entities should identify a legal or natural person's person authorised by power of attorney and verify the identity of the person authorised by power of attorney. The CNB and Financial Inspectorate Guidance also require that financial institutions determine whether the customer is acting on behalf of another person; however the provisions in HANFA's Guidelines are less precise.

786. The evaluators were informed that, since 2008, it has not been possible to issue bearer shares. However, the transitional period had not finished at the time of the on-site visit and some bearer shares issued before 2008 were still used in practice. Furthermore, through a direct examination of the court register it is not possible to get all the required information on ultimate beneficial owners. Further details on the information available from the Court Register are set out under Section 5.1 below.

787. On 14 October 2011, CNB and AMLO issued joint guidance on procedures to identify the beneficial owner of legal persons when the individual ownership structure is less than 25%. In the mentioned guidance it is stated that bank is obliged to identify and verify the identity of the beneficial owner (name and surname, address, date and place of birth) even in a case when individual ownership is less than 25%. Furthermore, according to the Guidance, if it is not possible to determine the identity and verify the identity of the beneficial owner of the customer it is not possible to continue business relationship or to conduct a transaction. On 5 December 2011, further guidance on identification of beneficial owners were jointly issued by CNB and AMLO.

Information on purpose and nature of business relationship (c.5.6)

788. According to Art. 8 §1 3. of the AMLTF Law, all reporting entities are required to obtain information on the purpose and intended nature of the business relationship or transaction and other data in line with the AMLTF Law. The reporting entities are obliged to define the procedures for the implementation of this measure in their respective internal enactments. There is no further reference on what type of information is required and how it is to be obtained. There is no clear requirement to collect data about the profession or area of activity of the natural person or data about sources of his/her funds. There is no obligation to receive annual reports from legal entities. Art. 16 §7 requires that, during the course of conducting CDD, the reporting entities shall obtain information on the purpose and intended nature of the business relationship, including

information on customer's business activity. This requirement is reinforced in sectoral guidance issued by the CNB, HANFA and the FI.

On-going due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

789. Art. 8 §1. 4 of the AMLTF Law requires the reporting entities to conduct on-going monitoring of the transactions or of the business relationship. This should include the examination of transactions concluded throughout the course of the respective relationship with a view to ensuring that the transactions being conducted comply with the reporting entity´s knowledge of the customer´s type of business and risk, including, as necessary, information on the source of funds. According to Art. 26 of the AMLTF Law the reporting entity is obliged to exercise due care in monitoring the business activity of the customer.

790. The reporting entities are obliged to monitor and scrutinise the compliance of the customer's business with the intended nature and purpose of the business relationship, the compliance of sources of funds with the intended source of funds the customer had indicated at the establishment of the business relationship, the compliance of customer's operations or transactions with the customer's usual scope of business operation or transactions. The reporting entities also have a detailed obligation to apply due diligence measures to foreign legal persons regularly, at least once a year, and no later than after the expiration of one year since the last customer due diligence had been conducted (Art. 27 of the AMLTF Law).

791. According to Art. 8 §1. 4 of the AMLTF Law, the reporting entity is obliged to ensure through conducting on-going due diligence that the documents and data available to the reporting entity has been kept up-to-date. It is not clear whether the client has an obligation to notify the financial institution about any changes in the data and information supplied in the course of due diligence or any changes concerning the beneficial owner. CNB, HANFA and the FI have all issued guidance on on-going monitoring of the business relationship.

Risk – enhanced due diligence for higher risk customers (c.5.8)

792. Criterion 5.8 requires financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. As mentioned above, the Croatian AML/CFT framework did not provide for a risk based approach at the time of the 3rd round evaluation. According to paragraphs 1 and 2 of Article 30 of the AMLTF Law, the reporting entities are obliged to conduct additional enhanced customer due diligence in case of the establishment of a correspondent relationship with a bank or other similar credit institution seated in a third country, in case of the establishment of a business relationship or the conducting of a transactions referred to in the AMLTF Law with a customer who is a politically exposed person or in instances when the customer was not present during the course of due diligence measures implementation (Art. 30 of the AMLTF Law). These risk-categories are modelled on the risk-based approach set up on the 3rd EU AML&TF Directive and are not the result of a specific risk assessment of the Croatian financial sector.

793. According to Art. 30 §3 of the AMLTF Law, the reporting entity may apply an additional enhanced CDD measure or measures in other circumstances when there shall or might exist a greater degree of money laundering or terrorist financing risk, due to the nature of the business relationship, the form and manner of transaction execution, business profile of the customer or other circumstances associated with the customer, i.e. that a business relationship, a transaction or a product shall be directly or indirectly used for money laundering or terrorist financing purposes. The evaluators noted that the requirement under Art. 30 §3 uses the word "may" which appears to indicate that this is an option. However, these requirements are set out in greater detail in the sectoral guidance and it is made clear, in all guidance, that this is a mandatory requirement.

794. In the categories of Art. 30 of the AMLTF Law, non-resident customers, legal arrangements such as trusts, companies that have nominee shareholders or shares in bearer form and private banking are not designated as higher risk situations and these categories do not therefore require enhanced CDD measures. Non-resident customers appear to represent potential risks to Croatian

financial sector as in other countries. It is noted, that in the Mutual Evaluation Questionnaire supplied to the evaluators, the authorities identify a number of ML threats involving non-resident customers and it is therefore surprising that such identified threats are not highlighted under Art. 30 of the AMLTF Law. However Art. 7 §2&3 require reporting entities to develop a risk analysis and apply it to rate risks of individual groups or types of customers, business relationships, products or transactions in respect of possible abuse relative to money laundering and terrorist financing and to align the risk analysis and assessment with the guidelines issued by the competent supervisory bodies. Art. 90§ 1.1 provides sanctions for failure to comply with this requirement. All of the issued guidelines provide detailed guidance on risk assessment and the various levels of risk.

795. Enhanced CDD measures are required in cases where there is a higher ML or FT risk as well as in other cases as set out in the criteria established by the supervisory authorities. Guidelines adopted by the supervisory authorities CNB, FI and HANFA give examples of additional types of customers presenting a high degree of risk and additional guiding rules where enhanced due diligence measures should be applied (see ANNEXES XXVII, XXVIII & XXIX).

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

796. According to Art. 14 of the AMLTF Law, certain entities[22] are exempted from conducting the customer due diligence measures under the circumstances prescribed in the law[23].

797. Croatian law creates blanket exemptions from the CDD requirements. This approach is largely modelled on the EU 3rd AML Directive and can be found in most EU countries. Furthermore, the Ministry of Finance may issue a rulebook to prescribe that a reporting entity may be excluded from the obligation of conducting customer due diligence when conducting certain transactions and in respect of other products and transactions associated with them, which shall represent a negligible money laundering or terrorist financing risk. These regulations are not fully in line with the Methodology whereby simplified CDD should nevertheless be accomplished, including in circumstances where the risk of money laundering and terrorist financing is low.

798. According to Art. 35 §1. 2 & 3 of the AMLTF Law, the reporting entities may, at the time of establishing the business relationship and when conducting transactions, conduct a simplified CDD if the customer is: a reporting entity (financial institution); state body (local and regional self-government bodies, public agencies, public funds, public institutes or chambers); or publicly traded company (companies whose securities have been accepted and traded on the stock exchanges or the regulated public market in one or several member-states in line with the provisions in force in the European Union, i.e. companies seated in a third country whose securities have been accepted and traded on the stock exchanges or the regulated public market in

[22] Insurance companies licensed for the performance of life insurance business, the business units of insurance companies from third countries licensed for the performance of life insurance business, insurance companies from member-states which are to establish a business unit in the Republic of Croatia or are authorised to directly perform life insurance business in the Republic of Croatia, pension companies, as well as legal and natural persons performing business or activity of insurance representation or intermediation for entering into life insurance agreements, and companies for the issuance of electronic money, companies for the issuance of electronic money from another member state and business units of foreign companies for the issuance of electronic money

[23] For Insurance companies: (1) with contracting life insurance policies in which individual premium instalment or several insurance premium instalments to be paid within one year does not exceed a total kuna equivalent amount of EUR 1,000.00 or in cases when single premium payment does not exceed the kuna equivalent value of EUR 2,500.00; (2) with contracting pension insurances providing that: a) types of insurance are being contracted whereby it is not possible to transfer the insurance policy to a third person or use it as collateral for a credit or loan, and b) a contract is entered into with a closed-end pension fund if the employer pays the contributions into the voluntary pension fund on behalf of the fund's members.
For Electronic money providers: (1) with issuing electronic money, if the single amount of payment executed for the issuance of such a money, on an electronic data carrier which may not be recharged, does not exceed kuna equivalent value totalling EUR 150.00; (2) with issuing electronic money and performing business with it if the total amount of the executed payments, stored on an electronic data carrier which may be recharged, does not exceed kuna equivalent value totalling EUR 2,500.00 during the current calendar year, save for cases in which the holder of electronic money cashes out a kuna equivalent amount of EUR 1,000.00 or more during the same calendar year.

a member-country or a third country, under the condition that the third country have the disclosure requirements in effect in line with the legal regulations in the European Union.)

799. The Rulebook (issued by the Minister of Finance) on Determining Conditions Under Which the Reporting Entities shall make Grouping of Customers Representing a Negligible Money Laundering or Terrorist Financing Risk (NN 76/09), which entered into force on 1 July 2009, prescribes the conditions under which reporting entities may include customers that represent a negligible money laundering or terrorist financing risk.

800. Guidelines for reporting entities subject to control by the Financial Inspectorate give types of low risks and additional guiding rules where simplified CDD measures may be applied.

Risk – simplification/reduction of CDD measures relating to overseas residents (c.5.10)

801. According to Art. 35 §1. 1 of the AMLTF Law, the reporting entity is allowed to conduct simplified CDD, if the customer is a financial institution (reporting entity referred to in Art. 4, §2, items 1, 2, 3, 6, 7, 8, 9 and 10 of AMLTF Law) or other equivalent institutions under the condition that such an institution shall be seated in an EU member-state or a third country. As the definition of "third country" is "*a European Union non-member state or a state non signatory to the European Economic Area*" this appears to allow simplified CDD to be applied to all countries, regardless of the level of implementation of FATF Recommendations. The Guidelines issued by the CNB, HANFA and the FI all provide additional guidance on the application of simplified CDD. The HANFA and FI Guidelines state that "third country" refers to a "non-EU Member State or a non-signatory state to the Agreement creating the European Economic Area". although this clarification is not found in the CNB Guidelines as this is already included in legislation. The Guidelines all cover situations when simplified CDD can be applied. Furthermore, the IIWG Subgroup adopted a list of equivalent third states which was sent to reporting entities on 28th October 2011.

Risk – simplified/reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

802. According to Art 14 §4. of the AMLTF Law, the derogation from conducting CDD in respect of a customer, product or transaction shall not be allowed when there are reasons for suspicion of money laundering or terrorist financing. According to Art. 35 §1. the reporting entities are not allowed to conduct simplified CDD in instances when there are reasons for suspicion of money laundering or terrorist financing in relation to a customer or a transaction. The prohibition on the use of the derogation does not, however, extend to "*specific higher risk scenarios*" as required by the standard.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

803. For the purpose of a uniform application of the provisions of the AMLTF Law and regulations adopted pursuant to this Law, in June 2012 the CNB adopted the CNB Guidelines for the implementation of the AMLTF Law with respect to credit institutions, credit unions and ELMIs. In addition to the risk-based approach, which defines the risk categories (low, moderate and high risk) and the risk criteria (country or geographical risk, customer risk and product/transaction/business relationship risk), the CNB Guidelines also provide guidance on establishing policies and procedures aimed at reducing exposure to the risk of money laundering and terrorist financing which may stem from new technologies enabling anonymity (electronic or Internet banking, electronic money, etc.). The purpose of introducing the risk-based approach is to ensure that the AML/TF measures applied by credit institutions, credit unions and ELMIs are proportionate to the identified risk. The level of due diligence must be appropriate in relation to identified risk categories and the institutions must be able to prove that the level of due diligence measures applied is appropriate in relation to the risk of money laundering and terrorist financing.

804. Detailed guidelines for the implementation of the AMLTF Law for the reporting entities falling within the competence of the HANFA were adopted by HANFA on 10 September 2009. It

provides, that the risk category assigned to a customer, business relationship, product or transaction will determine the type of CDD measure that the reporting entity is obligated to implement under the AMLTF Act (regular CDD, enhanced CDD or simplified CDD).

805. Guidelines for reporting entities subject to control by the FI in relation to the enforcement of the AMLTF Law were adopted by the FI and published in September 2011.

Timing of verification of identity – general rule (c.5.13)

806. Arts. 10 and 11 of the AMLTF Law clearly provide for the requirement to identify and verify the identity of a customer and its beneficial owner before the establishment of a business relationship or while carrying out occasional transactions.

807. On the basis of the discussions with those parts of the industry met by the evaluation team, it appears that in general this requirement is followed in practice. From the experience gained during the on-site visit, this rule seems to be applied. Great emphasis is devoted to the identification at the beginning of a business relationship.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

808. Art. 10 §2 of the AMLTF Law allows that the reporting entities may conduct the CCD measures "during" the establishment of a business relationship with a customer, should it be necessary not to interrupt the usual manner of establishing business relationships and if there is a negligible risk of money laundering or terrorist financing. However, this derogation appears to allow the postponement of all CDD measures, not just verification and there are no provisions requiring that, in such situations, the CDD measures shall be completed as soon as reasonably practicable after the initial contact the authorities it is considered that this is not necessary as Art. 10 §2 is merely a derogation from Art. 10 §1 which requires CDD to be completed before establishing the business relationship. This fact is particularly emphasised in the guidelines issued by the CNB, HANFA and the FI.

809. Insurance companies may identify the beneficiary under the life insurance policy after entering into an insurance contract, but no later than before or at the time of payout of the insured amount, i.e. at the point when the beneficiary under the policy requires the payout of the receipt, announces the intention of obtaining a loan on the basis of the policy, giving it as collateral or capitalising on it.

810. Guidelines for reporting entities subject to control by the Financial Inspectorate describe that, in instances where CDD is not conducted prior to the establishment of the business relationship, the reporting entity should document why the CDD could not be completed prior to establishing the business relationship and the nature of the transactions that was conducted. In these circumstances, CDD should be conducted as soon as practicable.

811. Art 7 of the AMLTF Law sets out the obligation to conduct risk assessment in line with sectoral guidelines. All of the guidelines issued by the CNB, HANFA and the FI contain considerable detail concerning the conduct of risk assessments. Furthermore, Art. 48 §1 prescribes that the reporting entities shall undertake to pass an internal enactment to provide for measures, actions and proceeding for the purpose of money laundering and terrorist financing prevention and detection as prescribed by the AMLTF Law and regulations passed on the basis of the Law.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

812. According to Art. 13 of the AMLTF Law, the reporting entity is not allowed to establish a business relationship or to carry out a transaction, if the entity is unable to conduct measures referred to in Art. 8, §1. items 1, 2 and 3 of AMLTF Law. In the case of an already existing business relation, the reporting entities are required to close the business relationship upon establishing that the identification and verification information and data obtained is not in accordance with the legislation in force and normative acts of the supervisory authorities.

813. In accordance with Art. 13 (2), reporting entities are obliged to report such circumstances together with all customer transaction data collected to date to AMLO. There were, however, a very low number of STRs which were supplied to AMLO on this basis. Furthermore, one bank reported during the on-site visit that, in these circumstances, they would return the funds to the customer.

Existing customers – (c.5.17 & 5.18)

814. Art. 102 of the AMLTF Law clearly provides the requirement that reporting entities shall undertake to conduct due diligence of all existing customers within one year after the effective date of the coming into force of the AMLTF Law (1 January 2010), on the basis of risk assessment that a money laundering or terrorist financing risk shall or might exist.

815. According to Art. 27 of the AMLTF Law, the reporting entity shall, in addition to the application of business activities monitoring measures, regularly at least once a year, and no later than after the expiry of one year since the last CDD had been conducted, conduct the repeated annual foreign person due diligence. The same requirement applies if the customer shall be a legal person seated in the Republic of Croatia and with 25% or greater ownership stake held by a foreign legal person which does not perform or is not allowed to perform trading, production or other activities in the domicile country of registration or a trust or other similar foreign law company with unknown, (i.e. hidden owners, secret investors or managers). The reporting entity shall not be permitted to conduct transactions for a customer for which the reporting entity has not conducted or failed in conducting the repeated annual CDD in keeping with this article.

816. As already indicated above, anonymous accounts, or accounts under fictitious names are prohibited in Croatia. For those anonymous accounts, coded or bearer passbooks as well as other anonymous products which were existing on 1 January 2009, the reporting entities were obliged to conduct customer or other product user due diligence, during the first transaction that the customer or another user shall conduct on the basis of such products. According to the transitional provisions of the AMLTF Law (Art. 103 §1) the reporting entities were obliged to close all anonymous accounts not later than January 31 2009.

Effectiveness and efficiency

817. The evaluation team welcomes the efforts made by the Croatian authorities in order to bring the legislation in line with international requirements. The CDD regulation system is generally in line with the international standards.

818. The financial sector appears to display a high level of understanding of their CDD obligations, i.e. obligation to identify risk categories to be able to prove that the level of due diligence measures which is appropriate in relation to the risk of money laundering and terrorist financing. They also appeared well aware of their obligation to retain the relevant documentation and record keeping. However, the on-site interviews revealed that the private sector, some banks and non-banks, still appeared confused about the methods and procedures needed to identify the ultimate beneficial owner though the special indicators or questionnaire and publicly available data-bases are widely used in practice.

819. The AMLTF Law has introduced a risk-based approach which provides for a significant amount of discretion to the reporting entities to decide on the applicable measures. The reporting entities are advised by AMLO and other supervisory authority on the most frequently asked questions are related to the interpreting of CDD measures. It is of particular concern that the extension of simplified CDD to third countries has a potentially very wide interpretation.

820. Concerns remain as to effectiveness especially about the methods and procedures needed to identify the ultimate beneficial owner and it is questionable how banks and other financial institutions apply the principle of "know your customer". During the on-site visit the evaluators were informed by representatives of the private sector that in practice there are difficulties on identification of ultimate beneficiary owners, especially for smaller reporting entities. A direct

examination of the court register is not possible to get all the required information on ultimate beneficial owners. There are particular difficulties in practice if the shareholder of the company is a foreign legal person.

821. Some concerns remain as to the effectiveness of the CDD measures applied by financial sector entities as there are very low numbers of STRs to AMLO based on the criteria to terminate negotiations or to terminate the business relationship. A very low number of STR which were supplied by life insurance and capital market sector and a very low number of STRs and CTRs which were supplied to AMLO by exchange offices are indicating not sufficient implementation of CDD measures. Croatian authorities have informed evaluators that exchange offices sector there are high risks of ML.

Recommendation 6 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

822. R.6 requires enhanced customer due diligence to be applied where the customer is identified as a politically exposed person. The Recommendation defines the additional due diligence required in these circumstances. During the 3rd round evaluation Croatia had not implemented any AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs).

Risk management systems, senior management approval, requirement to determine source of wealth and funds and on-going monitoring (c. 6.1- c. 6.4)

823. According to Art 32 §3 a foreign politically exposed person (PEP) is defined as any natural person with a permanent address or a habitual residence in a foreign country who shall act or had acted during the previous year (or years) in a prominent public function and includes their immediate family members, or persons known to be close associates of such persons. The definition of foreign PEP is not in line with the FATF Recommendations because of the time limit, which is not provided for in the FATF recommendations. Furthermore, certain types of PEP (e.g. important party officials) are not included in the definition under Art.32 §4. The definition is, however, in line with the EU COM AML Directive 2006/70 art 2(4).

824. The definition of PEP is limited to natural persons "*with permanent address or habitual residence in a foreign country*". This definition could be taken to exclude and foreign PEPs who are temporarily or permanently resident in Croatia.

825. The reporting entities are obliged according to Art. 32 to apply adequate procedures to determine whether or not a customer is a foreign politically exposed person. The procedures should be defined through internal bylaws, taking into account guidelines adopted by competent supervisory authorities (CNB, FI, HANFA).

826. Art. 30 (1) 2) and Art. 32 (7) of the Law requires reporting entities to carry out enhanced due diligence measures in transactions or when establishing business relationship with a PEP. An employee of the reporting entity who is responsible for the establishment of the business relationship with a customer who is a foreign politically exposed person shall mandatorily obtain written consent from the superior responsible person (which is understood by reporting entities to mean "senior management" e.g. director or director of department) before establishing such a relationship. However, for credit institutions, the CNB considered that credit institutions usually determine internally which employee is allowed to carry out enhanced due diligence measures in transactions or when establishing business relationship with a PEP; for example, this can be a shift manager, office manager, business centre manager, or in smaller institutions, the authorised person for Law enforcement.

827. There is no clear provision that reporting entities are obliged to determine whether a customer's beneficial owner is a politically exposed person and there no specific requirement covering about situations where the customer or beneficiary owner subsequently becomes a PEP; this has to be considered as a shortcoming. Although guidelines issued by HANFA and the FI

provide instructions on the conduct of ongoing CDD this does not extend to identifying whether a customer's beneficial owner has become a PEP.

828. Art 32 §7 (1) requires reporting entities to gather data on the source of funds and property which are or will be the subject matter of the business relationship or transaction, from documents and other documentation supplied by the PEP. Should it be impossible to collect data in the described manner, the reporting entity shall collect data directly from a customer's written statement. This requirement does not, however, extend to requiring reporting entities to establish the source of wealth. However, this is addressed by the Guidelines issued by the Financial Inspectorate but not in those issued by the CNB or HANFA.

829. After the establishment of the business relationship, the reporting entity is required to exercise due care in monitoring transactions and other business activities performed by a foreign politically exposed person with the reporting entity. Although the standard of "due care in monitoring" is not clear it is considered to be interpreted as "enhanced ongoing monitoring" which represents enhanced ongoing monitoring and involves a much more intensive and frequent regime of monitoring. Additional details are provided in guidelines issued by HANFA and the FI. These additional procedures include regular review of the account at least annually and close monitoring of individual transactions.

830. The on-site interviews demonstrated that the representatives of the banking sector were generally aware of the obligations arising from law and regulation in relation to PEPs. Some banks rely on internet checks and some have access to specialised databases such as World-Check. Both HANFA and the FI have included additional directions on the procedures to be followed to identify foreign a politically exposed person´s family members or persons known to be close associates of such persons. The CNB Guidelines refer to the provisions of the AMLTF Law but do not provide a definition of family members or provide any further guidance on the procedures to be followed to identify foreign a politically exposed person´s family members or persons known to be close associates of such persons.

Additional elements

Domestic PEP-s – Requirements

831. Domestic PEPs are not covered by the requirements relating to PEPs under the AMLTF Law.

Ratification of the Merida Convention

832. The United Nations Convention against Corruption was signed in New York on 10 December 2003 and ratified on 24 April 2005. The ratification was published in the "Official Gazette - International Treaties" no. 2/2005, entered into force as regarding to Croatia on 14 December 2005 and is fully implemented in the Croatian legislation.

Effectiveness and efficiency

833. Financial sector representatives were generally aware of the provisions on PEPs. Financial institutions met on-site confirmed that they regularly check names against internationally recognised databases (e.g. WordCheck, etc.) and many of the larger institutions have automated processes.

834. The evaluators were advised that in practice senior management approval in always required to open an account or to offer other financial services to foreign PEP.

835. Concerns remain as to effectiveness especially about the methods and procedures needed to identify foreign a politically exposed person´s family members, or persons known to be close associates of such persons for customers of banks.

Recommendation 7 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

836. Recommendation 7 requires financial institutions to undertake enhanced due diligence on respondent banks when providing cross-border banking services. During the 3rd round evaluation Croatia had implemented AML/CFT measures regarding the establishment of cross-border correspondent banking relationships but only to a very limited extent and most of the elements of R. 7 were not covered by Croatian legislation.

837. According to Art. 3 §26 of the AMLTF Law, a correspondent relationship is "*a relationship between a domestic credit institution and a foreign credit, i.e. other institution established by the opening of an account of the foreign institution with the domestic credit institution*". It seems that the definition of correspondent banking is narrower than that defined by FATF. There is no provision that correspondent banking is a legal relationship arising from a contract entered into by credit institutions on the basis of which a credit institution uses an account (correspondent account) at another credit institution (correspondent bank) and in addition to the services offered by the correspondent bank, such account is used by the credit institution for providing services to its customers in its name.

Require to obtain information on respondent institution & Assessment of AML/CFT controls in Respondent institutions (c. 7.1 & 7.2)

838. According to Art. 31 of the AMLTF Law, when establishing a correspondent relationship with a bank or other credit institution seated in a third country, the reporting entity is obliged to conduct CDD measures within the framework of enhanced customer due diligence and additionally gather data about the institution. The data required includes, authorisation details, authorising body and description of the systemic arrangements in the field of money laundering and terrorist financing prevention and detection and description of the implementation of relevant internal procedures in place in the country. However, this provision of the AMLTF Law falls short of meeting the requirements under Recommendation 7 which refers to all types of cross-border relationships not just to third countries.

839. Although Art. 31 §3 of the AMLTF Law requires reporting entities to obtain certain information concerning correspondent banks, there is, however, no clear provision for them to gather sufficient information about a respondent institution to understand fully the nature of the respondent business and economic activities, about reputation of the institution and the effectiveness of supervision exercised over the credit institution.

840. The CNB Guidelines reinforce the requirement in the Act and section 3.2.5.3 provides a comprehensive risk matrix to help the credit institution decide on the level of risk posed by the correspondent institution. Although the guidelines do not specifically elaborate on the nature of the information to be gathered it would, nonetheless, be necessary for the institution to gather the necessary information to complete the analysis. The information required would be sufficient for the financial institution to understand fully the nature of the respondent business and economic activities, the reputation of the institution and the effectiveness of supervision exercised over the credit institution. However, there is no requirement to ascertain that the AML/CFT measures implemented by the respondent institution are adequate and effective.

Approval of establishing correspondent relationships (c.7.3)

841. Art. 31 (3) of the AMLTF Law clearly provides for the requirement that a reporting entity's employee involved in establishing correspondent relationships and running the enhanced customer due diligence procedure shall be obliged to obtain a written consent from the superior responsible person (see under R.6 above) of the reporting entity prior to the establishment of the business relationship. During the on-site visit it was clear that the institutions interviewed all required senior management approval.

Documentation of AML/CFT responsibilities for each institution (c.7.4)

842. Reporting entities are obliged, under Art. 31 §1. 2 of the AMLTF Law to obtain a description of the implementation of internal procedures relative to money laundering and terrorist financing prevention and detection, notably the procedures of the correspondent bank. This clause only addresses AML/FT measures with regard to due diligence, other responsibilities of the corresponding institutions, such as notification obligations etc., are not covered. Thus, this provision does not provide a clear requirement for reporting entities to clearly document all of their respective AML/CFT obligations and how and by whom they are to be carried out.

Payable through Accounts (c.7.5)

843. A correspondent relationship which involves the maintenance of "payable-through accounts" is not regulated in AMLTF Law. However, pursuant to item 3.2.5.3. of the CNB Guidelines, the establishment of a correspondent relationship with a bank or another credit institution with a seat in a third country poses a high risk.

844. In the context of enhanced due diligence, when establishing a correspondent relationship with a bank or other credit institution with a seat in a third country, the institutions should provide a written statement that the bank or other credit institution can provide upon request relevant data obtained on the basis of due diligence of customers with direct access to payable through accounts.

Effectiveness and efficiency

845. The evaluators were advised by private sector representatives that in practice a special questionnaire is used for the establishment of correspondent relationships to conduct AML&TFP measures and additional information is asked from parent credit institution if it is relevant.

Recommendation 8 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

846. During the 3rd round evaluation the evaluators were advised that there were no dedicated internet banks in Croatia and all of the existing banks operated exclusively via their registered head offices in the Republic of Croatia. Some banks performed internet banking transactions and the transactions executed via internet were not exempted from the AML Law. There was, however, no legal obligation requiring financial institutions to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risks associated with non-face to face business relationships or transactions.

Misuse of new technology for ML/FT (c.8.1)

847. Art. 34 of the AMLTF Law lays down that the credit and other financial institutions are required to pay special attention to any money laundering and/or terrorist financing risk which may stem from new technologies enabling anonymity and put policies in place and take measures aimed at preventing the use of new technologies for ML/TF purposes. In the course of its administrative supervision, AMLO sent a request to banks on 20th September 2011 requesting information on their implementation of Article 34 of the AMLTF Law.

848. The procedure is required to be defined through internal bylaws, taking into account guidelines adopted by competent supervisory authorities (CNB, FI, HANFA).

849. The Guidelines adopted by CNB, HANFA and FI refer to new technologies providing for anonymity. Pursuant to these items, credit institutions, credit unions and other reporting entities are required to put in place policies and procedures for the risk involved in business relationships or transactions with customers who are not physically present. The policies and procedures of the reporting entity for the risk associated with a business relationship or a transaction with customers that are not physically present require applying supplementary enhanced CDD measures in business operations with customers conducted by means of new technologies.

850. In designing the above policies and procedures or in the process of defining policies and applying measures for the prevention of the use of new technologies for ML/TF purposes, credit institutions are recommended to apply the obligations, principles and rights governed by the Credit Institutions Act (CIA) and the bylaws pertaining thereto, notably the Decision on adequate information system management and Guidelines for information system management aimed at reducing operational risk.

Risk of non-face-to-face business relationships (c8.2)

851. According to Art. 33 of the AMLTF Law, if the customer is not physically present during the identification and identity verification, the reporting entity is required to apply the following measures of enhanced customer due diligence:

1. collect additional documents, data or information on the basis of which the customer's identity is to be verified;
2. additionally verify the submitted documents or additionally certify them by a foreign credit or financial institution; and
3. apply a measure whereby the first payment within the business activity is carried out through an account opened in the customer's name with another given credit institution.

852. Section 3.3.3 of the CNB Guidelines prescribes the additional procedures and documents required for the customers not physically present during the identification and identity verification. This includes collection of additional documentation and ensuring that the first payment into the account is made through an account opened in the customer's name with another credit institution. Section IV 2.2 of HANFA's Guidelines also prescribe the additional procedures and document required for the customers not physically present during the identification and identity verification.

853. Nonetheless, the evaluators noted that financial institutions are not required to have policies and procedures to address the specific risks associated with non face-to-face business relationships when conducting on-going due diligence.

Effectiveness and efficiency

854. The on-site interviews demonstrated that internet banking is still not very popular in Croatia; although there were no statistics about the number of internet banking customers at the time of the on-site visit. Mobile-banking services are offered by the two biggest banks.

855. The financial sector representatives met by the evaluators seemed generally aware about the need to prevent the misuse of technological developments and that non-face-to-face business relationships represented a high risk. As an alternative to setting up a particular procedure for handling such a situation, however, most representatives indicated they would much rather require the customer to be present for a face-to-face identification. Internet banking services are only offered to existing clients who were physically present during the identification and identity verification process.

856. Training on anti-money laundering measures and on the fight against cybercrime for financial institutions has continued. All training arranged contained modules on risks concerning new technologies and cybercrime and in the Annual Report for 2011 new methods and technologies are recognised as a trend and a threat for ML/TF. Furthermore, the CNB Guidelines contain a section on "new technologies providing for anonymity".

3.2.2 Recommendations and comments

Recommendation 5

857. A domestic ML/TF risk assessment should be conducted in order to facilitate a national understanding of the risks the country is facing and which would allow for proper risk-based CDD programmes and policies to be adopted and implemented by the financial sector.

858. The AMLTF Law should be amended to:

- Introduce a requirement in law or regulation to determine whether the customer is acting on behalf of another person for accounts opened for investments and fiduciary assets;
- Require reporting entities to ensure that a person acting on behalf of a person is so authorised;
- Require reporting entities to obtain from customers information on a foreign legal person's or foreign legal arrangement's form, directors and powers to bind;
- remove the blanket exemptions from the CDD requirements and to apply simplified CDD, even in circumstances where the risk of money laundering and terrorist financing is low;
- limit the situations when financial institutions are permitted to apply simplified CDD measures to customers resident in third country to countries which are in compliance with and have effectively implemented FATF Recommendations;
- Amend Art. 35 §1 to include "*specific higher risk scenarios*";
- Clarify that the derogation under Art 10 §2 refers only to verification procedures, not all CDD procedures and require that CDD measures should be completed as soon as reasonably practicable after the initial contact in situations where the reporting entity is allowed to conduct CCD measures during the establishment of a business relationship with a customer; and
- define risk management procedures to be applied in circumstances where a business relationship is commenced prior to verification of the identity of the customer.

Recommendation 6

859. The definition of PEP should be brought into line with the FATF definition. The definition should also clarify that it includes foreign PEPs who are temporarily or permanently resident in Croatia.

860. Financial institutions should be required to obtain senior management approval to establish or continue the business relationship where the customer or beneficial owner subsequently becomes or is found to be a PEP.

861. There should be a clear requirement in the law for financial institution to:

- Identify the source of wealth;
- determine whether a customer's beneficial owner is a PEP; and
- extend the requirements concerning identification of PEPs to situations where the customer or beneficiary owner subsequently becomes a PEP.

Recommendation 7

862. The requirement regarding correspondent banking relationships should be applied irrespective of whether the respondent institution is located in the EU or EEA or in a third country.

863. Financial institutions should be required to obtain approval from senior management before establishing new correspondent relationships.

864. There should be a clear provision requiring banks and other credit institutions to gather sufficient information about a respondent institution in order to fully understand the nature of the respondent business and economic activities, as well as about reputation of the institution and the effectiveness of supervision exercised over the credit institution.

865. There should be a clear requirement to document the respective AML/CFT responsibilities of each institution.

866. Requirements concerning a correspondent relationship which involves the maintenance of "payable-through accounts" should be introduced in the AMLTF Law.

Recommendation 8

867. This recommendation is fully complied with.

3.2.3 Compliance with Recommendations 5, 6, 7 and 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• There is no requirement to verify whether any person purporting to act on behalf of a person is so authorised; • Financial institutions are not required to obtain from customers information on a foreign legal person's or foreign legal arrangement's form, directors and powers to bind; • The AMLTF Law creates blanket exemptions from the CDD requirements where the risk of money laundering and terrorist financing is low; • The application of simplified CDD measures to customers resident in a third country is not limited to countries which are in compliance with and have effectively implemented FATF Recommendations; • Derogation under Art. 10 §2 allows the postponement of all CDD measures, not just verification and there is no requirement that CDD measures should be completed as soon as reasonably practicable after the initial contact in case of the reporting entity is allowed to conduct the CCD measures during the establishment of a business relationship with a customer; • There are no clear provisions in the law which requires adopting risk management procedures concerning the conditions under which business relationship is permitted to utilise prior to verification of the identity of the customer; **Effectiveness** • Effectiveness and efficiency of implementation CDD measures in regard to beneficial owners and in business relationships with non-resident customers is not demonstrated.
R.6	**PC**	• The definition of foreign politically exposed person is not in line with the FATF Recommendations; • The provisions do not apply to foreign PEPs who are temporarily or permanently resident in Croatia; • No specific requirement to obtain senior management approval to establish or continue a business relationship where the customer is found to be or becomes a PEP; • There is no clear provision that reporting entities are obliged to determine whether a customer's beneficial owner is a politically exposed person; • There are no requirements to identify situations when the customer or beneficiary owner subsequently becomes a PEP in the course of a business relationship; • Other than in the Financial Inspectorate's Guidelines, there is no requirement to identify the source of wealth of PEPs. **Effectiveness** • Lack of clarity over what procedures were to be followed to identify a PEP´s family members or persons known to be close associates of such persons.
R.7	**PC**	• No clear requirement to document the respective AML/CFT responsibilities of each institution; • The requirements regarding correspondent banking relationships only apply to third countries; • No requirement to ascertain that the AML/CFT measures implemented

		by the respondent institution are adequate and effective; • No clear requirement to obtain approval from senior management before establishing new correspondent relationships.
R.8	**C**	

3.3 Third Parties and Introduced Business (R.9)

3.3.1 Description and analysis

Recommendation 9 (rated N/A in the 3rd round report)

Summary of 2008 factors underlying the rating

868. At the time of the 3rd round evaluation the AML Law did not contain any provisions concerning the introduction of clients by third parties to the institutions obliged to identify them or the delegation of CDD obligations to any third party, such as a business introducer and R.9 was not applicable to the Croatian AML/CFT system.

869. According to Art. 28 of the AMLTF Law, upon establishing a business relationship with a customer the reporting entity may rely on a third party to identify the customer and verify the customer's identity. Art 28 §6 goes on to state that "*The Minister of Finance shall prescribe in a rulebook who may be a third person, terms and conditions under which the reporting entities shall be allowed to entrust the conducting of customer due diligence with a third person, the manner in which the reporting entities shall be enabled to obtain data and documentation prescribed in this Law from a third person, and instances in which the reporting entities shall not be permitted to entrust a third person with conducting customer due diligence*." The Rulebook is set out in ANNEX XXXIV.

870. The reporting entity must first check whether or not the third party who shall be entrusted with the conducting of CDD measures meets all requirements prescribed by AMLTF Law. The reporting entity is permitted to accept CDD conducted by a third party on behalf of the reporting entity as adequate, if the third party conducted the identification and identity verification measure within the due diligence exercise when the customer was present. The rulebook establishes terms and conditions under which the reporting entities may entrust the conducting of customer due diligence with a third person and instances in which reporting entities shall not be permitted to entrust the conducting of customer due diligence with a third person. The Rulebook on the conditions under which reporting entities of the AMLTF Law can leave customer due diligence to third parties (NN 76/09) entered into force on 1 July 2009.

871. Guidelines adopted by CNB, FI and HANFA clarify the conditions for reporting entities entrusting a third party with conducting due diligence.

Requirement to immediately obtain certain CDD elements from third parties; availability of identification data from third parties (c.9.1 & 9.2)

872. According to Art. 28 (4), a third person conducting CDD in lieu of the reporting entity, is accountable for meeting the obligations as set out in the AMLTF Law, including the obligation of reporting on transactions in relation to which suspicion of money laundering or terrorist financing shall exist and the obligation of keeping data and documentation. The obligation of keeping data and documentation by the third person or reporting entity is not clear enough as the rulebook lays down the obligation of a third person to supply the reporting entity without any undue delay with a copy of the identification document and other documentation, on the basis of which the third person has conducted CDD and obtained the required customer data. The reporting entity shall keep the obtained copies of documents and documentation in keeping with the provisions of the Law providing for data protection and keeping.

873. According to the Art. 6 (2) 8) and Art. 78 of the AMLTF Law, the reporting entities shall be obliged to ensure data storage and protection and keeping the records but there is no clear

obligation of financial institutions to take adequate steps to satisfy themselves that data of CDD will be made available from the third party.

Regulation and supervision of third party & adequacy of application of FATF Recommendations (c.9.3 & 9.4)

874. According to the Rulebook, the reporting entities are allowed to rely on certain, listed third parties, consisting only of other supervised financial institutions who apply measures of CDD, keeping records and data according to the provisions contained in EU Directive 2005/60/EC, the recommendations of the FATF, i.e. equivalent standards, the application of which measures are subject to supervision conducted in keeping with the provisions contained in EU Directive 2005/60/EC or have their business seat in a third country applying measures equal to the provisions contained in Directive 2005/60/EC.

875. According to Art. 7 of the Rulebook the reporting entities are not permitted to entrust the conducting of CDD with a third person if the customer is a foreign legal person which does not perform or is not allowed to perform trading, production or other activities in its domicile country of registration or if the customer is a trust or other similar foreign law company with unknown, i.e. hidden owners, secret investors or managers.

876. The CNB guidelines provide that prior to reliance on a third party, the institutions have to verify whether the third person they are about to entrust with the conduct of CDD fulfils all the conditions prescribed by the Law.

877. The HANFA guidelines clarify that the reporting entity shall check whether the third person meets the conditions in one of the following ways: by looking into public or other available data records; by looking into documents and business documentation submitted to the reporting entity by the third person; or by obtaining a written statement from the third person, guaranteeing the reporting entity that it meets the prescribed conditions.

Ultimate responsibility (c.9.5)

878. Even if reliance to conduct CDD has been entrusted to a third party, Art. 28 (5) of the AMLTF Law clearly stipulates that the responsibility for CDD entrusted to a third party still falls to the reporting entity. Should it arise that a third person conducted CDD in lieu of the reporting entity, such person shall also be accountable for meeting the obligations as per this Law, including the obligation of reporting on transactions in relation to which suspicion of money laundering or terrorist financing shall exist and the obligation of keeping data and documentation.

Effectiveness and efficiency

879. As the obligation of keeping data and documentation by the third person or reporting entity is not clear enough it may impact on the effectiveness of the application of the legal regulations.

880. The evaluators were advised during the on-site meetings that financial institutions prefer to conduct CCD measures themselves (by their employees) and do not normally entrust the third persons to do this.

3.3.2 Recommendations and comments

881. A requirement that the delegating party obtain the necessary information concerning, *inter alia*, elements of the customer due diligence process should be introduced in either law or regulation.

882. Croatian authorities are encouraged to add a clear obligation for financial institutions to take adequate steps to satisfy themselves that data of CDD will be made available from the third party.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**LC**	• There is no requirement that the delegating party obtain the necessary information concerning, inter alia, elements of the customer due diligence process; • There is no clear obligation for financial institutions to take adequate steps to satisfy themselves that data of CDD will be made available from the third party without delay.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

Recommendation 4 (rated LC in the 3rd round report)

Summary of 2008 factors underlying the rating

883. In the 3rd round MER, the Republic of Croatia received 'LC' for Recommendation 4 and the rating was based on the factors that the AML Law did not provide a clear legal basis to lift bank secrecy for STRs in respect of terrorist financing.

884. Legislation in Croatia sets out provisions about confidential data, information, facts and circumstances which reporting entities discovered in their operations with their clients and gives bases to supply data to third parties i.e. to courts and competent authorities.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

885. Pursuant to Art. 76 (1) of the AMLTF Law for the reporting entities, the state administration bodies, the legal persons with public authorities[24], the courts and the State Attorney's Office and their employees, the submission of data, information and documentation to AMLO on the basis of AMLTF Law shall not represent the disclosure of classified data, i.e. disclosure of business, banking, professional, notary public, lawyer client privilege or other secret.

886. The CIA contains provisions on banking secrecy. In accordance with the provisions of Art. 168, §(1) of the CIA, a credit institution is bound by the obligation of banking secrecy, i.e. of protecting the confidentiality of all information, facts and circumstances of which it becomes aware in the course of providing services to clients or in the course of business with individual clients. In accordance with the provisions of Art. 169, §(1) and (2) members of the credit institution's bodies, its shareholders, employees and other persons who, due to the nature of their business with or for the credit institution have access to confidential information are bound by the obligation of banking secrecy and may not divulge confidential information to third parties, use it against the interests of the credit institution or its clients, or enable third parties to make use of it. These persons are bound by the obligation of banking secrecy even after the termination of their employment with the credit institution or after the termination of their status of shareholders or membership in the credit institution's bodies, as well as after the termination of their contract on the performance of activities for the credit institution.

887. Art. 169 (3) of the CIA sets out a list of situations in which the obligation to observe banking secrecy is not applied. The credit institution's obligation of banking secrecy shall not include the following cases:

1) *where the client explicitly agrees in writing that certain confidential information may be disclosed;*

[24] Legal persons with public authorities are defined in the Art 2 §2 of the Law on Organisation or System of State Administration.

3) where confidential information is disclosed to the Croatian National Bank, the Financial Inspectorate of the Republic of Croatia or another supervisory authority for the purposes of supervision or oversight within their competence;
4) where confidential information is exchanged within a group of credit institutions for the purpose of risk management;
7) where the disclosure of confidential information is essential for collecting and establishing facts in criminal or preliminary proceedings, when requested or ordered in writing by the competent court;
10) where confidential information is disclosed to the Office for the Prevention of Money Laundering pursuant to the law governing the prevention of money laundering and terrorist financing;
11) where confidential information is disclosed to the Office for the Prevention of Corruption and Organised Crime pursuant to the law governing the prevention of corruption and organised crime;
18) disclosure of information necessary for the exercise of the credit institution's activities which are subject to outsourcing, where information is disclosed to the providers of outsourced activities; and
19) where a credit institution which provides services of storing and administering financial instruments for the account of clients, including custody services, discloses information on the holder of securities to a credit institution which is the issuer of these non-material securities at its request.
21) where so provided for in other laws

888. Art. 169 (3) clearly says that this former list applies to the credit institutions as legal persons. Art. 169 (3) does not apply to the members of credit institution's bodies, its shareholders, employees and other natural persons who, due to the nature of their business with or for the credit institution have access to confidential information and these natural persons are responsible for violation related to the obligation of banking secrecy. According to Art. 367 (3) and (4) of the CIA responsible persons of credit institutions and other natural persons shall be fined between HRK 25,000.00 and HRK 100,000.00 for the violation related to the obligation of banking secrecy referred to in Art. 169, §(1) of the CIA.

889. According to Art. 76 (2) and (3) of the AMLTF Law the employees of the reporting entities shall not be held accountable for any damage caused to customers or third persons and may not be held disciplinary or criminally answerable for the infringement of classified data secrecy observance, i.e. data related to banking secret if they supply AMLO with data, information and documentation in keeping with the provisions contained in this Law or regulations passed on the basis of this Law. It is very difficult to understand which provision prevails as special norm (*lex specialis*) or which provision is general norm (*lex generalis*). The regulation is not clear enough and therefore it is difficult to define the scope of application of the obligation of banking secrecy of the members of the credit institution's bodies, its shareholders or employees and other persons who, due to the nature of their business with or for the credit institution have access to confidential information. The banking secrecy regulations may give rise to the possibility to inhibit the implementation of the FATF Recommendation 4. The Croatian authorities state that the AMLTF Law is *lex specialis* with regard to the implementation of all AMLCFT measures; which include providing data, information and documentation to AMLO i.e. the provisions of the AMLTF Law in this respect are a special norm and the provisions of the Credit Institutions Act are general norm *(lex generalis*) and the provisions of the AMLTF Law shall therefore apply.

890. Arts. 137 and138 of the Insurance Act, Arts. 85 and 86 of the Leasing Act and Art. 54 of the Capital Markets Act also lay down provisions about confidential data, information, facts and circumstances which are discovered in operations with clients. The wording of these laws give more a general approach in such a way that data confidentiality requirement shall not apply in the case of competent court requests or in the case of the regulations on money laundering prevention. According to Art. 86 of the Leasing Act the data confidentiality requirement shall not apply in

cases of individual regulations on money laundering prevention. Although terrorist finance issues are not specifically covered in the Leasing Act, the underlying regulations do extend to terrorist financing.

Sharing of information between competent authorities, either domestically or internationally

891. In general, AMLO is not allowed to communicate the collected data, information and documentation and the course of action on the basis of this Law to persons to which data, information and documentation or action shall pertain, or to third persons. But this restriction is not valid if data, information and documentation collected and kept by the reporting entity shall be needed for the purpose of establishing facts in a criminal procedure and if the supply of such data was requested from or ordered to the reporting entity by a competent court in writing or data from the previous item is required by a competent supervisory body for the purpose of conducting supervision over a reporting entity in its implementation of the provisions of AMLTF Law and the initiation of a misdemeanour procedure.

892. In accordance with Art. 170 of the CIA, the CNB, courts, other supervisory authorities and other persons referred to in Art. 169, §(3) are required to use the confidential information they have received under the same article exclusively for the purpose for which it has been given and may not divulge it to third parties or enable third parties to acquire and make use of such information, except in cases prescribed by law.

893. Cooperation and exchange of information between the Croatian National Bank and other Croatian supervisory authorities or the competent authorities of the Member States is regulated in different articles of the CIA and of the Payments Systems Act. If the Croatian National Bank receives confidential information from a competent authority of another Member State, or where it receives confidential information in the course of the supervision of branches of credit institutions of other Member States, it may divulge such information to third parties only with the agreement of the competent authority of the Member State in question.

894. According to Art. 25 of the Financial Inspectorate Law the Financial Inspectorate and other bodies in the Republic of Croatia that are in charge of the supervision of the implementation of the provisions that regulate the prevention of money laundering and the financing of terrorism, foreign currency operations and money transfer shall deliver, at mutual request, all data on the subjects of supervision that they require in the procedure for performing supervision to other supervisory bodies in Croatia.

895. Art. 16 of the Act on Croatian Financial Services Supervisory Agency regulates the exchange of data and information between the HANFA and the CNB. Art. 9 of this act (The duty to preserve confidentiality) appears to inhibit information sharing between HANFA and other bodies. However, Art 17 does allows that, in the execution of the statutorily defined objectives and tasks, HANFA shall collaborate with the Government of the Republic of Croatia and other bodies of government and in the framework of its competence shall take measures to improve this collaboration.

896. Furthermore, Art 15 §states that HANFA shall "*report to other supervisory, administrative and judicial bodies on all issues that directly or indirectly impinge on their scope of activities and competence, as occasioned by proceedings that are being handled in front of these bodies and that are connected with procedures from the scope of activities and competence of the Agency*." Although there is no absolute clear mandate for HANFA to share information, taken together the provisions in the Act (in particular Arts. 15 to 18) do appear to provide HANFA with sufficient authority to share information with other authorities.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

897. The obligations set out in the AMLTF Law in the area of correspondent banking relationships and wire transfers override the banking secrecy provisions in the Credit Institutions Act and other acts providing for commercial secrecy and presuppose the ability of financial institutions to share

information for the purpose of Recommendation 7 and Special Recommendation VII (see analysis of these Recommendations).

898. In general, the banking secrecy regulation prohibits banks from providing information on a client to another bank. There is one exception which allows divulging confidential information to another bank belonging into the same banking group. According to Art. 169 (3) 4) the credit institution's obligation of banking secrecy shall not apply if the confidential information is exchanged within a group of credit institutions for the purpose of risk management. Money laundering and terrorist financing issues are interpreted in the prudential regulation of credit institutions as operational risks. There is no special provision in the AMLTF Law that the contract for the correspondent banking relationship should determine a correspondent bank´s ability to submit the data gathered in the course of identification and verification of the customer based on an enquiry. As Art. 169 (3) of the CIA does not apply to correspondent relationships it is not clear whether credit institutions are allowed to share information about their clients CDD to their correspondent banks or not.

899. According to Art. 169 (3) 18), credit institutions are allowed to divulge confidential information if disclosure of information is necessary for the exercise of the credit institution's activities which are subject to outsourcing, where information is disclosed to the providers of outsourced activities.

Sharing information with domestic financial institutions

900. In general the banking secrecy regulations prohibit banks from providing information on a client to another bank. There is one exception which allows divulging confidential information to another bank belonging into the same banking group. Information sharing between financial institutions is possible if the client explicitly agrees in writing with it.

Sharing information with foreign financial institutions

901. In general banking secrecy regulation prohibits banks to provide information on a client to another bank. There is one exception which allows divulging confidential information to another bank belonging into the same banking group. Information sharing between financial institutions is possible if the client explicitly agrees in writing with it.

Effectiveness and efficiency

902. The banking secrecy regulations could potentially give rise to the possibility of inhibiting the implementation of the FATF Recommendation. Although there is a derogation for "credit institutions" this is not clearly extended to "members of the credit institution's bodies, its shareholders or employees and other persons who, due to the nature of their business with or for the credit institution have access to confidential information".

903. During on-site visit the evaluators were told that in practice credit institutions share information to police if it is requested in the court order and for prosecutors there are no difficulties to getting data from credit institutions or from natural persons who, due to the nature of their business or working relationship, have access to banking secrecy.

904. During the on-site visit the evaluators were informed that in practice there were no problems for supervisory authorities in obtaining information from financial institutions.

3.4.2 Recommendations and comments

905. Croatia should amend the Credit Institutions Act provisions so that it is clear that credit institutions are allowed to share information about their clients CDD to their correspondent banks.

906. Croatia should amend the Leasing Act provisions so that data confidentiality requirement shall not apply in cases of individual regulations on terrorist finance issues.

907. Croatia should add to the AMLTF Law a special regulation that the contract for the correspondent banking relationship should determine a correspondent bank´s ability to submit the data gathered in the course of identification and verification of the customer based on an enquiry.

908. There should be more emphasis on clarification of legal regulation of banking secrecy.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• The Leasing Act requirement on the data confidentiality inhibits information sharing (the implementation of the FATF Recommendation) in cases of terrorist finance; • It is unclear whether credit institutions are allowed to share information about their clients CDD to their correspondent banks; • No special provision in AMLTF Law that the contract for the correspondent banking relationship should determine a correspondent bank´s ability to submit the data gathered in the course of identification and verification of the customer based on an enquiry. **Effectiveness** • The banking secrecy regulations may give rise to the possibility to inhibit the implementation of the FATF Recommendation 4.

3.5 Record Keeping and Wire Transfer Rules (R.10 and SR. VII)

3.5.1 Description and analysis

Recommendation 10 (rated LC in the 3rd round report)

Summary of 2008 factors underlying the rating

909. R.10 on record keeping has three main essential criteria for the retention of records for a period of five years: the retention of transaction records that are sufficient to reconstruct individual transactions to provide evidence for prosecution of criminal activity; the retention of identification data including account and correspondence records; and the availability of these records to the relevant authorities on a timely basis. In the 3rd round MER, the Republic of Croatia received 'LC' for Recommendation 10 and the rating was based on two factors:

- there was no requirement in law or regulation to keep documents longer than five years if requested by a competent authority; and
- apart from the banking sector, the record keeping provisions did not mention collecting or maintaining account files or business correspondence.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

910. In the AMLTF Law there is a general requirement for the reporting entities to ensure data storage and protection and keeping the records as prescribed in the AMLTF Law and regulations passed on the basis of this Law. It is positive to note that in Croatia the retention period is set longer than the 5 year requirement under the FATF Recommendation. Reporting entities are obliged to keep data collected on the basis of Art. 78 of the AMLTF Law and regulations for a period of ten years after the execution of a transaction execution or the termination of a business relationship.

911. There are rules about record keeping in different legal acts. According to Art. 172 of the CIA, a credit institution shall prepare, check and store bookkeeping documents in accordance with applicable regulations and professional standards and store the documents for a period of at least eleven years. The time limit shall mean the period following the end of the year in which the business change occurred, i.e. in which bookkeeping documents were prepared. Where such documents relate to long-term business activities, they shall be kept for the duration of the

business relationship and at least eleven years following the end of the year in which the business relationship was terminated.

912. According to Art. 91 of the Payments Systems Act, a payment institution shall store bookkeeping documents and other documentation in accordance with applicable regulations and professional standards, but for no less than five years.

913. According to Art. 41 of the Capital Markets Act, an investment firm shall preserve, for a minimum period of 5 years from the end of the year in which a transaction is entered into, all records and information on all transactions in financial instruments which it makes for either its own account or for a client's account.

914. Article 12 of the Ordinance Regulating Business Operations of the Investment Fund Management Companies (NN 25/07) stipulates as follows:

(1) All the business documentation and data which must be produced and stored according to the Act and regulations adopted pursuant to the Act, shall be stored by a management for at least 5 years as of the end of the business year the data in question relate to, i.e. for at least 5 years after the expiration of concluded contracts.

(2) By way of derogation from the provision of paragraph 1 of this Article, business documentation shall be stored for a longer period of time in the case of ongoing court proceedings referred to in Article 178, paragraph 4 of the Act.

(3) A management company shall protect the documentation and data referred to in paragraphs 1 and 2 of this Article from unauthorised access and potential losses in records, and store them in a manner that shall guarantee the permanence of the records.

(4) A management company shall store back-up copies of all data and documentation outside its premises, in a manner and within the time limits referred to in paragraphs 1, 2 and 3 of this Article.

915. For pension funds, Article 18 of the Mandatory and Voluntary Pension Funds Act, regulates that a pension company shall keep, in the form of an archive, all documents and other records relating to the fund managed by it.

916. According to Art. 139 of the Insurance Act, insurance undertakings and the Croatian Insurance Bureau may establish, maintain and keep the database of the insured persons, database of loss events and database for the assessment of insurance covers and loss compensation amounts. There is no ordinance or guidance about the form and substance of the database of the insured persons.

917. According to Art. 56 of the Leasing Act, the leasing company must organise its operations and maintain books, business documentation and other records in a form that enables insight whether the leasing company operates in compliance with the regulations and industry standards. There is no specific ordinance or guidance about record-keeping requirements for leasing companies although the bookkeeping requirements of the Accounting Law do apply.

918. There is, however, no regulation requiring reporting entities to prolong the record keeping period upon request of the supervisory or law enforcement authorities.

Record keeping of identification data, files and correspondence (c.10.2)

919. The credit institutions and other financial institutions are required to keep records of the information and the documents about applied CDD measures of the natural and legal persons, of the beneficial owner, the registers of identified natural and legal persons, the archive of accounts and primary documents. According to Art. 81 of the AMLTF Law, the reporting entities shall keep the records on customers, business relationships and transactions and records on the supplied data on cash transactions totalling HRK 200,000 and more together with data about suspicious transactions.

920. According to Art. 172 of the CIA, a credit institution shall store documents relating to the opening, closing and recording of changes in payment system and deposit accounts, documents relating to changes on basis of which data have been entered in the credit institution's business books and contracts and other documents relating to the establishment of a business relationship.

921. HANFA's reporting entities that are subject to the AMLTF Law have the obligation to keep and safeguard records and business documentation of all investment services and activities, as well as transactions of investment firms. The keeping of business records is prescribed in the provisions of Art. 41 of the Capital Market Act and the provisions of Art. 12 of the Ordinance on Organisational Requirements for Providing Investment Services and Conducting Investment Activities and Ancillary Services brought on the basis of the Capital Market Act.

922. In general, HANFA's reporting entities that are subject to the AMLTF Law will undertake to keep data collected on the basis of the AMLTF Law and regulations passed on the basis of that Law and the accompanying documentation for the period of ten years after a transaction execution, the termination of a business relationship. Also the reporting entities undertake to keep data and the accompanying documentation on an authorised person and the authorised person's deputy, the professional training of employees and the performance of internal audit referred to in Arts. 44, 49 and 50 for a period of four years after the appointment of the authorised person and the authorised person's deputy, the delivery of professional training or the performed internal audit.

923. For pension fund management companies, Article 16a of the Ordinance Amending the Ordinance on Additional Investment Criteria and Investment Limitations for Pension Funds applies for each transaction in assets of pension fund exceeding 5 million EUR or equivalent in some other foreign currency, which includes:

- currency conversion,
- investments in securities denominated in foreign currency,
- investments in short-term bank deposits,
- repurchase agreements and
- forward agreements,

924. For investment funds, the provisions of Article 10 a, paragraph 7 of the Ordinance Amending the Ordinance on Permitted Investments and Investment Limitations for Open-End Investment Funds with a Public Offering (Amendments NN 32/08) applies. In this case, the management company shall report to HANFA, and make available to the public on its website, data on all purchase and sale transactions in securities outside the regulated public market made with the related persons within the meaning of Article 2 of the Act.

925. The stated provisions prescribe that the investment firm is obliged to:

- keep and preserve records of all investment services and activities, as well as transactions undertaken by it in such a manner as to enable supervision of the business and in particular to ascertain that the investment firm has complied with all obligations with respect to clients and potential clients; and
- organise its operations and keep orderly business documents and other administrative and business records in a way that it is possible at any time to check the course of a transaction it has made for its own account or for a client's account.

926. Investment firms which execute transactions in financial instruments admitted to trading on or outside a regulated market shall report to HANFA details of such transactions no later than the close of the following working day. This obligation also relates to credit institutions which perform investment services and activities and to investment fund management companies which offer services of portfolio management.

927. With regard to guidance to financial institutions, reporting entities must keep the records on customers, business relationships and transactions referred to in Art. 9 of the AMLTF Act and

records on the supplied data referred to in Arts. 40 and 42 of the Act. Reporting entities which are supervised by FI should maintain the following records:

- Data about the conducted transactions amounting to HRK105,000 or more;
- Data about the linked transactions reaching the total amount of HRK105,000 or more;
- Data about the other suspicious transactions established in accordance with the list of indicators;
- Data regarding complex and unusually large transactions, as well as transactions of unusual form even in instances when the reasons for suspicion on money laundering or terrorist financing have not yet been detected, according to the Art. 43 of AML/CFT Act;
- Data on clients and transactions for transactions of selling/buying foreign currency- submitted to AML Office (larger than HRK105 000, linked transactions and suspicious transactions);

928. CNB guidance lays down that obligated persons should prescribe in their internal bylaws, according to their size and the nature and scope of their operations, the following measures, actions and procedures: record keeping; the manner of keeping data; retention periods; the content of records and data protection.

929. There is no regulation and no guidance regarding the keeping of business correspondence.

Availability of Records to competent authorities in a timely manner (c.10.3)

930. Credit and financial institutions are obliged to establish adequate information systems relevant for their respective organisational structures in order to be able to promptly, timely and completely provide AMLO with data as to whether or not they shall maintain or have maintained a business relationship with a given natural or legal person, as well as to the nature of such a relationship (AMLTF Law Art. 6 (2) 9)). Furthermore, according to Art. 84 (2), the reporting entities are obliged to supply AMLO with data, information and documentation prescribed by AMLTF Law, as well as other data AMLO shall require for the conducting of supervision without any undue delay, and no later than within 15 days after the receipt of the request.

Effectiveness and efficiency

931. It seems that the credit institutions and other financial institutions are required to keep records of the information and the documents for a period of at least 5 years. The terms of record keeping are different in different legal acts on the financial institutions, compared to the general requirement in the AMLTF Law. This could cause confusion in practice as it is not easy to understand what is the special norm (*lex specialis*) or general norm (*lex generalis*) in case of AMLTF issues.

932. Law enforcement and supervisory authorities are not empowered to request the prolongation of the record keeping period but this deficit might be evaluated together with the retention period which is longer than the 5 year requirement under the FATF Recommendations.

933. During the on-site mission the evaluators established that the financial institutions are familiar with their obligation for record keeping and in practice mostly IT systems are used on for record keeping purposes.

934. There is no specific requirement in the AMLTF Law to provide an obligation for record keeping in a manner that would allow the reconstruction of the individual transaction so as to provide, if necessary, evidence for prosecution of criminal activity. However, the record keeping requirements cover the necessary components provided by the FATF Methodology. In addition, during the on-site visit, it was explained to the evaluators that there have been no cases in practice when documents have been lost or were not available to competent authorities or could not be used in investigations or court procedures.

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

Summary of 2008 factors underlying the rating

935. As a result of the assessment of compliance with SRVII, Croatia was rated Partially Compliant in the 3rd round as: there were no comprehensive requirements for ordering financial institutions to verify that originator information is accurate and meaningful; no obligation to verify the identity of a customer for all wire transfers of EUR/USD 1,000 or more; no procedures in place for banks and the Croatian Post Office dealing with batch transfers; financial institutions were not required to have in place risk-management systems to identify and handle wire transfers that lack full originator information aimed at detecting transfers of suspicious nature that may result in making an STR report; and no specific enforceable regulations existed for the Croatian Post which acts as an agent for a global money remittance company.

936. Croatia has modified its legal framework by introducing specific provisions under the AML/CFT Law, which was further complemented by the Rulebook on Wire Transfers detailing the content and type of information on payers accompanying cash wire transfers, on duties of payment service providers and exceptions[25] from the cash wire transfer data collection obligation (adopted on 19 December 2008).

Obtain Originator Information for Wire Transfers (c.VII.1)

937. Art. 15 of the AMLTF Law states that "*(1) Credit and financial institutions, including companies involved in certain payment operations services or money transfers shall be obliged to collect accurate and complete data on the payer and include them in a form or a message accompanying the wire transfer, sent or received in any currency. In doing so, data must follow the transfer at all times throughout the course of the chain of payment. (2) The Ministry of Finance shall issue a rulebook to prescribe content and type of data to be collected on the payer and other obligations of the payment service providers and exceptions from the obligation of collecting data at money transfers representing a negligible money laundering or terrorist financing risk.*"

938. According to the Rulebook on Wire Transfers issued by Ministry of Finance, the payer's payment service provider shall undertake to collect the payer's name, surname, address, account number or the unique identification code. Furthermore, before making a cash wire transfer, the payer's payment service provider shall identify the payer and verify his/her identity through the review of an official identification document of the payer in his/her presence. In instances when cash transfers are made without opening an account, the payment service provider is obliged to check the payer information only if the Kuna equivalent amount of a single transaction (or several linked transactions) exceeds a total of €1,000. Irrespective of the transaction value, the payer's payment service provider shall identify and verify payer's identity in all instances when reasons for suspicion of money laundering or terrorist financing exist in relation with a transaction or a person.

939. It is to be noted that, in January 2011, the Croatian National Bank adopted the Decision on Payment Orders prescribing mandatory and additional data elements of the three types of orders (for placement, withdrawal, and transfer of funds). However, the decision does not define the payment originator's address as a mandatory element. This may result in various interpretations

[25] According to the Rulebook, the payment service provider shall not collect payer information at cash wire transfers when using credit and debit cards, rendering electronic money-related services up to EUR 150, use of mobile phones, another digital appliance or an information technology device when the cash wire transfer was conducted in advance and in Kuna equivalent amount of €150, the payer withdraws money from his/her own account, the cash wire transfers are being conducted between two clients through accounts, provided that the unique identification code or the identifier accompany the cash wire transfer enabling the identification of a natural or legal person, when using electronic cheques, when paying taxes, fines or other public dues, when the payer and the recipient shall be payment services providers and shall act on their own behalf.

and confusion among reporting entities as to the applicability of the provisions of the rulebook and the decision.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2); Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3); Maintenance of Originator Information (c.VII.4)

940. Art. 15 §1 of the AMLTF Law prescribes that credit and other financial institutions, including companies involved in certain payment operations services or money transfers, shall be obliged to collect accurate and complete data on the payer and include them in a form or a message accompanying the wire transfer, sent or received in any currency. In doing so, data must follow the transfer at all times throughout the course of the chain of payment. Paragraph 6 further defines that the provision contained in Paragraph 1 shall pertain to wire transfers conducted by both domestic and foreign payment service providers.

941. According to Art. 3 §3 of the Rulebook on Wire Transfers, for individual payer's batch file transfers, the provisions contained in Paragraph 1 of this Art. (i.e. payer information) shall not apply to individual transfers gathered in the file, provided that the batch file contains complete information on the payer, and that individual transfers contain payer's account number or the unique identification code.

942. Art. 15 §3 of the AMLTF Law stipulates that payment service providers acting as intermediaries or cash receivers shall refuse wire transfers failing to contain complete data on the payer referred to in §2 of this Article or shall ask for payer data supplement within a given deadline as required by the reporting entity (normally 7-10 days).

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

943. Payment service providers acting as intermediaries or cash receivers shall consider the lack of payer information in relation to the assessed level of risk as a possible reason for implementing enhanced due diligence measures, and shall adequately apply provisions contained in Art. 43, §§ 2 & 3 of the AMLTF Law (identification and analysis of complex and unusual transactions).

944. Furthermore, Art. 5 §3 of the Rulebook on Wire Transfers states that the recipient's payment service provider is to have efficient procedures in place to detect if there is any missing payer information as per the prescription of Art. 3 §§ 1&3 of the Rulebook; that is the payer information.

945. Section 3.3.4 of the CNB Guidelines sets out the requirements which deal with the lack of complete originator information. In this section there is an instruction that "*The payee`s payment service provider shall consider the lack of data on the payer, with respect to the assessed risk level, as a potential reason to apply the enhanced customer due diligence measures.*" There is, however no requirement to consider this as a factor in assessing whether a wire transfer or related transactions are suspicious and, as appropriate, whether they are thus required to be reported to FIU

946. Pursuant to Art. 15 §4 of the AMLTF Law, payment service providers may restrict or terminate a business relationship with those payment service providers who, in the judgement of the reporting entity, frequently fail to meet the requirements. The payment service provider shall notify AMLO of a more permanent restriction or business relationship termination.

Monitoring of Implementation (c. VII.6) and Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

947. The CNB is responsible for monitoring and supervising activities of banks and other credit institutions for compliance with applicable laws and regulations. The authorities advised that the Financial Inspectorate performs the same function for the Croatian Post, which is a money and value transfer institution as per the definition of the FATF standards.

948. However, the statistics provided by the authorities on the findings of supervision, including that on imposed sanction, reveal that no infringements related to the compliance of reporting entities with the requirements concerning wire transfers were ever detected.

949. Art. 90 §§ 1(6) & 1(7) of the AMLTF Law define that a pecuniary penalty within the range from HRK 50.000 (approximately €6,700) to HRK 700,000 (approximately €93,400) shall be imposed for the violation of the requirements defined under Art. 15 of the Law (including the failure to collect or include in the form or a message accompanying a wire transfer, to refuse a wire transfer, which does not contain complete payee data etc.).

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

950. The legislation in force, particularly the Rulebook on Wire Transfers specifies that in instances when cash transfers are not made from an account, the payment service provider is to check the payer information only if the Kuna equivalent amount exceeds a total of €1,000 or if the transfer is conducted in several obviously linked transactions with the Kuna equivalent amount in excess of €1,000.

Effectiveness and efficiency

951. The evaluators were not provided any evidence on effective mechanisms available for ensuring compliance of certain money transfer service providers (such as the Croatian Post and electronic money institutions) with SR VII. The meetings with the representatives of the Croatian Post did not demonstrate an appropriate understanding of the requirements related to wire transfers.

3.5.2 Recommendation and comments

Recommendation 10

952. The AMLTF Law should be amended to require Financial institutions to maintain records for a longer period if requested by a competent authority in specific cases upon proper authority.

953. The AMLTF Law should be amended to require the keeping of business correspondence.

954. The requirements for record keeping in different legal acts should be aligned as it is difficult to understand what is the special norm (*lex specialis*) or general norm (*lex generalis*) in case of AMLTF issues.

Special Recommendation VII

955. A specific requirement for financial institutions to consider the lack of complete originator information as a factor in assessing whether a wire transfer or related transactions are suspicious and, as appropriate, whether they are thus required to be reported to FIU should be introduced.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• There is no requirement in law or regulation to keep documents longer than five years if requested by a competent authority; • There is no regulation and no guidance regarding the keeping of business correspondence.
SR.VII	**LC**	• No specific requirement for financial institutions to consider the lack of complete originator information as a factor in assessing whether a wire transfer or related transactions are suspicious and, as appropriate, whether they are thus required to be reported to FIU. **Effectiveness** • No evidence of effective mechanisms available for ensuring compliance of certain money transfer service providers (such as the Croatian Post

		and electronic money institutions); • Croatian Post did not demonstrate an appropriate understanding of the requirements related to wire transfers.

Unusual and Suspicious transactions

3.6 Monitoring of Transactions and Relationship Reporting (R. 11 and R. 21)

3.6.1 Description and analysis[26]

Recommendation 11 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

956. Financial institutions were not required to investigate the purpose of complex/unusual large transactions and thus to keep a record of the written findings during the 3rd round evaluation and Rec 11 had not been implemented.

957. The obligations related to the complex and unusual transactions are now stated in the AMLTF Law, which requires the reporting entities to obtain information on the purpose and the nature of the business relationship or of the complex and unusual transaction.

Special attention to complex, unusual large transactions (c. 11.1)

958. According to Art. 43 of the AMLTF Law, the reporting entities are obliged to pay special attention to all complex and unusually large transaction, as well as to each unusual form of transaction without an apparent economic or visible lawful purpose even in instances when reasons for suspicion of money laundering or terrorist financing have not yet been detected in relation to such transactions.

959. In order to align the legal provisions with the requirements of R.11, additional measures in respect of unusual transactions have been adopted in different regulations on banks and other financial institutions.

Examination of complex and unusual transactions (c. 11.2)

960. According to Art. 43 of the AMLTF Law, the reporting entities are obliged to analyse the background and purpose of such transactions, and to make a written record of the results of this analysis. There is no definition of the scope of these transactions or any patterns, but the scope of the analysis is determined in the CNB guidelines. According to the CNB guidelines, an analysis of complex and unusual transactions should cover the data on:

1. the intended nature and purpose of a business relationship;
2. the customer's activities;
3. funds kept on transaction accounts;
4. the purpose and intended use of a transaction;
5. cash transaction inflow and outflow;
6. transactions with countries from enhanced-risk geographic areas;
7. persons authorised to use the accounts;
8. frequency of transactions involving a certain legal or natural person as the transaction issuer;
9. the source of funds;
10. information obtained from the media; and
11. information obtained from publicly accessible databases, etc.

961. There is no further guidance for other reporting entities as to what the analysis might consist of.

Record-keeping of finding of examination (c. 11.3)

[26] 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.

962. According to Art. 43 (2) of the AMLTF Law, the reporting entities are obliged to make a written record of the analysis results which are available at the request of AMLO and other supervisory bodies.

963. According to Art. 81 of the AMLTF Law, the reporting entities shall keep the records on customers, business relationships and transactions and records on the supplied data on cash transactions totalling HRK 200,000 or more. There is no specific requirement in the law to keep analyses about the background and purpose of transactions for at least five years. CNB and FI guidelines do, however, lay down that reporting entities which are supervised by the FI are obliged to maintain data regarding complex and unusually large transactions and to analyse the background and purpose of the transaction. The reporting entity is also required to make the analysis available to AMLO and other supervisory bodies upon request.

Recommendation 21 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

964. Recommendation 21 requires financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not, or insufficiently apply the FATF Recommendations. This should be required by law, regulation or by other enforceable means. During the 3rd round evaluation there were no specific requirement for financial institutions to examine the background and purpose of such transactions and set out their findings in writing and to make them available to the competent authorities and there were no laws and mechanisms in place to apply counter-measures against countries which do not apply or insufficiently apply FATF recommendations.

Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1), Examination of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c 21.2)

965. The legal situation concerning the coverage of Recommendation 21 is that there are general provisions requiring reporting entities to pay special attention to all complex and unusually large transaction and about enhanced CDD at the establishment of a correspondent relationship with a bank or other similar credit institution seated in a third country. According to Art. 3 (4) of the AMLTF Law, "*a third country shall be a European Union non-member state or a state non signatory to the European Economic Area Agreement*". In the Guidelines issued by the competent authorities there are some elements which meet R.21 by making transactions with NCCT areas suspicious transactions and by making transactions over HRK 200,000 subject to monitoring by reporting institutions. This goes part way to meeting the Recommendation. However, there are no provisions specifically addressing the requirements of R.21. Except for HANFA's guidelines, there is no requirement in law, regulation or other enforceable means to be particularly security-conscious when dealing with business from certain countries, nor is there any regulation on which countries should be treated with particular care.

966. AMLO periodically issues guidelines on countries which do not apply or insufficiently apply the FATF Recommendations to prevent money laundering and terrorist financing. Guidelines are provided for all reporting entities and their professional associations, and all supervisory bodies. The Guidelines state names of the countries that continue not to apply or insufficiently apply the FATF Recommendations.

967. The CNB Guidelines prescribe that customers that pose a high risk may be customers having permanent residence or a seat in countries subject to sanctions, embargoes or similar measures issued by the United Nations including:

1. countries identified by credible sources as:
    a. lacking appropriate laws, regulations and other measures for the prevention of money laundering and terrorist financing;

b. providing funding or support for terrorist activities and having designated terrorist organisations which operate within them;
c. having significant levels of corruption, or other criminal activity;

2. countries which are not Member States of the European Union or signatories to the Treaty Establishing the European Economic Area, and do not qualify as equivalent third countries; and
3. countries which, according to the FATF data, belong to non-cooperative countries or territories or, in the case of an Offshore Financial Centre from the list supplied by AMLO.

968. The HANFA guidelines do contain a checklist which identifies "Any country identified by the Financial Action Task Force (FATF) as non-cooperative in the fight against money laundering or terrorist financing or subject to a FATF statement" as representing a high risk and requires that Risk-mitigation steps should be taken where appropriate.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c 21.3)

969. The Croatian authorities affirm that in relation to individuals and financial institutions from the countries listed/described in the AMLO or CNB guidelines it is necessary to apply enhanced CDD measures.

Effectiveness and efficiency

970. The rest of the financial sector was generally aware of the obligation to examine the unusually large transactions although they considered this as a form of suspicious transactions reporting.

971. The evaluators were informed that in practice, when unusually large transactions are identified, the banks obtain the supporting documents for the transactions and determine the source of funds used.

972. The financial institutions interviewed on-site also confirmed that they closely monitor all transactions with not sufficiently applying FATF Recommendations.

3.6.2 Recommendations and comments

Recommendation 11

973. The AMLTF Law or related Guidelines should be amended to include a requirement to retain analyses about the background and purpose of transactions for at least five years.

974. Further guidance for reporting entities (except banks) as to what analysis of complex and unusual transactions might consist in is required.

975. A requirement to make transaction records available to auditors should also be introduced in legislation.

Recommendation 21

976. A requirement should be introduced to require financial institutions to examine and monitor transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations, if they do not have an apparent economic or visible lawful purpose, and have written findings available to assist competent authorities and auditors.

977. Clear procedures should be introduced that where a country continues not to apply or insufficiently applies the FATF Recommendations, the Croatian authorities should be able to apply appropriate counter-measures.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**LC**	• There is no specific requirement in the law to keep analyses about the background and purpose of transactions for at least five years; • There is no specific requirement to make transaction records available to auditors; **Effectiveness** • The lack of further guidance for other reporting entities as to what analysis of complex and unusual transactions might consist of could have an impact on the effectiveness of implementation; • Although the rest of the financial sector was in general aware of the obligation to examine the unusually large transactions, they considered this as a form of suspicious transactions reporting.
R.21	**LC**	• There are no specific provisions on the application of counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

3.7 Suspicious Transaction Reports and Other Reporting (R. 13, 14, 25 and SR.IV)

3.7.1 Description and analysis[27]

Recommendation 13 (rated PC in the 3rd round report) & Special Recommendation IV (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

978. Croatia was rated *"Partially Compliant"* in the 3rd round MER. It was stated that there was no clear obligation to report STRs on terrorism financing; attempted transactions were covered only partially and in an indirect manner; the STR reporting regime contained exemptions for certain transactions, regardless of whether there was a suspicion for terrorist financing; and there were a low number of STRs outside the banking sector which raised issues of effectiveness of implementation.

979. Though significant improvements in the reporting system are evident since the 3rd evaluation round, some deficiencies mentioned at that time remain.

Requirement to Make STRs on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

980. The adoption of the AMLTF Law in 2009 introduced a requirement to report suspicious transactions related to terrorist financing. The AMLTF Law provides for express provisions that impose the obligation of reporting any transaction suspected of being related to either money laundering or the financing of terrorism, without providing the amount of such transaction. The obligation to make a suspicious transaction report also applies to attempted transactions.

981. Art. 42 §7 defines a suspicious transaction as any "*attempted or conducted cash and non-cash transaction, irrespective of the value and the execution manner, if the reporting entity shall know, suspect or have grounds to suspect that:*

1. *the transaction involves funds stemming from illegal activities or is linked with terrorist financing given the ownership, nature, source, location or control of such funds;*
2. *the transaction by its properties associated with the status or other characteristics of customers or funds or other properties shall clearly diverge from the usual transactions of the same*

[27] 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.

customer and which shall match the necessary number and type of indicators pointing to the existence of reasons for suspicion of money laundering and terrorist financing;

3. *the transaction is intended to avoid regulations providing for money laundering or terrorist financing prevention measures;*
4. *in all instances when the reporting entity judges that there shall be reasons for suspicion of money laundering and terrorist financing in relation with a transaction or a customer."*

982. It would therefore appear that although Art. 42 §1 refers to reporting suspicions of money laundering the scope of the reporting requirement does in fact extend to "*funds stemming from illegal activities"* and is in line with the standard.

983. Art. 42 of the AMLTF Law states that:

> *(1) The reporting entities shall be obliged to refrain from the conducting of a transaction for which the reporting entity shall know or suspect to be connected with money laundering, i.e. terrorist financing. The reporting entity shall be obliged to notify the Office on such a transaction without any undue delay before the transaction execution, and to indicate in the report the reasons for suspicion of money laundering or terrorist financing, as well as the deadline within which the transaction is to be conducted.*
>
> *(2) The reporting entity shall be obliged to notify the Office of the intention or plan to conduct the suspicious transaction referred to in paragraph 1 of this Article notwithstanding of whether or not the transaction was subsequently conducted.*

984. Money laundering is defined under Art 2 §2 as *"money laundering shall mean the undertaking of actions aimed at concealing the true source of money or other property suspected to have been obtained in an illegal manner in the country or abroad, including:*

- *conversion or any other transfer of money or other such property;*
- *the concealment of the true nature, source, location, disposition, movement, ownership or rights with respect to money or other such property;*
- *the acquisition, possession or use of money or other such property*."

985. The evaluators consider that this definition adequately covers "*proceeds of criminal activity*"

986. Terrorist financing is defined in Art. 2§2 as "*The terrorist financing shall mean the provision or collection of, as well as an attempt to provide or collect legal or illegal funds by any means, directly or indirectly, with the intention that they should be or in the knowledge that they are to be used, in full or in part, in order to carry out a terrorism offence by a terrorist or by a terrorist organisation*". This definition does not extend to funds that are "*linked or related to*" carrying out a terrorism offence by a terrorist or by a terrorist organisation. Furthermore, the persons defined do not include "*those who finance terrorism*".

987. A suspicious transaction is defined under Art. 42 §7 as any transaction for which the reporting entity and/or a competent body shall deem that there shall be reasons for suspicion of money laundering or terrorist financing in relation to the transaction or a person conducting the transaction, i.e. a transaction suspected to involve resources from illegal activities. The reference is made to transactions not funds; however as could be seen, the requirement of the AMLTF Law refers to transactions suspected to involve resources from illegal activities. Considering that there is no definition of "resources" in the AMLTF Law, in this respect it is hard to determine whether the concept of "resources" covers "proceeds" as defined by the FATF Methodology. Nonetheless, the definition of a "transaction" from the AMLTF Law Art 3 (18) is "*A transaction shall be any receipt, outlay, transfer between accounts, conversion, keeping, disposition and other dealings with money or other property with a reporting entity*". The definition of property in the AMLTF Law is "*assets of every kind, whether tangible or intangible, movable or immovable, and documents and instruments in any form, including electronic or digital, evidencing title to or ownership rights in relation to the assets*". This appears to cover the FATF definition of "*funds*"

which is "*assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable and legal documents or instruments evidencing title to, or interest in, such assets.*"

988. According to the Art. 41 of the AMLTF Law the reporting entities shall be obliged to produce a list of indicators for detection of suspicious transactions and customers in relation with which reasons for suspicion of money laundering or terrorist financing shall exist. In opinion of the evaluation team leaving the responsibility to produce the list of indicators to a reporting entity may pose some risks because of reducing them only to identified typologies and red flags.

989. With respect to TF reporting, according to Art. 42 of the AMLTF Law obliged institutions are required to report to AMLO on transactions related to TF. As was stated above under the ML reporting requirement, even though a reference is made to transactions, by reading in conjunction definitions of "transaction" and "suspicious transaction" and "property", this does appear to cover the concept of funds.

990. Additionally, according to Art. 2 §2 of the AMLTF Law, terrorist financing shall mean the provision or collection of, as well as an attempt to provide or collect legal or illegal funds by any means, directly or indirectly, with the intention that they should be or in the knowledge that they are to be used, in full or in part, in order to carry out a terrorism offence by a terrorist or by a terrorist organisation. This is only a partial definition of what is required by the standard. Art. 2 §2 is linked solely to the carrying out of a terrorism offence by a terrorist or by a terrorist organisation. The standard requires that the obligation to submit an STR should cover funds that are suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance them.

No Reporting Threshold for STRs(c. 13.3 & c. SR.IV.2)

991. Art. 42 §1 &2 of the AMLTF Law sets out the requirement to report suspicious transactions which may be committed or attempted. No reference is made in the AMLTF Law to any threshold for STR reporting.

992. Art. 42 of the AMLTF Law states "*the suspicious transaction referred to in paragraphs 1 and 2 of this Article shall be any attempted or conducted cash and non-cash transaction, irrespective of the value and the execution manner(...)*". The following table sets out the split between completed transactions and attempted transactions that have been reported to AMLO. It would appear that attempted transactions are now being successfully reported.

Table 20: Number of STR and attempted transactions reported to AMLO

	2010		2011		2012	
	No	**%**	**No**	**%**	**No**	**%**
Conducted Transactions	351	86	286	86	337	85
Attempted Transactions	55	14	48	14	60	15
Total	406	100	334	100	397	100

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

993. There are no legal provisions that prohibit STR reporting on the grounds that tax matters are involved. Reporting entities are obliged to report suspicious transactions irrespective of the nature of the underlying criminal activity which is defined as any criminal offence and irrespective of whether they involve tax matters or not.

994. The financial institutions interviewed indicated that they understood their reporting obligation to include cases that may involve tax matters and cases of attempted transactions and, as noted under R.26 above some reports were submitted by AMLO to the Tax Authority.

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

995. According to Article 265 §6 of the new Criminal Code of Croatia, the liability for an act committed abroad is subject to the condition that liability for such an act is likewise recognised as an offence, by a law in force in the place of its commission. In view of this requirement this additional element is not covered.

Effectiveness and efficiency R.13

996. There is an obligation set by the AMLTF Law to report to AMLO any suspicious transactions. The Croatian authorities presented to the evaluators the following statistics regarding the suspicious transaction reporting of the reporting entities in Croatia.

Table 21: Breakdown of STRs sent by reporting entities to AMLO

STRs	2009	2010	2011	2012*
Reporting Entities				
Banks	342	307	279	144
Housing Saving Banks			1	
Croatian Post	60	63	23	19
Companies Authorised to do Business with Financial Instruments		3	5	1
Investment Funds Management Companies	7	2	5	1
Pension Companies		1	1	2
Authorised Exchange Offices	2		3	
Companies Issuing Payment and Credit Cards	1		1	
Organisers of Games of Chance			1	
Insurance Companies			3	
Leasing Companies		2	1	8
Notaries Public	2	23	7	15
Lawyers		5	3	1
Accountancy			1	
Total From Reporting Entities	**414**	**406**	**334**	**191**

* To 30 June 2012

997. The evaluation team noted that the number of reports received in years 2009 – 2012 (until June 30, 2012) has largely decreased in comparison to years 2005 – 2008. According to the explanations provided by the Croatian Authorities the new legal provisions, which clarified the reporting requirement, together with guidance provided have had a positive impact on the whole system of reporting and although the number of reports decreased their quality has significantly increased.

998. The evaluators noted that the number of STRs from banks in general has decreased.

- In 2009, banks submitted 342 STRs, out of a total of 414 STRs, (82.6%)
- In 2010, banks submitted 307 STRs, out of a total of 406 STRs, (75.6 %)
- In 2011, banks submitted 279 STRs, out of a total of 334 STRs, (83.5%).
- In 2012 (6 months to 30 June), banks submitted 144 STRs, out of a total of 191 STRs (73.8%).

999. There were statistics provided on STRs concerning the financing of terrorism. Proportionately, the level of reporting appears to be acceptable and in line with other countries.

1000. Apart from reports from banks, the Croatia Post and notaries, the number of reports other reporting entities still remains low. Therefore effectiveness in the reporting of STRs from insurance sector and other reporting entities cannot be confirmed. In opinion of evaluators further outreach to these sectors is needed.

1001. The evaluators were provided with data on cash transaction reports collected under the provision of Art. 40 of the AMLTF Law.

Table 22: Breakdown of CTRs sent by reporting entities to AMLO

CTRs	2009	2010	2011	2012*
Banks	54,154	55,916	56,117	25,670
Housing Saving Banks	14	20		
Credit Unions	130	162	212	82
Companies Authorised to do Business with Financial Instruments	94			
Investment Funds Management Companies	706			
Authorised Exchange Offices	500	406	415	240
Financial Agency	1,275	891	694	408
Croatian Post	6	17	39	12
Creditors		35	61	36
Insurance Companies			1	
TOTAL CTRs	**56,879**	**57,447**	**57,539**	**26,448**

* To 30 June 2012

Recommendation 14 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

1002. In the 3rd evaluation round of Croatia Recommendation 14 was rated 'Non-compliant' based on the following deficiencies:

- There was no protection from other sorts of criminal charges or civil lawsuits than from liability for breach of banking secrecy rules;
- It was not clear if the safe harbour provisions cover also good faith reporting and when no illegal activity actually occurred;
- There was no clear legal basis for protection in the case of reporting a suspicion of terrorist financing;
- There was no direct and explicit sanctioning for "tipping off".

Protection for making STRs (c. 14.1)

1003. Criterion 14.1 requires that financial institutions and their directors, officers and employees be protected by law from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU. This requirement is addressed by Art. 76 §1 of the AMLTF Law which provides as follows:

> *(1) For the reporting entities referred to in Article 4, paragraph 2 of this Law, the state administration bodies, the legal persons with public authorities, the courts and the State Attorney's Office and their employees, the submission of data, information and documentation to the Office on the basis of this Law shall not represent the disclosure of classified data, i.e. disclosure of business, banking, professional, notary public, lawyer client privilege or other secret.*

1004. Considering the definition of a suspicious transaction (Art. 3 §20 of the AMLTF Law) this protection can apparently be available even if the underlying criminal activity was not precisely known and regardless of whether illegal activity actually occurred though the Law does not enter in details on this issue.

1005. Art 76 §2 provides protection from civil liability and states:

> *The reporting entities referred to in Article 4, paragraph 2 of this Law and their employees shall not be held accountable for any damage caused to customers or third persons if they shall act bona fide in line with the provisions contained of this Law and regulations passed on the basis of this Law and:*
>
> 1. *supply the Office with data, information and documentation on their customers;*
> 2. *collect and process customer data, information and documentation;*
> 3. *carry out an order issued by the Office on temporary transaction suspension and instructions in relation with the order;*
> 4. *carry out an order issued by the Office on ongoing monitoring of customer's financial operations.*

1006. In addition to that, Art. 76 §3 of the AMLTF Law provides for further protection against disciplinary or criminal liability as follows:

> *The employees of the reporting entities referred to in Article 4, paragraph 2 of this Law may not be held disciplinary or criminally answerable for the infringement of classified data secrecy observance, i.e. data related to banking, professional, notary public, lawyer client privilege or other secret if:*
>
> 1. *they analyse data, information and documentation gathered in accordance with this Law for the purpose of establishing reasons for suspicion of money laundering or terrorist financing in relation to a customer or a transaction;*
>
> 2. *they supply the Office with data, information and documentation in keeping with the provisions contained in this Law or regulations passed on the basis of this Law.*

1007. Notwithstanding this, the current legislation does not appear to cover all directors, officers and other natural persons directing, managing or representing a reporting entity if these cannot be considered "employees" of the entity. That is, directors, officers etc. being not in a labour – law relationship, based on a contract of employment, with the respective entity, are apparently left out of the scope of Art. 76 §1&2 of the AMLTF Law.

Prohibition against tipping off (c.14.2)

1008. Turning to the prohibition of "tipping off", Criterion 14.2 that requires the same range of persons (as referred to above under Criterion 14.1) be prohibited by law from disclosing the fact

that a STR or related information is being reported or provided to the FIU. The provision by which this requirement is addressed is Art. 75 §1 of the AMLTF Law:

> *(1) The reporting entities referred to in Article 4, paragraph 2 of this Law and their employees, including members of management and supervisory boards and other managerial bodies and other persons who have any type of access and availability of data collected in accordance of this Law shall not be allowed to disclose the information listed hereunder to a customer or a third person:*
>
> 1. *that the Office was or will be supplied with a piece of data, information or documentation on the customer or a third person or a transaction referred to in Article 42, Article 54, paragraphs 1 and 2 and Article 59 of this Law;*
> 2. *that the Office had temporarily suspended the execution of a suspicious transaction, i.e. gave instructions thereof to the reporting entity on the basis of Article 60 of this Law;*
> 3. *that the Office requested on-going monitoring of a customer's financial operations on the basis of Article 62 of this Law;*
> 4. *that a pre-investigative procedure has commenced or might be commenced against a customer or a third person due to suspicion of money laundering or terrorist financing.*

1009. The wording of Art. 75 fully covers criteria 14.2.

Additional element – Confidentiality of reporting staff (c.14.3)

1010. According to Art. 65 §2 of the AMLTF Law AMLO shall not disclose information on the reporting entity's employee who first supplied the information on the basis of Arts. 42 and 54 of this Law, except for instances where reasons for suspicion shall exist that the reporting entity or its employee had committed the money laundering or terrorist financing offence, or if the information shall be necessary to establish the offence in the criminal procedure and the said information is required by the competent court in writing.

Effectiveness and efficiency R.14

1011. There had been no sanction applied for unauthorised disclosure of reports ("tipping - off") at the time of the on-site visit. AMLO confirm that they are not aware of any instances of tipping-off having arisen.

Recommendation 25(c. 25.2 – feedback to financial institutions on STRs/rated PC in the 3rd round report)

1012. According to Art. 66 of the AMLTF Law AMLO shall supply a written notification to reporting entities who reported the transaction, save for instances in which AMLO deems such a course of action could damage the further course and outcome of the proceeding, by doing the following:

- confirm the transaction report receipt;
- supply the information on the decision or the result of such a case if the case based on the report on transaction was closed or completed, and information thereof became available;
- at least once a year, supply or publish statistical data on the received transaction reports and the results of proceedings;
- supply or publish information on the current techniques, methods, trends and typologies of money laundering and terrorist financing;
- supply or publish summarised examples of specific money laundering and terrorist financing cases.

1013. Additionally, pursuant to Art. 87 of the AMLTF Law in order for reporting entities to be able to uniformly apply the provisions of the AMLTF Law and regulations adopted on the basis of this Law, AMLO independently or in conjunction with other supervisory bodies is required to issue

recommendations or guidelines related to implementation of individual provisions contained in the AMLTF Law and regulations adopted on the basis of this Law. In this respect the Croatian authorities provided the following statistics to the evaluators.

Table 23: Number of recommendations/guidelines issued by AMLO

Reporting Entity	2009	2010	2011	2012
Pension Funds	1			
Banks	6	18	9	5
Life Insurance Companies	1		1	
Insurance Companies				1
Companies that do Certain Payment Operations, Including Money Transfer		1		
Authorised Exchange Offices			2	
Leasing Companies			1	2
Companies for the Issuance of Electronic Money			2	
Credit Dealings Intermediation Companies				1

1014. During the on-site interviews the evaluation team was informed that AMLO organises regular training for authorised persons of reporting entities who report to AMLO electronically in order to ensure proper filling in of reporting forms.

1015. Also during the on-site it was stressed that employees of AMLO's Department for Financial and Non-financial institutions have daily contact with authorised persons in reporting entities giving them directions in implementation of provisions set out in the AMLTF Law and Rulebooks.

1016. It appears that Recommendation 25 is broadly covered. However, as noted under R.26 above, only a limited amount of information is provided to financial institutions on recent ML/TF trends.

3.7.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

1017. The Croatian authorities should enhance outreach to housing saving banks, insurers, companies issuing payment and credit cards and other reporting entities (with low reporting).

1018. The reporting requirement should be amended to also refer to:

- funds that are "linked or related to"; and
- "those who support terrorism".

Recommendation 14

1019. The protection provided by Art. 76 of the AMLTF Law should explicitly be extended to directors, officials and other natural persons contributing to the direction, management or representation of a reporting entity.

Recommendation 25/c. 25.2 [Financial institutions and DNFBPs]

1020. The evaluators were provided with two typologies reports (on money laundering and terrorist financing) issued by AMLO which contained case studies from the national and international practice. In opinion of evaluators more sector oriented guidance on money laundering and terrorist financing should be issued by the Croatian Authorities in order to assist the reporting entities (especially those with low reporting) in properly identifying suspicious transactions.

3.7.3 Compliance with Recommendations 13, 14, 25 and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**LC**	• The reporting requirement does not include funds which are "linked or related to" terrorism generally and (partially) to "those who finance terrorism"; **Effectiveness** • Low number of STRs submitted by certain categories of reporting entities raises effectiveness questions.
R.14	**LC**	• No protection of directors, officials and other natural persons contributing to the direction, management or representation of a reporting entity.
R.25	**LC**	• Only a limited amount of information is provided to financial institutions on ML/TF trends.
SR.IV	**LC**	• The reporting requirement does not include funds which are "linked or related to" terrorism generally and (partially) to "those who finance terrorism".

Internal controls and other measures

3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1021. Croatia was previously rated PC in respect of Recommendation 15, with deficiencies including the lack of legislative or other enforceable obligations to ensure that financial institutions are required to develop appropriate compliance management arrangements at a minimum the designation of an AML/CFT compliance officer at the management level, to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls and that they had in place adequate screening procedures for hiring employees.

Internal AML/CFT procedures, policies and controls (c. 15.1)

1022. Art. 48 §1 of the AMLTF Law on reporting entity's internal enactments defines the reporting entities' obligation "*to pass an internal enactment to provide for measures, actions and proceeding for the purpose of money laundering and terrorist financing prevention and detection as prescribed by the Law and regulations passed on the basis of the Law*".

1023. As regards the specific constituents of AML/CFT measures defined under Criterion 15.1, Art. 8 §2 of the Law states that reporting entities shall be obliged to define the procedures for the implementation of CDD measures in their respective internal enactments, while Art. 41 §4 requires that the list of indicators for the detection of suspicious transactions and customers are an integral part of the reporting entity's internal enactments. Furthermore, there are guidelines issued by different supervisors such as the FI, the HANFA, AMLO and the CNB, which appear to cover the specific requirements under Criterion 15.1 regarding inclusion of CDD, record retention,

unusual/suspicious transaction detection and reporting obligations in internal acts of supervised entities.

1024. The authorities also refer to the *On-Site Examination Methodology* used by examiners of the CNB for assessing the adequacy of credit institutions' internal enactments presumably covering the requirements under Criterion 15.1 in relation to the specific constituents of AML/CFT measures. However, the mentioned methodology is specifically envisaged for dealing with examination tasks only and does not amount to a defined obligatory provision for the reporting entities.

Compliance Management Arrangements (c. 15.1.1 and c.15.1.2)

1025. Art. 44 of the AMLTF Law provides for the following: "*(1) The authorised person and his/her deputy shall be persons appointed by the reporting entity responsible for carrying out measures and actions undertaken for the purpose of money laundering and terrorist financing prevention and detection as prescribed by this law and regulations passed on the basis of this Law*". Paragraph 3 of the same article establishes that "s*hould the reporting entity …fail to appoint an authorised person, the reporting entity's legal representative or other person in charge or running the arrangements of the reporting entity, i.e. the reporting entity's compliance officer as per legal regulations shall be deemed the authorised person"*. In the evaluators' opinion, this amounts to an option for reporting entities to exempt them from the obligation of appointing a compliance officer.

1026. Furthermore, according to Art. 45, "*(1) The reporting entity [...] must ensure that the matters falling under the remit of the authorised person and the authorised person's deputy referred to in Art. 44 of this Law be performed solely by persons who shall meet the following requirements: the person shall be employed at a position which was systematised within the organisational structure at such a level to enable the person execute the tasks prescribed by this Law and regulations passed on the basis of this Law in a quick, quality and timely fashion, as well as the independence in his/her work and direct communication with management*".

1027. In addition, Art. 47 §4 of the AMLTF Law prescribes that the authorised person shall perform his/her duties as an autonomous organisational section directly responsible to the management board or other managerial body, and shall functionally and organisationally be segregated from other organisational parts of the reporting entity.

1028. In the evaluators' opinion, the current language of the legal provisions above stipulating for the appointment of the authorised person at a systematised position within the organisational structure and the right to direct communication with management does not necessarily amount to and ensure designation of an AML/CFT compliance officer at the management level.

1029. Regarding the requirement defined under Criterion 15.1.2, that is availability of timely access to customer identification data, other CDD information etc., it appears that Art. 47 of the AMLTF Law provides for compliance with the mentioned criterion in stating that "*(1) Within the framework of money laundering and terrorist financing prevention and detection as prescribed by this Law, the reporting entity shall be obliged to ensure the following conditions to the authorised person and the deputy: 1. unrestricted access to all data, information and documentation necessary for the purposes of money laundering and terrorist financing prevention and detection; 3. Adequate human resource, material and other work conditions*".

Independent Audit Function (c. 15.2)

1030. Art. 50 of the AMLTF Law states that "*(1) The reporting entities [...] shall be obliged to ensure that regular internal audit over the performance of money laundering and terrorist financing prevention and detection assignments as per this Law be performed at least once a year, and to inform the Office accordingly at request. (2) The purpose of internal audit referred to in paragraph 1 of this Art. shall relate to the detection and prevention of irregularities in the*

implementation of the Law and to the improvement of the internal system for detecting suspicious transactions and persons, as referred to in Art. 42 of this Law."

1031. As to the independence of the audit function required under Criterion 15.2, various sectoral laws contain provisions providing for the establishment and operation of "*a separate organisational unit, functionally and organisationally independent both from the activities it audits and from other organisational units*" (Art. 183 §1 of the Credit Institutions Acts). Similar provisions can be found in the Insurance Act, AML/CFT Guidelines issued by HANFA, CNB, FI, etc.

Employee Training (c. 15.3)

1032. According to Art. 49 of the AMLTF Law, "*(1) The reporting entities referred to in Paragraph 2, Art. 4 of this Law shall be obliged to cater for regular professional improvement and training of all employees involved in the tasks relative to money laundering and terrorist financing prevention and detection as per this Law*". In the meaning of this Art., professional improvement and training is understood as "*familiarization with the provisions of this Law and regulations passed on the basis of the Law, reporting entity's internal enactments, and with international standards stemming from the international money laundering and terrorist financing prevention conventions, with the guidelines and the list of suspicious transactions detection indicators, and with other assignments prescribed by this Law*".

1033. Paragraph 3 of the same Art. requires that by the end of each year, reporting entities undertake to produce the annual professional improvement and training program "*pertinent to the money laundering and terrorist financing prevention and detection field for the next calendar year.*"

Employee Screening (c. 15.4)

1034. There is no formal requirement for financial institutions regarding screening procedures to ensure high standards when hiring employees. Sectoral laws cover this issue only in relation to fit and proper test when making decision on appointment of senior management.

Additional elements (c. 15.5)

1035. Criterion 15.5 refers to ability of the AML/CFT compliance officer to act independently and to report to senior management above the compliance officer's next reporting level or the board of directors. To comply with this criterion, Art. 44 of the AMLTF Law provides that the compliance officer is appointed at a position enabling independence in his/her work and direct communication with the management.

Effectiveness and efficiency

1036. Meetings with the representatives of financial institutions revealed a proper recognition and comprehension of the requirement to have internal procedures, policies, and controls for the prevention of ML/FT. Compliance officers of financial institutions demonstrated an understanding of their respective functions and duties, as well as the pertinent policies and procedures. Moreover, CNB referred to regular communication with relevant staff of financial institutions on issues pertaining to the appropriate implementation of the compliance function.

1037. Nonetheless, the discussions during the on-site visit also revealed that compliance officers lack the ability (the institutional arrangements) to report to the senior management above their next reporting level, i.e. above the executive management, such as the Supervisory Board for banks and similar bodies for other financial institutions.

1038. Moreover, no information was provided on whether there is any regulation for employee screening arrangements and, in case of availability, on the procedures to implement that in practice.

Recommendation 22 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1039. R.22 requires that financial institutions should be required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit.

1040. In the 3rd round MER, Croatia was rated PC in respect of R.22 mainly because the provisions requiring financial institutions to apply AML/CFT measures to foreign subsidiaries consistent with home country requirements were not fully operational and there was no provision that required financial institutions to inform their home country supervisor when a foreign subsidiary or branch was unable to observe appropriate AML/CFT measures for the effective implementation of internal controls in the nonbanking financial sector.

1041. Now in line with the 3rd EU Directive, Art. 5 of the AMLTF Law requires that the reporting entities are obliged to ensure that money laundering and terrorist financing prevention and detection measures as prescribed by the AMLTF Law are applied within the equal scope in their business units and companies in their majority ownership or with predominant decision-making rights, seated in a third country unless such a course of action would be in direct contradiction to the legal regulations of the third country. As the Croatian financial sector legislation is in line in EU legislation there are no prohibitions on the financial institution from having foreign branches, which means that it would be possible for them to open foreign branches in the future.

1042. At the time of the on-site visit, there were no credit institutions, payment institutions or electronic money institutions with a registered office in the Republic of Croatia with foreign branches either in EU countries or in third countries. There were, however, two bank subsidiaries in foreign countries and one insurance company had subsidiary companies in neighbouring countries.

Consistency of the AML/CFT measures with home country requirements and the FATF recommendations (c. 22.1 & 22.2)

1043. The AMLTF Law requires that the financial institutions branches and subsidiaries in host countries shall apply the equal scope of the AMLTF Law measures as in Croatia if the requirements of the home and host countries differ. This provision covers all reporting entities. It can be inferred from the language of Art. 5 (1) of the AMLTF Law that if the foreign provisions are not fully in line with international standards, the reporting entities should follow the Croatian provisions unless such a course of action would be in direct contradiction to the legal regulations of the third country. But if the foreign provisions should provide better standards, it would be still sufficient to follow the Croatian regulations. The wording "within the equal scope" refers only to a same standard as in Croatia but not that the higher standard has to be applied.

1044. There is no requirement to pay special attention in case of jurisdictions which do not or insufficiently apply the FATF Recommendations.

1045. Art. 5 (2) of the AMLTF Law provides that where the legislation of the third country does not permit the application of the money laundering and terrorist financing prevention and detection measures within the scope laid down in the AMLTF Law, the reporting entity is required to inform AMLO of the matter without any undue delay and to institute adequate measures for the elimination of the money laundering and/or terrorist financing risk. This provision further states that, in the event that the legislation of a third country does not permit the application of equal measures as in Croatia, the reporting entity is required to notify AMLO. There is, however, no requirement to notify CNB, FI or HANFA as competent supervisory authorities.

Additional elements (c. 22.3)

1046. Pursuant to Art. 5 (3) of the AMLTF Law, the obligated entities are required to regularly inform their business units and companies in their majority ownership or in which they have predominant decision-making rights, with a seat in a third country, of internal procedures pertinent to money laundering and terrorist financing prevention and detection, especially in terms of customer due diligence, supply of data, keeping records, internal control and other significant circumstance related to money laundering and terrorist financing prevention and detection. There is no clear provision that financial groups should apply consistent CDD measures at the group level. Evaluators were advised during the on-site visit that in practice credit institutions which belong to international groups are advised about risk management, typologies, etc. by their parent entities.

Effectiveness and efficiency

1047. At the time of the on-site visit, there were no credit institutions, payment institutions or electronic money institutions with a registered office in the Republic of Croatia with foreign branches either in EU countries or in third countries. There were, however, two bank subsidiaries in foreign countries and one insurance company had subsidiary companies in neighbouring countries.

1048. As there is no requirement to notify CNB, FI or HANFA, as competent supervisory authorities, that the legislation of a third country does not permit the application of equal measures as in Croatia, this may give rise to the possibility of AML&TF risks in the operational risks of credit and financial institution.

3.8.2 Recommendation and comments

Recommendation 15

1049. A legally defined provision for compliance officers to be designated at management level should be introduced.

1050. The language of the law potentially providing an option for reporting entities to exempt them from the obligation of appointing a compliance officer should be revised to avoid any ambiguity in interpretation.

1051. A formal requirement and practical implementation of employee screening procedures should be introduced.

Recommendation 22

1052. A requirement should be introduced that the financial institutions should pay special attention in case of jurisdictions which do not or insufficiently apply the FATF Recommendations.

1053. A requirement should be introduced that financial institutions branches and subsidiaries in host countries should apply the higher standard in the event that local requirements are not fully in line with international standards or the host countries standards are higher.

1054. A requirement should be introduced that in cases where the legislation of a third country does not permit the application of equal measures as in Croatia, the reporting entity should be required to notify the CNB, FI or HANFA as competent supervisory authorities.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**LC**	• No explicitly defined legal provision for compliance officers to be designated at management level; • Lack of clarity in Article 44 of the AMLTF Law might provide an option for reporting entities to exempt them from the obligation of

		appointing a compliance officer; • No formal requirement and practical implementation of employee screening procedures.
R.22	**PC**	• There is no clear requirement that financial institutions should pay special attention in case of jurisdictions which do not or insufficiently apply the FATF Recommendations; • There is no clear requirement that the financial institutions should apply the higher standards in branches and subsidiaries in host countries in the event that local requirements are not fully in line with international standards or the host countries standards are higher; • Although there is a requirement to advise AMLO, there is no requirement to notify CNB, FI or HANFA as primary supervisory authorities.

3.9 Shell Banks (R.18)

3.9.1 Description and analysis

Recommendation 18 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1055. At the time of the 3rd round evaluation there were no legally binding prohibitions on financial institutions to enter or continue correspondent banking relationships with shell banks. There was no obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country did not permit its accounts to be used by shell banks.

1056. According Art. 3 (27) of the AMLTF Law "*a shell (virtual) bank shall be a bank, i.e. other credit institution doing identical business activity registered in the country in which it does not perform its business activity and which is not related with a supervised or otherwise controlled financial group*". It seems that the definition of shell bank is narrower than defined by FATF. The meaning of the wording "*business activity registered in the coun*try" is not clear and does not appear to fully cover "*has no physical presence in the country*" as required in the FATF definition. It is, therefore, questionable whether this wording fully covers the definition of shell bank.

Prohibition of establishment of shell banks (c. 18.1)

1057. The establishment of the so-called "shell" banks in the territory of the Republic of Croatia is expressly prohibited by the provision of Art. 65, (6) of the CIA.

Prohibition of correspondent banking with shell banks (c. 18.2)

1058. Art. 38 of the AMLTF Law states a clear prohibition from establishing or continuing correspondent relationships with a bank which operates or could operate as a shell bank or with other similar credit institutions known to enter into agreements on opening and keeping accounts with shell banks. This requirement applies for all financial institutions.

1059. Pursuant to Article 322 Paragraph 1 of the Civil Obligations Act ("Official Gazette", No. 35/2005, 41/2008 and 125/2011) a contract that is contrary to the Constitution, the mandatory laws or to the morals of the society is null and void unless the objective of the infringed rule refers to some other legal effect or the law provides otherwise for such particular case.

1060. Due to the fact that Article 38 of the AMLTF Law imposes a prohibition for only one of the contracting parties (i.e. reporting entity) one could interpret it in a way that it falls within the scope of Article 322 Paragraph 2 of the Civil Obligations Act. However it is not clear whether that should be the case or Paragraph 1 of the said Act should apply and such contract considered null and void. Namely, there were some court judgements in similar cases (e.g. where according to the law one contracting party was prohibited to enter into assignment agreement due to the fact that its

accounts were frozen) but the court declared such an agreement null and void. Since there has not been any court practice in the Republic of Croatia regarding Article 38 of the AMLTF Law yet, it is not clear whether this contractual relationship is valid or should be voided.

1061. No further guidance is provided to the banks as to how to identify instances where a bank is a shell bank or even if it is not a shell bank it has business relations with other shell banks.

Requirement to satisfy respondent financial institutions of use of accounts by shell banks (c. 18.3)

1062. Art. 31 of the AMLTF Law requires that when establishing a correspondent relationship with a bank or other credit institution seated in a third country, the reporting entity shall be obliged to conduct measures of enhanced CDD and additionally demand a written confirmation that the bank or other credit institution does not operate as a shell bank, nor has business relationships nor conduct transactions with shell banks.

Effectiveness and efficiency

1063. During the on-site mission the evaluators found no indication that banks in the Republic of Croatia have any kind of direct corresponding relations with shell banks or with banks known as allowing shell banks to use their accounts.

1064. The Croatian authorities have assured the evaluators that the on-site examinations of credit institutions have established that credit institutions had not established or continued correspondent relationships with shell banks or similar credit institutions known to enter into agreements on opening and keeping accounts with shell banks.

3.9.2 Recommendation and comments

1065. Further guidance should be provided to banks on how to identify instances where a bank is a shell bank.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**C**	

Regulation, supervision, guidance, monitoring and sanctions

3.10 The Supervisory and Oversight System - Competent Authorities and SROs /Role, Functions, Duties and Powers (Including Sanctions) (R. 23, 29, 17 and 25)

3.10.1 Description and analysis

1066. Croatia was previously rated Partially Compliant in respect of Recommendation 23 for the reasons that there was no clear legal basis to cover CFT in the course of supervision, HANFA in the course of its supervision focused more on the detection of non-reported suspicious transactions than evaluating the effectiveness of the whole anti-money laundering system of the obliged entities, not for all types of financial institutions legislation existed to prevent all criminals and their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, there was no special licensing or registration regime for companies issuing credit/debit cards and providing MVT services

Authorities/SROs roles and duties & Structure and resources

Recommendation 23 (23.1, 23.2) (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

Regulation and Supervision of Financial Institutions (c. 23.1); Designation of Competent Authority (c. 23.2)

1067. Since the last evaluation, the legislative framework providing for the supervision and regulation of financial institutions in terms of AML/CFT has significantly changed. With the adoption of the AMLTF Law, the legal provisions pertinent to preventing ML became equally applicable to countering TF, aimed at prevention and detection of activities of individuals, legal persons, groups and organisations related to terrorist financing. Additionally, the guidelines issued by various supervisory bodies have become equally applicable for AML and CFT.

1068. Art. 83 of the AMLTF Law provides that "*(1) The supervision of operations of the reporting entities referred to in Art. 4, paragraph 2 of this Law concerning the application of this Law and regulations passed on the basis of this Law shall be conducted by the institutions listed hereunder within the framework of their respective scopes of competence:*

b) The Office;
c) The Financial Inspectorate of the Republic of Croatia;
d) The Tax Administration;
e) The Croatian National Bank;
f) *The Croatian Financial Services Supervision Agency*"

1069. Furthermore, Arts. 84 and 85 define the scope of competence of supervisory authorities in following manner:

- "*The Office shall conduct off-site supervision of compliances with this Law with the reporting entities referred to in Art. 4, paragraph 2 of this Law via the collection and examination of data, information and documentation supplied as per this Law;*
- *The Financial Inspectorate shall conduct supervision of compliance with all reporting entities;*
- *The Tax Administration shall conduct supervision of compliance with organisers of games of chance;*
- *The Croatian National Bank shall conduct supervision of compliance with the banks, credit unions and electronic money institutions;*
- *The Croatian Financial Services Supervision Agency shall conduct supervision of compliance with investment funds management companies, pension companies, companies authorised to do business with financial instruments, insurance companies*".

1070. In relation to explicit definition of and distinction between supervisory agencies with their respective areas/subjects of competence, it should be mentioned that whereas the law is specific enough to provide for explicitly with regard to the Tax Administration (responsible for casino sector), the Croatian National Bank (responsible for credit institutions), and the Croatian Financial Services Supervision Agency (responsible for insurance and investment sectors), the same cannot be said in relation to: a) AMLO, which has a mandate for off-site surveillance of compliance for all reporting entities and, more importantly; to b) the Financial Inspectorate, which has a mandate for conducting supervision (i.e. both off-site surveillance and on-site inspections) of compliance for all reporting entities.

Table 24: Reporting entities, the regulators, supervisors and their respective scopes of competence under the AMLTF Law.

			SUPERVISORS				
N	**Financial institution**	**Number**	**AMLO***	**FI**	**CNB**	**HANFA**	**Licensing authority**
1	Banks	31	X	X	X		CNB
2	Saving banks	1	X	X	X		CNB
3	Housing savings banks	5	X	X	X		CNB
4	Credit unions	24	X	X	X		CNB
5	Payment Institutions	0	X	X	X		CNB
6	Croatian Post	1	X	**X****			-
7	Investment funds	130	X	X		X	HANFA
8	Investment funds management companies	29	X	X		X	HANFA
9	Investment firms	37	X	X		X	HANFA
10	Pension funds	26	X	X		X	HANFA
11	Pension fund management companies	8	X	X		X	HANFA
12	Insurance companies	28	X	X		X	HANFA
13	Electronic money Institutions	5	X	X	X		CNB
14	Exchange offices	1400	X	**X****			CNB
15	Consumer loan providers	27	X	**X****			Ministry of Finance
16	Loan intermediaries	33	X	**X****			Ministry of Finance
17	Leasing companies	25	X	X		X	HANFA
18	Factoring companies	15	X	X		X	No information

* AMLO is empowered to conduct off-site supervision only

** stands for the primary responsibility of FI as per the interpretation of the Croatian authorities

1071. As can be seen from the above table, both the Financial Inspectorate (FI) and the Croatian National Bank (CNB) appear to have AML/CFT supervisory responsibility over credit institutions with no explicit distinction and sharing of responsibility for each agency. The same is true for the other types of reporting entities supervised by the HANFA. In AMLO's Procedures of Work of Department for Financial and Non-Financial Institutions Targeted Supervision (see ANNEX XXVI) the division of responsibility for AML/CFT supervision is clearly laid out between the Financial Inspectorate, The Tax Administration, the CNB and HANFA.

1072. The authorities advised that for financial institutions, which do not have a designated sectoral supervisor, supervision of implementation of AML/CFT measures is conducted by the Financial Inspectorate; the category of such financial institutions includes foreign exchange offices, consumer loan providers, and loan intermediaries. In addition, the Financial Inspectorate is

authorized "on the basis of ML/FT risk assessment to conduct inspection examinations (controls) of all reporting entities who implement AML/CFT measures. In course of conducting controls, cash flows are primarily monitored, inside and outside the financial system, including companies that are not reporting entities pursuant to AML/CFT Act".

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)

1073. Arts. 83-85 of the AMLTF Law define the bodies exercising supervision of the implementation of the Law, within their respective areas of competence. Compliance of these bodies with the requirements of the Recommendation 30 has been assessed against the following criteria:

- Adequacy of structure, funding, staffing, and technical resources (R 30.1);
- Professional standards (including confidentiality requirement), integrity, and skills of staff (R 30.2);
- Adequate training of staff for combating ML/FT (R 30.3).

Anti-Money Laundering Office (AMLO)

1074. AMLO is the Croatian financial intelligence unit. Founded in early 1998, AMLO is a structural unit within the Ministry of Finance, which performs tasks for prevention of ML/FT, and other functions as provided by the AMLTF Law. AMLO is managed by the director and has two services responsible for analytical and supervisory activities, respectively. The staff list of AMLO comprises 36 systemised working places, of which only 22 are occupied. There are defined security clearance rules for hiring employees. AMLO does not have a separate budget, but it is fully supported by the Secretariat of the Ministry of Finance in securing funds for AMLO to fully and effectively perform its functions. AMLO staff maintains high professional standards, including those concerning confidentiality. Around 80% of current staff hold university degrees in economics or law (management staff and inspectors).

Financial Inspectorate

1075. The FI is a structural unit within the Ministry of Finance established by a special Law (Financial Inspectorate Law, FIL). According to Art. 5 of FIL, FI is managed by the director appointed with a special decision of the Minister of Finance. The evaluators were not aware of any indications that the FI was not operationally independent or subject to undue influence or interference. The legal protections for the director are the same as those described for the head of AMLO under R.26 above. In March 2012, the FI strengthened its administrative capacities by hiring 6 new inspectors thus increasing the total staff number to 46 employees. Among them, 80% have higher education (30 economists and 5 lawyers). To deal with the broadened scope of its tasks and assignments, the FI has recently adjusted its internal organisational structure to appropriately reflect the functions performed by it.

Croatian National Bank

1076. The CNB is the central bank of Croatia. According to Art. 4 of the Act on the Croatian National Bank, the CNB is autonomous and independent within the Constitution and law in performing the entire operations within its competence. Based on the information provided by the authorities, the assessment team concluded that the CNB has adequate resources in terms of structure, staff, and technical basis to effectively perform the function of supervision over reporting entities. The CNB employees are obliged to keep as a business secret any documents and data of which they become aware in the course of carrying out their duties and tasks. The qualification structure of CNB employees is as follows: 2% have a doctor's degree, 13% have a master's degree, and 54% have university qualifications.

Croatian Agency for Supervision of Financial Services (HANFA)

1077. Art. 3 §1 of the Act on the Croatian Agency for Supervision of Financial Services provides that the Agency shall be an independent legal person reporting to the Croatian Parliament. HANFA has a total of 141 employees, of which 4% have a Master's degree, and 86% have Bachelor's degree. The number of employees directly involved in AML/CFT is 57. HANFA has adopted a Code of Conduct for its employees, which prescribes the rules for safekeeping of confidential data, standards of business etiquette, and adequate level of professionalism.

Table 25: Quantitative characteristics in the form of ratios pertinent to trainings of supervisory staff:

Year	Supervisor	CNB	HANFA	FI	AMLO	TA
2009	Training events	7	4	**1**	6	**3**
	Staff attendance of trainings	12	10	**19**	16	**23**
2010	Training events	9	1	8	20	**4**
	Staff attendance of trainings	21	3	47	66	**25**
2011	Training events	3	1	3	22	**8**
	Staff attendance of trainings	27	3	46	30	**40**
2012	Training events	1	3	2	13	**9**
	Staff attendance of trainings	1	7	12	55	**90**
Total	Training events	20	9	13	61	**24**
	Staff attendance of trainings	61	23	105	167	**90**
Total number of staff involved in AML/CFT supervision		**15**	**57**	**23**	**22**	**45**

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)

1078. As already detailed under the analysis of Criteria 23.1 and 23.2, Arts. 83-85 of the AMLTF Law defines the supervisory bodies, their scopes of competence and responsibilities. Besides that, different sectoral laws define the supervisory power to conduct inspections in financial institutions. Hence, Art. 4 of the Act of Croatian National Bank defines the powers the of CNB for the exercise of supervision and oversight in accordance with the laws governing the operation of credit institutions, credit unions, payment institutions and payment transaction settlement systems. Art. 1 §2 of the Financial Inspectorate Act empowers the Financial Inspectorate to supervise the implementation of the provisions in the area of AML/CFT, as well as of foreign currency operations and provision of payment operation and money transfer services. Art. 13 of the Act on HANFA defines the fundamental objectives of the Agency as the promotion and preservation of the stability of the financial system and supervision of legality of the supervised entities operations.

1079. Furthermore, there are legislative provisions making the powers of the supervisors to access records and information conditional on the presence of a court decision. HANFA has the authority to access records and information from its supervised entities and has measures at its disposal in cases where the supervised entities are not willing to allow access to records and information. These powers are set out in to Art. 263 of the Capital Market Act, Art. 30 (and related Art. 232) of the Investment Funds Act, Art. 158 (and related Art. 234) of the Insurance Act and Arts. 71-73 (and related Art. 103) of the Leasing Act.

1080. The details of supervisory powers to enforce and sanction financial institutions, as well as their managers for non-compliance with AML/CFT requirements are provided under the analysis of Criteria 17.2 and 17.3. A peculiarity of the Croatian AML/CFT system is that the power of

imposing pecuniary sanctions is vested solely on the Financial Inspectorate, and all supervisory bodies should communicate infringements of AML/CFT legislation – through sending a respective notification – to the Financial Inspectorate for further processing. Nevertheless, different supervisory bodies are empowered to apply non-pecuniary measures (such as suspension or withdrawal of license etc.) to their respective supervised entities and persons.

Anti-Money Laundering Office (AMLO)

1081. Art. 84 §1 of the AMLTF Law enables AMLO to conduct off-site supervision of compliance of all reporting entities, through the collection and examination of data, information, and documentation submitted under the Law. As to the authority to conduct on-site inspections, Paragraph 4 of the same Art. states that AMLO may coordinate the work of other supervisory bodies and require them to conduct targeted examinations.

1082. Furthermore, the reporting entities are required to submit to AMLO data, information, and documentation prescribed by the Law, as well as other data that AMLO may require for the conducting of supervision without any undue delay, and no later than within 15 days after the receipt of the request.

Financial Inspectorate

1083. Art. 85 of the AMLTF Law states that "*The Financial Inspectorate shall conduct supervision of compliance with this Law with all reporting entities referred to in Art. 4, §2 of this Law. The supervision of the reporting entities by the Financial Inspectorate shall be conducted on the basis of money laundering and terrorist financing risk assessment. The Financial Inspectorate shall be entitled to use the assistance from other supervisory bodies in the conducting of supervision of the reporting entities in line with the signed agreements of understanding*".

1084. Then, Art. 9 of the Financial Inspectorate Law specifies that in the performance of the inspection function, authorised persons of the Financial Inspectorate have the authority to inspect business records, bank and financial documentation, contracts, business evidence and other documents in any form whatsoever and to obtain copies thereof, to inspect business premises, goods, installations and equipment etc.

1085. Furthermore, Art. 10 §1 of the same Law states that at the request of an authorised person of the Financial Inspectorate, a subject of supervision shall be required to provide for inspection, i.e. deliver, data, documentation and information regarding all important circumstances for the performance of inspection supervision or the implementation of other authorities and measures that the Financial Inspectorate has pursuant to the Act and other regulations. Art. 40 of the Financial Inspectorate Law provides sanctions for failure to provide the necessary documentation and objects.

Croatian National Bank

1086. Art. 85 §3 of the AMLTF Law empowers the Croatian National Bank to conduct supervision of compliance with the Law over banks, savings banks, housing savings banks, credit unions and electronic money institutions.

1087. According to Art. 4 of the Act on the CNB, the tasks of the CNB include, *inter alia*, "*the exercise of supervision and oversight in accordance with the laws governing the operation of credit institutions, credit unions, payment institutions and payment transaction settlement systems*". Then, Art. 197 § 1 of the Credit Institutions Act (CIA) defines that the CNB exercises supervision of credit institutions by:

1) Collecting and analysing reports and information, on-going monitoring of the operation of credit institutions and other persons required to report to the Croatian National Bank pursuant to the CIA and regulations adopted under the CIA, or other laws and regulations adopted under these laws;
2) Carrying out on-site examinations of credit institutions' operation; and

3) Imposing supervisory measures.

1088. Art. 204 of CIA requires that credit institutions enable the authorised persons, at their request, to carry out on-site inspections entailing examination of business books and documentation, administrative or business records, as well as of information and related technologies, to the extent necessary for proper conduction of examination. The respective sectoral laws define similar powers for the CNB to exercise supervisory powers in respect of electronic money institutions and payment institutions.

Croatian Financial Services Supervisory Agency (HANFA)

1089. Art. 85 §4 of the AMLTF Law empowers the HANFA to conduct supervision of compliance by investment fund management companies, pension companies (including pension fund management companies and pension insurance companies), companies authorised to do business with financial instruments, and insurance companies authorised for the performance of life insurance matters. It is noted that investment funds are not legal entities and are managed by investment fund management companies. HANFA also supervises leasing and factoring companies while conducting its regular supervisory activities.

1090. HANFA is empowered to supervise a broad range of entities; its powers are regulated by different pieces of legislation. These legislative provisions allow HANFA to conduct both off-site surveillance and on-site inspections of insurance companies, investment funds, investment funds management companies, investment firms, pension funds and pension fund management companies as well as leasing and factoring companies. This includes also the authority to check business books, documentation etc., power to obtain access to all records and information relevant to monitoring compliance, as follows:

Insurance companies: Art. 157 of the Insurance Act empowers HANFA to exercise the supervision of insurance companies by way of: 1) monitoring, collecting and verifying reports and notifications submitted by insurance companies and, 2) carrying out examinations of operations of insurance companies, 3) imposing supervisory measures.

Investment funds and fund management companies: Art. 227 of the Investment Funds Act states, that the supervisory authority shall be authorised to carry out inspections of investment funds, fund management companies, brokers engaging in the sale of units or shares, depositary banks or any other person carrying out the business activity the responsibility for which lies with one of the previously specified persons, through regular or extraordinary inspections.

Investment firms: Art. 247 of the Capital Market Act defines that HANFA is competent for supervision of the operation of investment firms. Then, Art. 254 of the same law empowers the HANFA, when carrying out supervision to review the organisational conditions, strategies, policies and procedures that the investment firm has set up, evaluate the financial position and risks to which the investment firm is exposed and etc.

Pension Funds and companies: Chapter XII of the Mandatory and Voluntary Pension Fund Law empowers the HANFA for the supervision of pension funds and companies with power to inspect business books and documentation of them.

Leasing and factoring companies: Chapter X of the Leasing Act empowers HANFA for the supervision of leasing companies with powers to monitor, gather and review reports of this type of reporting entities. Although the HANFA Act empowers the Agency to supervise factoring companies, the evaluators were informed that the special law for factoring companies is still in the process of being drafted.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

1091. Competence for supervision of compliance with AML/CFT requirements in Croatia is vested in five different authorities designated by Arts. 83-85 of the AMLTF Law; among them, four bodies have a mandate for supervising activities of financial institutions. The supervisory mandate

of those bodies is quite comprehensive and encompasses powers for general regulation and supervision, with instrumentalities such as off-site surveillance and on-site inspections, unhindered access to all records, documents, and information relevant to monitor compliance of supervised entities with applicable legislation, and enforcement and sanctioning tools.

1092. The supervisory bodies interviewed during the assessment visit did not raise any problems relating to the possible inadequacy or irrelevance of their powers to monitor and control activities of the financial market participants. The representatives of the private sector, on the other hand, had a full recognition and understanding of the supervisory function exercised by various authorities and reported that the powers of those authorities are adequate to check compliance with the applicable legislative framework.

1093. Overall, the current situation of the supervisors in terms of adequacy of technical resources, professional standards and staff integrity, as well as of training seems to be on a sufficient level.

1094. When it comes to the practice of supervision, particularly the distribution of roles between supervisors having a mandate over the same type reporting entities, the authorities explain that, in practice, the Financial Inspectorate is primarily responsible for comprehensive supervision of foreign exchange offices, consumer loan providers and loan intermediaries from among financial institutions, and the DNFBP sector. However, such distribution of supervisory roles is not reflected in the applicable legislation. In the evaluators' opinion, this may result in overlaps in the work of different supervisory agencies and, given the issues identified in terms of coordination between various supervisors, reduce the overall efficiency of the supervisory regime in general.

1095. The signing of MOUs between the relevant supervisors, which would provide an effective tool for coordination of supervisory efforts, has still not been completed. The supervisory coordination and flow of information between the authorities should be clarified to ensure a fully effective AML/CFT framework. HANFA has MoUs with AMLO, the Ministry of Finance and Croatian National Bank and is a signatory of a Multi-institutional Cooperation Agreement concerning cooperation in the field of prevention of money laundering and terrorism financing. HANFA is a signatory of the IOSCO MMoU and has signed the memoranda on observer status with the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). The CNB has also MoUs with Ministry of Finance - AMLO, Ministry of Finance - Financial Inspectorate, HANFA and its counterparts (supervisory bodies) in following countries: Italy, Germany, France, Hungary, Austria, Bosnia and Herzegovina, Montenegro, Turkey, and San Marino. As well as other supervisory bodies CNB is also signatory of a Multi-institutional Cooperation Agreement concerning cooperation in the field of prevention of money laundering and terrorism financing.

Recommendation 17 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1096. Croatia was previously rated Partially Compliant in respect of Recommendation 17 for the reasons that the AML Law did not provide a clear legal basis for sanctions concerning infringements in the context of terrorist financing, sectoral laws seem to have no such provisions with regard to violations of AML/CFT obligation, the AML law did not provide a sanctioning regime for directors or senior management, the majority of AML/CFT infringements could only be sanctioned by the AML Law and infringements could only result in fines; a comprehensive sanctioning regime providing for proportionate and dissuasive sanctions was missing.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

1097. Chapter VII of the AMLTF Law only provides for administrative sanctions (pecuniary penalties) imposed on reporting entities, both legal and natural persons, as well as on responsible officials of reporting entities, including members of the management board, in case of infringement of applicable AML/CFT requirements. These penalties are quite comprehensive and

cover almost all requirements specified in the field of AML/CFT. Nevertheless, there are at least two important requirements under the Law, for which no sanctions are envisaged:

- Art. 43 requiring reporting entities to pay special attention to all complex and unusually large transactions; and
- Art. 75 establishing the rules for non-disclosure ("tipping off") of submission of STR's and suspension of transactions.

1098. The range of pecuniary penalties varies depending on the infringement defined:

- From HRK 50,000 (approximately €6,700) to HRK 700,000 (approximately €93,400) for legal persons, and
- From HRK 1,500 (approximately EUR 200) to HRK 30,000 (approximately EUR 4,000) for the responsible officials of reporting entity.

1099. Hence, the maximum sanction for AML/CFT infringements is HRK 700,000 (approximately €93,400), which does not appear to be dissuasive enough if compared with other sanctions prescribed for the financial sector. For example, according to Credit Institutions Act, a bank may be fined with a sum up to HRK 2,000,000 (approximately €267,000) for different violations of relevant laws (such as, for example, the failure to manage operational, credit, market, liquidity and other risks).

1100. Furthermore, Art. 99 of the AMLTF Law defines that "*In instances when a special law shall envisage the issuance of an approval for the performance of certain arrangements, the competent body shall be entitled to recall the approval for the performance of such arrangements from legal or natural persons in breach of the provisions contained in this Law.*"

1101. In addition, administrative sanctions are, although indirectly and not in all cases unambiguously, available under various sectoral laws[28] governing activities of financial institutions and businesses, including, *inter alia*, supervisory measures such as:

- Signing of memoranda of understanding;
- Order to remove responsible managers;
- Orders and measures to remove irregularities;
- Orders for temporary prohibition on performing all or particular activities specified in the working license, for a certain period;
- Withdrawal of authorisation to provide particular financial services;
- Withdrawal of the authorisation;
- Penal provisions;
- Other measures.

Designation of Authority to Impose Sanctions (c. 17.2)

1102. The Financial Inspectorate is empowered to make first-instance decisions on misdemeanours of the AMLTF Law. According to Art. 83 §2 of the Law, should any of the supervisory bodies establish during the conduct of supervision or in any other manner that there are grounds to propose potential violations of the requirements of the Law, they are obliged to file a notification to the Financial Inspectorate and take other measures and actions legally vested in them[29].

1103. The Law defines that complaints in relation to the decisions of the Financial Inspectorate may be appealed judicially, to the High Misdemeanour Court of the Republic of Croatia.

[28] Among those laws, Art. 17 §1 of the Financial Inspectorate Law states that the Financial Inspectorate, in compliance with the provisions of the Act, shall be permitted to apply the following supervisory measures to subjects of supervision: 1) to issue a written warning to eliminate irregularities; 2) to order the elimination of illegalities and irregularities; 3) to propose the suspension of the implementation of financial transactions and the freezing of financial assets; 4) temporarily to prohibit the undertaking of specific business activities, pursuant to the authorities that issue from the Minor Offence Act; and 5) to propose the revocation of authorisation to work.

[29] Such other measures include those available under various sectoral laws.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

1104. All pecuniary penalties defined under Chapter VII of the AMLTF Law may also be applied to members of management board or to responsible officers of the legal person.

Market entry

Recommendation 23 (rated PC 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)

Credit Institutions (Bank, Savings Bank or Housing Saving Bank)

1105. According to Art. 34 of Credit Institutions Act, prior approval from the Croatian National Bank for the acquisition of shares of a credit institution is needed when legal or natural persons, directly or indirectly, acquire a qualifying holding[30] in the credit institution. Further, Art. 35 §1 of the same law states that "*an application for prior approval to acquire a qualifying holding shall be accompanied by: […] c) a list of natural persons who are the ultimate shareholders of the acquirer or holders of holdings in the acquirer …and information referred to in paragraph (1), item (2) under (b) and (c) of this Article.*" that is a curriculum vitae and evidence that the person has not been convicted by a final judgment of a crime against the values protected by international law or of certain types of crime[31].

1106. According to Art. 45 §1 of the Credit Institutions Act, "*Members of the credit institution's management board must meet the following criteria: … 1) an undergraduate degree pursuant to regulations governing scientific activity and higher education; 2) professional qualifications, abilities and experience appropriate and adequate to direct the business of a credit institution; 6) a good reputation[32]; 7) no conviction by a final judgment of a crime against the values protected by international law or of certain types of crime[33].*"

Investment Firms

1107. Pursuant to Art. 50 of the Capital Market Act, in the performance of its public authorities, HANFA shall decide on prior approval for acquiring a qualified share to the proposed acquirer. In assessing the application and in order to ensure the sound and prudent management of the investment firm in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the investment firm, HANFA shall appraise the suitability of the proposed acquirer against the following criteria: the reputation of the proposed acquirer and any person who will direct the business of the investment firm, whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing has been committed or attempted, or could be committed.

1108. Pursuant to Art. 21 §4 of the Capital Market Act, members of the management board of the investment firm must be of sufficiently good repute and must have the required professional qualifications and be sufficiently experienced so as to ensure the sound and prudent management of the investment firm. Furthermore, the ordinance issued by HANFA on 15 January 2009 regulates the conditions for members of the management board of the investment firm. Hence, Art. 5 §1 of the mentioned ordinance states that a person with a good repute would be the one who has complete working ability, whose assets are not under open bankruptcy proceedings and who is not guilty under final verdict for criminal offences against values protected by international law or

[30] A qualifying holding is a holding of 10% or more of the capital of the credit institution.

[31] Such as the crimes against the payment system and the security of its operations; relating to the authenticity of documents; relating to breaches of official duties; relating to money laundering; or relating to terrorist financing.

[32] A person is considered to have a good reputation provided that, *inter alia*, he/she is not subject to investigation or criminal proceedings for a crime prosecuted *ex officio* (Clause 3 of Art. 3 §2 of the Decision on the criteria and procedure for granting prior approval of the CNB for the appointment of the chairperson or a member of the management board of a credit institution.

[33] The same types of crime as defined under Art. 34 of CIA.

for certain types of offences (Such as the offenses of financial instrument market abuse, concealing money obtained in an illegal manner, financing terrorism, against property, where the criminal proceedings are started by official duty[34], against safety of the payment system and transactions, against justice, against the credibility of the documents, against the official duty).

1109. For investment fund management companies, Art. 30, §18 of the Investment Funds Act requires that an investment fund management company shall report to the Supervisory Authority any change in accordance with the provisions of the Act, including:

- a change in the management and supervisory board members,
- a change in the management company membership,
- any change in capital, structure or participation in registered capital in relation to the condition approved by the Supervisory Authority.

1110. In addition, Art. 26 of the Act stipulates which persons may not be members of management companies or members of their management boards or supervisory boards.

1111. For the stock exchange, Arts. 286 & 287 of the Capital Market Act require that the management board of the stock exchange shall consist of at least two members. Furthermore, the management board members of the stock exchange must have good reputation, suitable professional qualifications and experience necessary to steer and manage a regulated market exercising due professional care. It is possible to appoint as a management board member of the stock exchange a person who has been granted approval from the Agency.

1112. For the Central Clearing and Depository Agency, Art. 509 of the Capital Market Act requires that the provisions of Arts. 286 and 287 of the Act shall apply mutatis mutandis to the board of directors and the supervisory board of the central clearing and depository agency, whereby the term "stock exchange" shall be replaced by the term "central clearing and depository agency" as appropriate.

Insurance Companies

1113. According to Art. 21 §1 of the Insurance Act the acquisition of shares in an insurance company, whereby a person directly or indirectly acquires a qualifying holding in the insurance company shall be subject to the prior approval of the supervisory authority (HANFA). An application for authorisation required to carry on insurance business among others shall be accompanied by a list of shareholders including their personal information (Art. 59).

1114. However, there is no legal requirement for them to submit evidence on clean criminal record. Furthermore, there is no obligation defined in the law to provide data on beneficial owners and, respectively, on their criminal background. In practice HANFA does require this information for beneficial owners although there is no legal basis for this.

1115. With regard to fit and proper test for the management of insurance companies, it appears that the requirements of Criterion 23.3 are partially met. Particularly, Art. 27 of the Insurance Act defines the educational and professional qualifications, competence and experience needed to manage the operations of an insurance company in a sound and prudent manner. Nevertheless, there are no provisions providing for the prevention of criminals or their associates from holding management positions in insurance companies. Art 27 also requires that the candidate meets the requirements for the position of the member of the board of directors laid down in the Companies Act. The Companies Act does contain a requirement that any person of full legal capacity may be appointed management board member, unless s/he has been sentenced for specific criminal offences within a 5-year period from the date the sentence became effective, this includes persons who have been served a protective measure prohibiting the performance of a profession included in the company business activity as long as the measure is in force.

[34] "Criminal proceedings started by official duty" would include all major crimes in the Criminal Act and would include all predicate offences for money laundering.

Pension Companies and Funds[35]

1116. According to Art. 13 of the Mandatory and Voluntary Pension Funds Law, each transaction of stocks or shares and each change of the owner or of the ownership structure of a pension company shall require the prior consent of the HANFA. Then, Art. 21 of the same law defines that the authorisation application shall be submitted by the founders of a pension company along with the following documents: a list of founders, a list of members of the management or of the supervisory board of the pension company. However, there is no obligation defined in the law to provide data on beneficial owners and, respectively, on their criminal background.

1117. According to Art. 15 §3 of the same law, a member of the management or of the supervisory board of a pension company shall not be a person, who has been sentenced for certain types of crimes[36]. Moreover, according to HANFA ordinance on the requirements for members of management and supervisory board of pension companies, a member of the management board of a pension company is to have adequate professional qualifications and professional knowledge, experience, a valid license of a certified pension fund manager, and good repute.

Conclusion

1118. Finalising the analysis of Criterion 23.3, although it appears that the components of the "fit and proper" test for the management are in place in all sectoral laws regulating activities of financial institutions, in certain cases elements are missing for a comprehensive test, particularly:

- The provision to obtain information on ultimate beneficial owners and, respectively, their criminal background is not in place for insurance companies and pension fund management companies;
- Although measures have been taken to prevent criminals from holding a controlling interest or management function in financial institutions, associates of criminals do not appear to be covered by the current regulations;
- Due to the selective definition of the types of crimes resulting in disqualification of a person as to the fit and proper criteria, the requirement of Criterion 23.3 regarding prevention of criminals from holding shares or managerial positions in financial institutions does not appear to be fully met.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

1119. In Croatia, payment institutions and electronic money institutions are the legislatively defined types of entities, which, in addition to banks, may engage in the provision of money or value transfer services. These types of entities are subject to licensing by the CNB. In particular, money transfer services are considered as payment services under the Payment System Act, and authorisation by the CNB has to be obtained for the provision of these services.

1120. As regards money exchange services, authorised exchange offices transact currency exchange deals with natural persons. According to Art. 46 of the Foreign Exchange Act, authorised exchange offices may be resident individual entrepreneurs, sole traders and legal persons with an authorisation from the Croatian National Bank to conduct currency exchange transactions.

[35] *"Pension company"* means a mandatory or a voluntary pension company; "*mandatory pension company*" means a joint-stock company or a limited liability company which manages a mandatory pension fund; "*voluntary pension company*" means a joint-stock company or a limited liability company which manages a voluntary pension fund; *"pension fund*" means a mandatory or a voluntary pension fund; *"mandatory fund"* means a mandatory pension fund established and managed by a mandatory pension company; *"voluntary fund"* means a voluntary pension fund established and managed by a voluntary pension company, which may be an open-end pension fund and a closed-end pension fund.

[36] Such as the criminal offence of causing a bankruptcy, of non-compliance with the obligation to keep business books, of inflicting damage on a creditor, of giving preference to a creditor, of abuse of powers in the procedure of mandatory settlement or in bankruptcy proceedings, of unauthorised disclosure or obtaining of a business or manufacturing secret or for an offence of fraud, referred to in the Criminal Act, within five years after the judgment of conviction became final, without taking into account the time spent in serving the sentence.

1121. As previously noted in section 1.3 above, the Croatian Post also provides certain money and value transfer, as well as currency exchange services.

Licensing of other Financial Institutions (c. 23.7)

Leasing and Factoring Companies

1122. Clause 15, of Art. 4 §2 of the AMLTF Law defines leasing and factoring as separate types of financial activity to be supervised for AML/CFT purposes.

1123. Moreover, according to information provided by the Croatian authorities, both leasing and factoring companies in Croatia are generally supervised by HANFA. Particularly, Art. 63 of the Leasing Act defines HANFA as the authorised supervisor for leasing operations. HANFA is authorised to supervise compliance with AML/CFT requirements of the business activities of the leasing and factoring companies. Accordingly, during its on-site supervision on leasing and factoring companies, HANFA also covers AML/CFT issues. At the time of the on-site visit there was no separate Factoring Law in force[37].

1124. The license for conducting leasing activities shall be issued by the HANFA. Art. 11 §1 of the Leasing Act specifies that acquisition of stakes or shares in a leasing company on the basis of which their holder may directly or indirectly acquire a qualifying stake in the leasing company is subject to prior approval by HANFA.

1125. In accordance with Art. 11 of the Leasing Act, HANFA is authorised to approve qualifying stake of proposed acquirers, who intend to directly or indirectly acquire or increase their share or stake in a leasing company, which would result in the disposition of a qualifying stake in the leasing company (stake which would exceed 20%, 30% or 50%) and/or if the leasing company becomes its daughter company. The holder of qualifying stake must notify HANFA if it intends to sell its stakes or shares, thus decreasing its participation below the limits for which it requested an approval for acquiring qualifying stake. In assessing the application and in order to ensure the sound and prudent management of the leasing company in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the leasing company, HANFA shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

- the reputation of the future holder of qualifying stake
- legal and financial status of the future holder of qualifying stake
- whether the current and past activities conducted by the future holder of qualifying stake or the activities of its affiliated parties may endanger the operations of the leasing company;
- whether activities and operations conducted by the future holder of qualifying stake may hinder or prevent the supervision over the activities of the leasing company

1126. If the requirements are not met HANFA is authorised to reject the application.

1127. When deciding on the approval of the application for becoming a member of the management board of a leasing company, HANFA is required to consider whether the candidate has sufficiently good repute, the required education, corresponding expertise, skills and experience necessary for conducting the company operations, that is to ensure the sound and prudent management of the leasing company or individual who is a management member and/or a manager of another leasing company. If the requirements are not met HANFA is authorised to oppose approval.

1128. The legislation does not contain specific provisions on the licensing requirements and procedures for business entities engaged in factoring activities.

[37] The Act on Factoring is expected to be adopted in 2013.

Consumer Loan Providers and Loan Intermediaries

1129. The FI is the legally defined supervisor for consumer loan providers and loan intermediaries according to Art. 85 of the AMLTF Law. The authorisation for these types of reporting entities is issued by the Ministry of Finance. According to Consumer Loan Law and Rule Book, to obtain a license lenders and loan intermediaries must submit, *inter alia*, the list of qualified owners with name, surname and address and a certificate that there is no criminal charge process against the applicant and good reputation.

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))

1130. Criterion 23.4 requires that for financial institutions subject to the Core Principles – i.e. banks, insurance undertakings and collective investment schemes and intermediaries – the regulatory and supervisory measures applied for prudential purposes and also relevant to ML/TF, should apply in a similar manner for anti-money laundering and terrorist financing purposes. With regard to this, it seems that the AMLTF Law, the different regulations concerning supervisory authorities and sectoral laws of reporting entities generally cover most requirements related to: a) licensing and structure, b) risk management processes, c) ongoing supervision and d) consolidated supervision.

1131. Adequacy of the regulatory and supervisory measures is also assessed in consideration of the supervisory approach and techniques (including planning procedures and methodologies for both off-site surveillance and on-site inspections) as defined by the Core Principles and relevant guidance on the risk based approach, and contrasted to the factual performance in terms of the off-site surveillance measures, coverage and frequency of on-site inspections, identified irregularities, and imposed sanctions.

Supervisory Approach and Techniques

1132. An effective supervisory system requires that supervisors develop and maintain a thorough understanding of the operations of financial institutions. It consists of off-site surveillance and on-site inspections, for which the strategy and procedures applied by the supervisors are considered[38]. As such, the methodology adopted by supervisors to determine allocation of resources should cover the business focus, the risk profile and the internal control environment of supervised entities. It will need updating on an on-going basis so as to reflect the nature, importance and scope of the risks to which individual financial institutions are exposed. Consequently, this prioritisation would lead supervisors to demonstrate increased attention to financial institutions that engage in activities assessed to be of higher ML/FT risk[39].

1133. From among the basic principles for implementing the risk-based approach in AML/CFT supervision, the authorities of Croatia have begun to develop a preliminary National Risk Assessment with the IMF. As the completion of this project is planned for January 2013, this means that key risk factors influencing the risk of ML/FT in the country, such as the size, composition and geographical spread of the financial services industry, corporate governance arrangements in financial institutions and the wider economy, types of products and services offered by financial institutions can be comprehensively assessed and contrasted against critical indicators of ML/FT risks such as the types of predicate offences, amounts of illicit money generated/laundered domestically, sectors of the legal economy affected after the project implementation.

[38] See: BCBS, "Core Principles for Banking Supervision" (October 2006)
[39] See: FATF, "Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing" (June 2007)

1134. Coming to other important principles for implementing the risk-based approach in AML/CFT supervision, such as the design of the supervisory framework supportive for the application of the risk-based approach, the following situation has been observed at various agencies performing the supervisory function:

- The **Croatian National Bank** uses the On-Site Examination Manual for conducting on-site examinations. The evaluation team was informed also that on-site examinations are planned based on the risk assessment of operations of credit institutions and credit unions within the banking system. A notification of an on-site examination is accompanied with a questionnaire for a credit institution that, in addition to general questions, contains a range of questions about recent changes and activities in fifteen basic areas of operation (including the prevention of money laundering and terrorist financing).
- The **Croatian Financial Services Supervisory Agency (CFSSA, HANFA)** is responsible for performing supervision of regulations and enforcement of measures of AML/CFT regarding to internal acts of reporting entities, risk assessment, customer due diligence, list of indicators for recognising suspicious transactions and persons etc.. HANFA uses its own On-Site Examination Manual for conducting on-site examinations. The on-site examination plan is based on many factors: risk assessment of operations by supervised entities, market share of supervised entity, supervisory cycle and supervisory program, review and follow-up etc.
- The **Financial Inspectorate** conducts examinations in accordance with the procedures described in the *Examination Manual* developed in cooperation with the consultants from the IMF under a technical assistance project[40]. Compliance of reporting entities is examined in 3 main stages – self-assessment (compliance questionnaire), off-site examination and, if necessary, on-site inspection. Additional products for supervision planning have been developed, such as the sectoral risk matrix updated on yearly basis. The annual examination plan is developed based on the share of each sector in the aggregate risk.

Factual Performance

1135. The table below depicts statistics on on-site inspections conducted by the supervisory authorities in financial institutions in the period 2009-2012, as well as the number of the indictment proposal filed by respective supervisors to the Financial Inspectorate, which is the responsible authority for misdemeanour proceedings. All inspections by the CNB and HANFA covered AML/CFT issues.

Table 26: Number of on-site inspections conducted by the supervisory authorities

			2009		2010		2011		2012 (first six months)		Total	
Reporting Entities (RE)	Number of RE	Primary supervisor	Number of on-site exams	Indictment proposals filed with FI	Number of on-site exams	Indictment proposals filed with FI	Number of on-site exams	Indictment proposals filed with FI	Number of on-site exams	Indictment proposals filed with FI	**Number of on-site exams**	**Indictment proposals filed with FI**
Banks, housing banks, saving banks, credit unions	61	CNB	11	2	14	1	9	3	3	1	**37**	**7**
EMI	5	CNB	0	0	0	0	0	0	0	0	**0**[41]	**0**
Insurance companies	28	HANFA	6	0	5	0	5	1	5	1	**16**	**2**
Investment fund management companies	29	HANFA	6	0	21	0	14	0	10	0	**41**	**0**

[40] The project aimed to standardize policies and procedures for examination activities and to ensure uniform application in supervision by the inspectors of the Financial Inspectorate.
[41] Supervisory visits commenced in the 2nd half of 2012.

Investment firms, Investment funds, pension fund management/ pension companies, pension funds	201	HANFA	37	1	87	2	70	1	23	0	**194**	**4**
Leasing companies	26	HANFA	4	0	6	1	9	0	4	0	**19**	**1**
Factoring companies	15	HANFA	0	0	1	1	0	1	0	0	**1**	**2**
Exchange offices	1,400	FI	281	3	150	12	140	1	79	0	**650**	**16**
Consumer loan providers	6	FI	0	0	3	5	4	1	2	0	**9**	**6**
Loan intermediates	33	FI	0	0	3	0	3	2	7	1	**13**	**3**
Total	**1,804**		**345**	**6**	**290**	**22**	**254**	**10**	**133**	**3**	**980**	**41**

1136. As one can see from the table above, over the period of 2009-2012 the coverage of inspections (presented through the ratio of the number of institutions inspected in a given year and the total number of institutions in the given group of reporting entities) comprises in average 16% for credit institutions, zero for electronic money institutions, 14% for insurance companies, 35% for investment fund management companies, 24% for other investment and pension funds, 18% for leasing companies, 2% for factoring companies, 13% for exchange offices, 46% for consumer loan providers, and 15% for loan intermediaries. These statistics raise certain concerns in relation to:

- **Supervisory cycle** – while stating that for certain types of reporting entities (e.g. electronic money institutions[42]) no inspections have been conducted over the last three years, the average supervisory cycle varies from 2 years (consumer loan providers) to 5 years (factoring companies).
- **AML/CT compliance check** – while the statistics provided by the CNB and HANFA present data on inspections fully dedicated or including a check of compliance with AML/CFT requirements, those provided by the Financial Inspectorate fail to make such differentiation, which did not enable the assessment team to conclude whether the inspection statistics can be relevant for the purposes of assessing Criterion 23.4.

1137. Due to on-site inspection efforts by all supervisors, the Financial Inspectorate Misdemeanour Procedure Department has initiated /received indictment proposals as follows in the table below:

Table 27: Number of indictments issued by the supervisory authorities

Year	Number of indictment proposals						Subjects solved	
	FI	AMLO	HANFA	CNB	Tax Administration	TOTAL	Number of subjects	Penalties imposed (EUR)
2009	3	2	1			6	5	13,500
2010	32	2	3			37	2	6,700
2011	14	1	2	1		18	12	110,300
2012*	2		1	1	1	5	1	14,280

[42] Supervision of electronic money institutions by the CNB commenced in 2013.

Total	**51**	**5**	**7**	**2**	**1**	**66**	**20**	**144,780**

* The figures for 2012 cover the first six months only

1138. When comparing the number of indictments initiated by the FI and/or filed to it by other supervisors with the total number of supervisory actions taken by different supervisors, the picture is as follows: in 2009, the total of 345 actions resulted in 6 indictments only, in 2010 these figures made up 290 and 37, in 2011 – 254 and 18, and in the first six months of 2012 – 91 and 5, respectively. Besides the fact that there is no evident rationale/explanation for variations in the annual number of inspections from year to year, the absolute numbers of discovered irregularities/infringements of applicable laws and regulations appear to be unrealistically low.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

1139. The CNB exercises supervision over payment institutions and electronic money institutions (Art. 97 of the PSA and Art. 56 of the EMA), whereas authorised exchange offices are supervised by the Financial Inspectorate of the Ministry of Finance (for further details see the analysis under SR VI).

1140. However, Clause 5, of Art. 4 §2 of the AMLTF Law defines the companies performing certain payment services (including money transfers) as a separate type of financial activity to be supervised for AML/CFT purposes. Furthermore, Art. 85 of the Law, which defines specific mandates for different supervisory authorities, does not designate an authority – other than the FI – to supervise the companies performing certain payment services, including money transfers, for AML/CFT requirements. The FI is also responsible for verifying AML/CFT compliance by payment institutions with national AML/CFT requirements. Additionally, the exchange of information and results from inspections of payment institutions should be available to CNB, according to Art.97, §5 of the PSA.

Supervision of other Financial Institutions (c. 23.7)

1141. The supervisory framework of other financial institutions legally defined and operating in Croatia is provided under the analysis for Criteria 23.1 and 23.7 (in the section on licensing rules)..

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

1142. See the above analysis for Criterion 23.4 on factual performance of different supervisors.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

1143. In 2011, the CNB carried out one targeted on-site examination of one credit institution at the request of AMLO. Statistics on targeted inspections conducted by the FI independently and in cooperation with other bodies for the purpose of detecting money laundering criminal acts is provided below:

Table 28: Number of targeted inspections

Targeted inspections	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**
Credit institutions	2	2	1	3	3	4
Foreign exchange offices	-	-	-	2	-	
Other financial institutions and financial intermediation	-	1	6	-	1	
TOTAL	**2**	**3**	**7**	**5**	**4**	**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])

1144. Croatian legislation defines a licensing procedure for all to-be-established financial institutions, including those subject to the Core Principles, providers of money/value transfer services and currency exchange services, and other financial institutions such as leasing and factoring companies, loan intermediaries. There is an established regime of prior consent/approval for legal and natural persons to obtain significant (qualifying) interest in financial institutions. The "fitness and properness" of management members is tested against criteria such as appropriate educational and professional background, proven skills and expertise, clean criminal record, business reputation. The meetings with supervisors and the business community proved that there is adequate understanding and appreciation of market entry rules and procedures.

1145. Although HANFA has already implemented a basic risk-based approach arrangements in its supervision, as far as the supervisory framework is concerned, the fact that the authorities have not yet finalised a national risk assessment, so as to understand and appropriately respond to the threats and vulnerabilities in the system as a whole, may impair the overall efficiency of on-going supervision in so far as it fails to duly take into account the influence of certain key risk factors on the level of ML/FT risk in the country and allocate resources appropriately.

1146. The information provided by the authorities and the discussions during the on-site meetings lead the assessment team to the conclusion that the risk-based approach of supervision has been adequately introduced and implemented by the Financial Inspectorate, which, as interpreted by the authorities, is responsible for verifying AML/CFT compliance by exchange offices, loan intermediaries and DNFBPs. Supervisory arrangements practiced by the CNB and the HANFA appear to lack certain elements of the risk-based approach such as identification and assessment of aggregate risk in the supervised sector to enable targeted and effective channelling of resources to higher risk areas/subjects.

1147. In spite of a rather wide range of penalty provisions set out in the AMLTF Law, penalty measures are applied very rarely, which is also likely to result from the low number of irregularities/infringements discovered through on-site inspections. Furthermore, there are no powers set out in the law to publish sanctions applied for AML/CFT breaches. Hence, the assessment team arrived at the conclusion that the sanctioning regime needs to be improved significantly to provide for effective, proportionate and dissuasive sanctions for AML/CFT non-compliance.

1148. In addition, there are no feedback and follow-up mechanisms between the FI (which is the sole authority authorised to apply sanctions for AML/CFT non-compliance based on referrals from other supervisors and on its own initiative) and all other stakeholder authorities having a mandate for AML/CFT supervision. This would certainly further reduce the effectiveness of the supervisory and sanctioning regime.

1149. Evaluators have concerns about the lack of licensing/registration requirements of Croatian Post in relation to the money and value transfer services provided by it, which appear to be outside of the regulatory and supervisory framework.

1150. Overall, based on the above analysis of the supervisory approach, techniques and factual performance, as well as the sanctioning regime available in Croatia, the assessment team believes that supervisory activities of the respective authorities do not provide for fully ascertaining appropriate efficiency of implementation of applicable AML/CFT requirements by reporting entities.

Guidelines

Recommendation 25 (c. 25.1 – guidance for financial institutions other than feedback on STR-s)

1151. Art. 88 of the AMLTF Law defines that supervisory bodies shall issue recommendations or guidelines relating to the implementation of individual provisions contained in the Law and

regulations passed on the basis of the Law, for the reporting entities to be able to uniformly apply those provisions. Accordingly, all competent supervisors of financial institutions have issued guidelines basically covering all significant aspects of AML/CFT requirements defined by the law for reporting entities.

Effectiveness and efficiency (R. 25)

1152. During the on-site visit, the assessment team received from the representatives of financial institutions positive feedback regarding the efforts of AMLO and other supervisory bodies to provide detailed regulations on the implementation of AML/CFT requirements.

3.10.2 Recommendations and comments

Recommendation 23

1153. Expedite and conclude the signing of MOUs between the relevant supervisors; introduce defined principles and consistent practice of referring specific supervision cases to the FI.

1154. Introduce a requirement to obtain information on ultimate beneficial owners and, respectively, their criminal background for insurance companies and pension companies.

1155. Introduce provisions to prevent criminals from holding shares or managerial positions in financial institutions.

1156. Provide for inclusion of criminal associates into the scope of the measures aimed at prevention of criminals from holding a controlling interest or management function in financial institutions.

1157. Provide for the licensing or registration of money and value transfer (and other financial) services offered by the Croatian Post.

1158. Legislatively define licensing requirements and procedures for business entities engaged in factoring activities.

1159. Ensure sufficient coverage of inspections to provide for a reasonable supervisory cycle and AML/CFT compliance checks, stemming from an adequate planning of supervision and resulting in the disclosure of irregularities/infringement of AML/CFT requirements

Recommendation 17

1160. Ensure that specific sanctions are stipulated for the failure to comply with all requirements of the AMLTF Law (e.g. in relation to Arts. 43 and 75).

1161. Consider revision of the range of sanctions for AML/CFT non-compliance commensurate with those applicable for different violations of relevant laws in the financial sector.

1162. Powers should be in place to publish all sanctions applied for AML/CFT breaches.

Recommendation 25(c. 25.1 [Financial institutions])

1163. The requirements of this Recommendation are fully met.

Recommendation 29

1164. The requirements of this Recommendation are fully met.

Recommendation 30(all supervisory authorities)

1165. Overall resources appear to be adequate.

Recommendation 32

1166. Comprehensive statistics provided on supervisory activities by all supervisors.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors underlying rating
R.17	**PC**	• No specific sanctions for the failure to comply with some requirements of the AMLTF Law; • The range of sanctions for AML/CFT non-compliance is not commensurate with those applicable for different violations of relevant laws in the financial sector; **Effectiveness** • Low number of sanctions applied raises concerns about the effectiveness of the AML/CFT sanctions regime.
R.23	**PC**	• No requirement to obtain information on ultimate beneficial owners and, respectively, their criminal background for insurance companies and pension companies; • The requirement to prevent criminals from holding shares or managerial positions in financial institutions does not appear to be fully met; • Failure to include criminal associates into the scope of the measures aimed at prevention of criminals from holding a controlling interest or management function in financial institutions; • No licensing or registration for money and value transfer (and other financial) services offered by the Croatian Post; • Lack of legislatively defined licensing requirements and procedures for business entities engaged in factoring activities; **Effectiveness** • Lack of MoUs between all supervisory agencies could lead to confusion/inefficiency due to overlaps in the work of different supervisory agencies; • Insufficient coverage of inspections in terms of supervisory cycle and AML/CFT compliance check.
R.25	**C**	
R.29	**C**	

3.11 Money or value transfer services (SR. VI)

3.11.1 Description and analysis

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

Summary of 2008 factors underlying the rating

1167. In the 3rd round report Croatia has received a NC rating with regard to SR.VI due to the absence of the system of registering and/or licensing MVT service operators, and respectively MVT service operators were not subject to the applicable FATF Recommendations, there was only indirect monitoring of MVT service operators with regard to compliance with the FATF recommendations and there were no sanctions applicable to MVT service operators.

Designation of registration or licensing authority (c. VI.1), adequacy of resources – MVT registration, licensing and supervisory authority (R. 30)

1168. According to Art. 97 of the Payment System Act (PSA) and Art. 56 of the Electronic Money Act (EMA) (both in force from January 1, 2011), the CNB shall exercise supervision of payment

institutions and electronic money institutions. The same laws provide requirements on granting authorisation by the CNB for performing money or value transfer services.

1169. Art. 116 of the PSA and Art. 75 of the EMA state that the CNB shall maintain a register of payment institutions and electronic money institutions, their branches and agents. The register shall include a list of authorised payment and electronic money issuance services, as well as their registration numbers. The CNB shall update the register on a regular basis. The CNB shall prescribe the manner of keeping the register.

1170. It is worth mentioning, that as of the date of assessment, the CNB had not issued any authorisation for provision of payment services as stipulated under PSA. On the other hand, there are 5 licensed ELMIs, which also provide payment services (e.g. telecommunication operators, mobile parking and transportation fare payments), and the operation of these institutions is supervised by the CNB.

Application of the FATF 40+9 Recommendations (applying R. 4 – 11, 13 – 15 & 21 – 23 and SR IX (c. VI.2))

Applying R 15 and R 22

1171. Both payment institutions and electronic money institutions are considered as reporting entities to be supervised for AML/CFT purposes. Hence, the analysis for R 15 and R 22 is equally applicable to this criterion.

Applying R.23

1172. Art. 70 of the Payment System Act (for payment institutions) and Art. 13 of the Electronic Money Act (for electronic money institutions) provide that the holder of a qualifying holding and the person proposed to be a member of the management board or executive director of the respective institution must, *inter alia*, have a good reputation, that is he/she: 1) has former professional work and personal integrity, achieved good results and earned respect in the previous working environment; 2) has not been convicted by a final judgment of one or more crimes[43], or of a foreigner who has not been convicted of one or more crimes which, by definition, correspond to these crimes; and 3) is not subject to investigation or criminal proceedings for a crime prosecuted *ex officio*.

1173. Art. 12 §2 of the Electronic Money Act requires that the application for authorisation to issue electronic money shall be accompanied, *inter alia*, with the following: 1) for a person holding, directly or indirectly, a qualifying holding in the electronic money institution; 2) where such person is a natural person, evidence that the holder of a qualifying holding has not been convicted by a final judgment of a crime against the values protected by international law, or of certain types of crime[44].

1174. In the case of payment institutions, legal persons that directly or indirectly hold qualifying interest should submit, *inter alia*, a list of natural persons who are the ultimate shareholders or holders of holdings in the legal person which is the holder of qualifying holdings in the payment institution, as well as evidence that the holder of a qualifying holding has not been convicted by a final judgment of a crime against the values protected by international law or of certain types of crime[45].

Monitoring MVT services operators (c. VI.3)

1175. Details of regulatory arrangements for monitoring of MVT services by the authorised state body, i.e. the Croatian National Bank, are provided under the analysis of the Criterion 23.4. As to

[43] A crime against the values protected by international law, or against the security of a payment system and its operation, relating to the authenticity of documents; relating to breaches of official duty; relating to terrorist financing; or the violations prescribed in this Act (Art. 69 of PSA).
[44] The same types of crime as defined under Art. 69 of PSA.
[45] The same types of crime as defined under Art. 69 of PSA.

the practice of monitoring, the assessment team was not provided any information on supervisory measures, including off-site surveillance and on-site inspections, taken with regard to providers of MVT services. This also refers to the activities of the Croatian Post, which in practice appears to provide a full range of MVT services (for the details, please see the analysis under Criterion 23.5).

1176. Following the coming into force of the Payment System Act and the Electronic Money Act were enforced in the Republic of Croatia on 1January 2011, the CNB has conducted supervision of payment institutions and electronic money institutions. Both laws provide requirements on granting authorisation by CNB for performing money or value transfer services.

1177. Up to July 2013, the CNB had not issued any authorisation to payment institutions i.e. providers of money remittance services as stipulated under Payment System Act. Accordingly, there were no on-site inspections of providers of MVT services.

Lists of agents (c. VI.4)

1178. In accordance with Art. 76 of the PSA, PIs and ELMIs authorised by the CNB may provide payment services through one or several agents. An agent of a PI may be a legal or a natural person. Authorised PIs or ELMIs, which intend to provide payment services through an agent, have to obtain a prior decision to enter the agent into the register held by the CNB in accordance with Art. 116 of the PSA. The CNB adopted a decision on the register of PIs and ELMIs, which regulates the content of the register and its management. The said decision determines the entities subject to entry into the register and, *inter alia*, stipulates that data on the agents of PIs or ELMIs are to be entered into the register.

Sanctions (applying c.17 – 1 – 17.4 & R. 17 (c. VI.5))

1179. Clause 1, of Art. 149 §1 of the PSA prescribes that a fine between HRK 20,000 (approximately €2,700) and HRK 500,000 (approximately €67,000) is applicable to a legal or natural person providing payment services without CNB authorisation.

1180. Clause 1, of Art. 151 §1 of the PSA defines that payment institution shall be fined with a sum between HRK 20,000 (approximately €2,700) and HRK 500,000 (approximately €67,000) in cases of providing payment services through an agent before the agent has been entered into the register or after the agent has been removed from the register. Since the introduction of the Payment System Act on 1January 2011 (as set out above), no sanctions have been applied.

1181. Since both payment institutions and electronic money institutions are considered as reporting entities to according to the AMLTF Law, the penal provisions provided in Chapter VII of the Law are also applicable to them (for further details see the analysis under R 17).

Additional elements – applying Best Practices paper for SR. VI (c. VI.6)

1182. No information was provided indicating that the measures set out in the Best practices Paper for SR.VI have been implemented.

Effectiveness and efficiency

1183. The evaluators were not provided any evidence on effective mechanisms available for ensuring compliance of certain money transfer service providers (such as the Croatian Post and electronic money institutions) with SR VI. The meetings with the representatives of the Croatian Post did not demonstrate an appropriate understanding of the requirements related to wire transfers.

3.11.2 Recommendations and comments

1184. Establish a requirement for legal persons holding a qualifying interest in an electronic money institution to submit information on the beneficial owner.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR. VI	**LC**	**Effectiveness** • Effectiveness of implementation not fully demonstrated (also due to the lack of compliance checks).

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

1185. According to the FATF Methodology, DNFBP should be required to comply with the requirements set out in Recommendation 5 (Criteria 5.1 – 5.18) for circumstances specific to casinos, real estate agents, dealers, lawyers, and trust and company service providers. DNFBP should especially comply with the CDD measures set out in Criteria 5.3 to 5.7 but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction.

1186. According the AMLTF Law, the list of designated non-financial businesses and professions subject to AML/CFT requirements goes beyond the international standards. Under the legislation in force, all DNFBP listed under FATF Methodology are included as obliged entities. Art. 4 of the AMLTF Law specifies that its provisions also apply to the organisers of games of chance (lottery games, casino games, betting games, slot-machine gaming and games of chance on the Internet and via other telecommunications means, i.e. electronic communications) as well as to legal and natural persons performing business in relation to trading precious metals and gems and products made of them, to trading artistic items and antiques, to organising or carrying out auctions, real-estate intermediation and trusts or company service providers (definition in Art. 3 (21)) is in line with Rec 12.1.e) and pawnshops. It seems that the scope of the definition of DNFPBs is even wider than defined in Recommendation 12 or in the Annex of FATF Recommendations because it clearly covers the wider range of the organisers of games of chance. Other entities as traders of artistic items and antiques, organisers of auctions and pawnshops were obliged by the same AMLTF standards as financial institutions according to the previous legislation.

1187. Lawyers, law firms, notaries public, accountants, auditing firms, independent auditors and tax advisors were not listed as obligated persons according to the previous legislation. The AMLTF Law requirements for lawyers, law firms, notaries public, accountants, auditing firms, independent auditors and tax advisors were changed after the 3rd round evaluation. Lawyers, law firms or notaries public are obliged to observe the provisions of the AMLTF Law in instances when assisting in planning or conducting transactions on behalf of a customer in relation to:

a) buying or selling real-estate or stakes, i.e. shares in a company;
b) management of cash funds, financial instruments or other customer-owned property;
c) opening or managing bank accounts, savings deposits or financial instruments trading accounts;
d) collecting funds necessary for the establishment, operation or management of a company;
e) establishment, operation or management of an institution, a fund, a company or another legally defined organisational form; or
f) carrying out real-estate related financial transaction or transactions on behalf and for the account of a customer.

1188. Under Art 4 §16, lawyers, law firms and notaries public, auditing firms and independent auditors and natural and legal persons performing accountancy and tax advisory services are all included as reporting entities. As such they all have the obligation to apply the AML/CFT preventative measures, including CDD and record keeping requirements, in all their professional activities. Croatia has implemented in its legislation Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts.

1189. The new Act on Games of Chance (AGC) came into force on 1 January 2010, replacing the previous Act on Operating Games of Chance and Lottery Games. This Act governs the system, types and conditions related to operating of games of chance, the rules and procedures for obtaining and revoking the gaming concession, the rights and obligations of gaming operators, the allocation of revenues generated from games of chance, and the supervision of the gaming

operations. The new AGC also applies to operators of games of chance via the internet, telephone or other interactive communication devices, (through which a player may play independently, by means of interaction with the system, without a direct representative of the operator). Operators of games of chance are supervised by the Ministry of Finance and casinos are subject to the mandatory audit of annual accounting statements. The AGC is harmonised with the relevant provisions of the AMLTF Law.

1190. AMLO and all the supervisory authorities continued their work on awareness raising and training of reporting entities, especially in the DNFBP sector, which has resulted in a higher quality of received STRs as well as in the increase of STRs received from DNFBPs (especially from lawyers and notaries public).

1191. Given that, during the 3rd evaluation round, the non-banking financial sector and DNFBP were received poor ratings for supervision and guidance, the Financial Inspectorate sought technical assistance from the IMF in order to develop a supervision manual for inspectors in accordance with the AMLTF Law and guidance for implementation and enforcement of AMLTF Law measures for reporting entities.

1192. In meetings with the evaluators during the on-site visit, the DNFBP interviewed demonstrated that they were aware of their obligations related to AML/CFT issues, which is a welcome improvement since the last evaluation report.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

General introduction

1193. CDD and record keeping requirements covered by FATF Recommendations 5, 6, and 8-11 are applied in general to DNFBPs in Croatia. The AMLTF Law applies to lawyers, notaries and other independent legal professions when they carry out the specified transactions.

1194. As all DNFBPs are reporting entities the analysis of Recommendations 5 to 10, under Part 3 of this report, is equally applicable to all DNFBPs. Therefore, all DNFBPs have the same CDD obligation as financial sector entities with some exceptions as prescribed in the AMLTF Law. The persons involved in the performance of professional activities shall conduct CDD measures referred to the extent and within the scope relevant to their scope of work.

1195. In 2008, the Financial Inspectorate adopted Guidelines in relation to the enforcement of the Anti-Money Laundering and Counter Terrorism Financing Act for auditors, accountants and tax advisors and in 2009 Guidelines for lawyers and public notaries.

1196. The Tax Administration Guidance (Obligations of Tax Administration according to new AMLTF Law, in the field of operating of games of chance) has been forwarded to all regional offices of the Tax Administration on 2 January 2009.

Recommendation 12 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

1197. During the 3rd round evaluation R.12 was rated NC and the following factors were underlying the rating:

- Essential Criterion 5.7 is not covered by law, regulation or other enforceable means.
- Essential Criteria 5.6, 5.8 and 5.17 are not implemented across the board.
- Recommendations 5-11 do not apply to lawyers, notaries and other independent legal professions when they carry out the specified transactions.

- There is no authority for competent authorities to request the reporting institutions to keep all necessary records on transaction longer than five years and there is no mention of collecting or maintaining account files or business correspondence.
- Recommendations 6, 8 and 9 are not covered by law nor are they implemented.
- For casinos, the documents which are necessary for verification of identification are not determined.
- Casinos are not obliged to apply CDD measures when their clients engage in financial transactions equal or above 3 000 EUR/USD.
- There is no sound legal basis to oblige lawyers, accountants and public notaries to identify their clients.

Applying Recommendation 5(c. 12.1)

Casinos (Internet casinos/Land based casinos)

1198. With regard to CDD requirements for casinos, the standard requires that these should apply when their customers engage in financial transactions equal or above €3,000. In Croatia no such threshold exists.

1199. The AGC is harmonised with the relevant provisions of the AMLTF Law, prescribing that gaming operators shall operate according to the legislation regulating the prevention of money laundering and terrorist financing, particularly in cases of customer due diligence, identification of customer and customer's beneficial owner, suspicious transactions and terms for keeping customers' information. Pursuant to this Act, four ordinances related to AMLTF were adopted in 2010: Ordinance on Lottery Games ("OG" 78/10), Ordinance on Interactive Online Casino Gaming ("OG" 78/10), Ordinance on Obtaining License for Work in Casino ("OG" 78/10), and Ordinance on Organising Remote Betting Games ("OG" 8/10 and 63/10).

1200. According to the AMLTF Law, organisers of casino games are obliged to identify the customer and verify the customer's identity on the customer's entry into the casino, and to collect the following information: name and surname of natural person; permanent address; date and place of birth; identification number and name; number and name of the body which issued the identification document; and date and time of entry into the casino. The same provision is in the AGC art 43. Art 41. The operators are obliged to ensure continuous audio-video surveillance in a casino.

1201. The organisers of games of chance on the Internet or other telecommunications means, i.e. electronic communications are obliged to register their clients, to identify the customer and verify the identity of the customer at the point of performing the transaction at the cash register and to collect the data about name and surname of natural person, permanent address, date and place of birth, identification number of the client and name, number and name of the body which issued the identification document. The organisers of lottery games, casino games, betting games and games of chance on slot machines have the same obligation.

Real estate agents

1202. There are no special regulations about CCD measures for real-estate intermediation. Consequently, the general regulation about CCD is applicable and the AMLTF Law covers real estate agents with all the obligations mentioned above. During the on-site interviews, it appeared that relatively few real estate transactions are made through real estate agents as estate agents merely effect introductions and the actual transactions are conducted through law firms.

Dealers in precious metals and dealers in precious stones

1203. There is no special regulation about CCD measures for legal and natural persons performing business in relation to trading precious metals and gems and products made of them. So the general regulation about CCD is applicable and the AMLTF Law covers dealers in precious metals and dealers in precious stones with all the obligations mentioned above.

Lawyers, notaries and other independent legal professionals and accountants

1204. There is a general provision in Art. 51 of the AMLTF Law that during the performance of matters from their respective scopes of competence as defined in other laws, lawyers, law firms and notaries public, and auditing firms and independent auditors, legal and natural persons involved in the performance of accounting services and tax advisory services (hereinafter referred to as the persons performing professional activities) shall be obliged to carry out money laundering and terrorist financing prevention and detection measures and to observe the provisions of the Law providing for duties and obligations of other reporting entities, unless set forth otherwise in the AMLTF Law.

1205. The persons performing professional activities are obliged to take CDD measures upon establishing a business relationship, when conducting transactions and in instances when there shall be suspicion concerning the credibility and veracity of the previously collected customer or beneficial owner information, and in all instances when there are reasons for suspicion of money laundering or terrorist financing. Within the framework of customer identification, the persons involved in the performance of professional activities are required to identify the customer, i.e. customer's legal representative or the person authorised by power of attorney and identify the beneficial owner of the customer and gather information through the examination of a customer's official personal identification document, (i.e. original documents or notarised photocopies of documents or notarised documentation from a court or other public register, which may not be more than three months old).

1206. In Croatia there is no practice that lawyers conduct the management of cash funds, financial instruments or other customer-owned property on the basis of the proxy (power of attorney). Lawyers usually use paper-based databases of their clients for record keeping. The lawyers met during the on-site interviews appeared to have little awareness of the actual risks and threats and considered that legal privilege meant that the AMLTF Law rarely applied to them.

1207. There is a legal obligation that notaries public should identify persons only during the face to face contact; this means that the valid personal identification document is examined by the notary in the presence of the owner of the public identification document. Notaries public usually do not accept transactions in cash executing all transactions through bank transfers. The notaries demonstrated a high awareness concerning the CDD process, including the CDD process related to beneficial owners and PEPs.

1208. Auditing firms and independent auditors are allowed to conduct simplified CDD measures when establishing a business relationship with a customer subject to the mandatory audit of annual accounting statements, save for instances where reasons for suspicion of money laundering or terrorist financing exist associated with a customer or the circumstances of an audit. This risk-based approach is not the result of a specific risk assessment within Croatia. In practice auditors use a risk-based approach for CDD and in case of high risks they terminate the business relationship. The auditors interviewed during the on-site visit demonstrated a high level of awareness about the CDD processes including CDD processing of beneficial owners

1209. The notaries public and auditors have a high level of understanding of their CDD obligations. The legal professions perform CDD when entering into a business relationship with their clients in accordance to their own professional laws and are in general aware of the AML/CFT requirements.

Trust and company service providers

1210. There are no special regulations about CCD measures for trust and company service providers. So the general regulation about CCD is applicable.

Other

1211. There are no special regulation about CCD measures for traders of artistic items and antiques, organisers of auctions and pawnshops. So the general regulation about CCD is applicable.

Conclusion

1212. The deficiencies specified in Section 3.2 above about CCD measures (Rec 5) are also applicable to DNFBPs.

Applying Recommendations 6, 8, 9, and 11(c. 12.2)

1213. Art. 34 of the AMLTF Law which requires putting policies in place and taking measures aimed at preventing the use of new technologies for the money laundering and/or terrorist financing purposes is special provision for credit and financial institutions applies to all reporting entities. Rec 8 is not specifically covered in case of DNFBPs. The Guidelines provided by the Financial Inspectorate do, however, provide additional instructions on the steps to be taken, particularly with regard to non-face-to-face business.

1214. According to Art. 28 of the AMLTF Law at establishing business relationship with a customer DNFBP-s (except notaries public) may entrust a third party who is enumerated in the rulebook with identifying the customer and verifying the customer's identity. During the on-site visit the DNFBP demonstrated that they are generally aware of their obligation on CDD issues and in practice they do not use this possibility.

1215. The deficiency specified in Section 3.2 on the obligations related to the complex and unusual transactions (R.11) also applies to DNFBPs.

1216. Overall the provisions of the AMLTF Law relating to R. 6, 8, 9, and 11 apply equally to all DNFBPs. The deficiencies as set out in Sections 3.2, 3.3 and 3.6 above equally apply to all DNFBPs.

Applying Recommendation 10

1217. According to the AMLTF Law, the DNFBPs are obliged to fulfil the same requirements on record keeping as the financial institutions.

1218. The deficiency specified in Section 3.5 on record keeping also applies to DNFBPs.

Effectiveness and efficiency

1219. According to the information received during the on-site interviews casinos know their bigger clients and their habits very well. It appeared that the organisers of games of chance were fairly aware of their identification obligations under the AML/CFT legislation. The operators are obliged to ensure continuous audio-video surveillance in a casino. Reporting and auditing requirements are in place and followed in practice.

1220. Notaries public and auditors have a high level of understanding of their CDD obligations. The legal professions perform CDD when entering into a business relationship with their clients in accordance to their own professional laws and are in general aware of the AML/CFT requirements. However, the lack of awareness of the actual risks and threats and could have an impact on effectiveness of application.

1221. Although the legal systems described for the financial institutions are largely in place and the AML/CFT provisions apply equally to the DNFBP, the evaluators have concerns about the effectiveness of the system. It is also noted that (as set out under Section 4.3 below) a number of corrective measures have been applied to DNFBP by the FI in respect of AML/CFT breaches.

1222. The DNFBPs met during the on-site visit (except auditors) did not display a strong understanding of the concept of risk-based approach in respect of CDD.

4.1.2 Recommendations and comments

1223. The evaluators welcome the measures taken by the Croatian authorities in order to cover all DNFBPs in all aspects of the AML/TF requirements (including the risk-based approach, the obligations connected with identification, increased diligence, record keeping, internal programmes and procedures, identification of PEPs etc.) especially in applying the AML/TF

requirements to lawyers, notaries and other independent legal professions when they carry out the specified transactions.

1224. Consideration should be given to enhancing training and supervision in order to increase the effectiveness of implementation.

Recommendation 5

1225. The steps recommended under R.5 above should be extended to the DEFBP sector.

1226. Further guidance should be provided on the steps to be taken in respect of awareness about risk based approach and the identification of the beneficial owners and guidance should be adopted for the process of understanding the ownership and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements, including cases when somebody exercises ultimate effective control.

Recommendation 6

1227. Recommendations under R.6 also apply to the DNFBP sector.

1228. More emphasis on awareness raising in relation to PEPs amongst the DNFBPs sector is recommended to increase effectiveness.

Applying recommendation 8

1229. An obligation in the AMLTF Law requiring DNFBPs to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risks associated with non-face to face business relationships or transactions should be introduced.

Applying recommendation 9

1230. Recommended action points under R.9 also apply to the DNFBP sector.

Recommendation 10

1231. The recommended actions under R.10 are also applicable to the DNFBP sector.

Recommendation 11

1232. Recommended steps under R.11 should also extend to the DNFBP sector.

1233. Further guidance should be provided for DNFBP entities regarding analysis of complex and unusual transactions.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**PC**	***Applying Recommendation 5*** • Deficiencies under Recommendation 5 also apply to the DNFBP sector; ***Applying Recommendation 6*** • Deficiencies under Recommendation 6 also apply to the DNFBP sector; ***Applying Recommendation 8*** • There is no obligation in the AMLTF Law requiring DNFBPs to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risks associated with non-face to face business relationships or transactions; ***Applying Recommendation 10*** • Deficiencies under Recommendation 10 also apply to the DNFBP

		sector; ***Applying Recommendation 11*** • Deficiencies under Recommendation 11 also apply to the DNFBP sector; • Lack of adequate guidance on identifying complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose could have an impact on the effectiveness of application.

4.2 Suspicious transaction reporting (R. 16)

(Applying R.13 to 15 and 21)

1234. Recommendation 16 was rated 'Non-compliant' in the 3rd evaluation round based on the following deficiencies:

- There is no obligation to file an STR when there is a reason to suspect financing of terrorism.
- The number of reports from DNFBP is very small and indicates a lack of awareness and understanding from this sector. There are misunderstandings and uncertainties in various areas, particularly:
  i. It was unclear to DNFBP that the 200 000 Kuna threshold does not exempt reporting entities from submitting STRs.
  ii. The circumstances under which lawyers and notaries are exempted from reporting suspicious transactions because of legal professional privilege/secrecy are not sufficiently clear.
- The safe harbour provisions for lawyers and notaries to protect them from criminal or civil liability for reporting their suspicions in good faith are not sufficiently clear.
- For lawyers, public notaries and accountants no specific "tipping off" provisions exist.
- The head of compliance is not required to be at the management level.
- There are no requirements for an independent audit function to test compliance and there are no screening measures in place for the employees of heads of compliance or "responsible persons."
- Reporting institutions do not seem to give special attention to transactions or business relationships with individuals from countries which do not sufficiently apply the FATF Recommendations, nor does it appear that the reporting institutions have been advised of which countries have weak AML/CFT systems.

4.2.1 Description and analysis

Recommendation 16 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

Applying Recommendations 13-15

Requirement to Make STRs on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBPs) R.16 – applying R.13 & SR.IV

1235. The STR reporting regime has already been described under section 4.7 above. The weaknesses that applied to the financial sector also apply to DNFBPs.

1236. Art. 54 of the AMLTF Law sets out the obligation to make an STR related to money laundering or terrorist financing irrespective of the amount directly to the FIU. This obligation applies to all DNFBPs with a derogation for lawyers, law firms, notaries public who shall observe the provisions of the Law only in instances when assisting in planning or conducting transactions on behalf of a customer in relation to:

i. buying or selling real-estate or stakes, i.e. shares in a company;
ii. management of cash funds, financial instruments or other customer-owned property;

iii. opening or managing bank accounts, savings deposits or financial instruments trading accounts;
iv. collecting funds necessary for the establishment, operation or management of a company;
v. establishment, operation or management of an institution, a fund, a company or another legally defined organisational form;
vi. carrying out real-estate related financial transaction or transactions on behalf and for the account of a customer.

Legal Privilege R.16 – applying R.13 & SR.IV

1237. The AMLTF Law sets out exemptions from reporting duties which are designed for entities described under Art. 54 §1(i.e. lawyers, law firms and notaries public, during the performance of matters referred to in Art. 52 of this Law, as well as auditing firms and independent auditors, legal and natural persons involved in the performance of accounting services and tax advisory service). Pursuant to Art. 55 §1 of the Law:

> *" The provisions contained in Article 54, paragraphs 1 of this Law shall not apply to the persons involved in the performance of professional activities in respect of information they receive from or obtain on a customer during the course of establishing the legal position of the customer or during the representation of the customer in relation with a court proceeding which shall include advice on proposing or avoiding court proceeding, whether such information is received or obtained before, during or after the completion of such court proceedings."*

1238. The DNFBPs listed under Art. 54 §1 are also exempted from the obligation *to supply data, information and documentation based on the basis of the Office's request referred to in Article 59 of the AML/CFT Law. In such instances, they shall undertake to proceed without any undue delay and no later than within fifteen days from the receipt of the request supply the Office with a substantiated written explanation of reasons for which they did not comply with the Office's request.*

1239. In accordance with Art. 55 §3 point 1 "*persons involved in the performance of professional activities shall not be obliged: to report to the Office on cash transactions referred to in Article 40, paragraph 1 of this Law, except in instances when reasons for suspicion of money laundering or terrorist financing shall exist in relation with a transaction or a customer(...)"*

No Reporting Threshold for STRs (c. 16.1; applying c. 13.3 to DNFBPs) R.16 – applying R.13 & SR.IV

1240. There is no threshold for reporting of STRs. This obligation is applicable for all DNFBPs.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 16.1; applying c. 13.4 to DNFBPs) R.16 – applying R.13 & SR.IV

1241. All DNFBPs are required to report suspicious transaction reports related to money laundering or terrorist financing irrespective of possible involvement of tax matters.

Reporting through Self-Regulatory Organisations (c.16.2) R.16 – applying R.13 & SR.IV

1242. The DNFBPs when reporting the STRs do not report via their appropriate self-regulatory organisations, but they report directly to AMLO.

Legal Protection and No Tipping-Off (c. 16.3; applying c. 14.1 to DNFBPs) Prohibition against Tipping-Off (c. 16.3; applying c. 14.2 to DNFBPs) R.16 – applying 14, 15

1243. As was previously stated under Section 3.7 of this report, according to Article 1 §1 of the AMLTF Law reporting entities, the state administration bodies, the legal persons with public authorities, the courts and the State Attorney's Office and their employees, the submission of data, information and documentation to AMLO on the basis of the AMLTF Law shall not represent the

disclosure of classified data, i.e. disclosure of business, banking, professional, notary public, lawyer client privilege or other secret.

1244. Additionally, pursuant to Article 75 §1 of the AMLTF Law reporting entities, their employees, including members of management and supervisory boards and other managerial bodies and other persons who have any type of access and availability of data collected in accordance with the AMLTF Law shall not be allowed to disclose the information listed hereunder to a customer or a third person.

1245. During the on - site mission the evaluators found no evidence that the above - mentioned obligations are not fulfilled in practice.

Establish and Maintain Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPS)

1246. According to Art. 48 of the AMLTF Law, all reporting entities are obliged to issue an internal enactment establishing the measures, actions and proceedings for the prevention and detection of money laundering and financing of terrorism, as prescribed by the Law and regulations passed on basis thereof. Furthermore, the Financial Inspectorate guidelines define the components of internal enactments (for details see the analysis under Criterion 15.1).

1247. Section 4.3.1 of the Financial Inspectorate guidelines provides that persons involved in professional activities of attorneys at law, public notaries, auditing firms, independent auditors, accountancy and tax advisory services are exempted from the obligation to appoint a compliance officer (for all other reporting entities see the analysis under Criterion 15.1). This goes contrary to the requirement of Criterion 15.1.1 establishing that reporting entities should be required to develop appropriate compliance management arrangements. The authorities refer to Art 44. §3 of the AMLTF Law whereby, if a compliance officer is not appointed, the legal representative or other person that manages business (i.e. responsible person pursuant to legal regulations) shall be deemed the compliance officer. However, as articulated under the analysis for Criterion 15.1.1, this provision could amount to an option for reporting entities to be exempted from the obligation of appointing a compliance officer.

Independent Audit of Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.2 to DNFBPs)

1248. Pursuant to Art. 50 of the of the AMLTF Law, the persons involved in professional activities of lawyers, law firms, public notaries, auditing firms, independent auditors, accountancy and tax advisory services are exempted from the obligation to carry out an internal audit over the performance of ML/TF related tasks. All other reporting entities must ensure that a regular internal review to test the appropriateness and effectiveness of their policies and procedures, risk assessment and training program is conducted at least once a year.

1249. On the other hand, the Financial Inspectorate guidelines clarify, that the review can be conducted by an internal or external auditor. If the reporting entity does not have an auditor, it can conduct a "self-review". The self-review should be conducted by an individual, who is independent of the reporting, record keeping and compliance-monitoring functions. This could be an employee or an outside consultant. The objective of a self-review is similar to the objectives of a review conducted by internal or external auditors. It should address whether policies and procedures are in place and are being adhered to, and whether procedures and practices comply with legislative and regulatory requirements.

On-going Employee Training on AML/CFT Matters (c. 16.3; applying c. 15.3 to DNFBPs)

1250. Art. 49 of the AMLTF Law regarding training of employees applies to all reporting entities including DNFBP. This obligation includes a requirement that by the end of each year, reporting entities undertake to produce the annual professional improvement and training program pertinent to the money laundering and terrorist financing prevention and detection field for the next calendar year.

Employee Screening Procedures (c. 16.3; applying c. 15.4 to DNFBPs)

1251. There is no formal requirement for DNFBPs regarding screening procedures to ensure high standards when hiring employees. The assessment team was not provided with any information on such screening procedures, if any, applied by DNFBPs. The authorities state that for a significant part of the DNFBP sector there are formal requirements that have to be followed. In particular, for lawyers, notaries, auditors, tax advisors, and real estate agents, there are provisions in their sectoral laws that have to be followed, as well as Ethics Codex. However, these standards are largely limited to the principals of the business (e.g. licensed attorneys and law trainees) and are not extended to all staff.

Additional Element—Independence of Compliance Officer (c. 16.3; applying c. 15.5 to DNFBPs) R.16 – applying 14, 15

1252. Art. 44 of the AMLTF Law applies to all reporting entities including DNFBP. This article provides that the compliance officer is appointed at a position enabling independence in his/her work and direct communication with the management.

Applying Recommendation 21

1253. As all relevant DNFBPs are regarded as being reporting entities and are therefore subject to the AMLTF Law, the analysis of R.21 above equally applies to DNFBPs

Special Attention to Persons from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBPS)

1254. AMLO periodically issues guidelines on countries which do not apply or insufficiently apply the FATF Recommendations to prevent money laundering and terrorist financing. Guidelines are provided for all reporting entities and their professional associations, and all supervisory bodies. The FI Guidelines for DNFBP highlight that "a country which, according to the data of the international organisation FATF, appertains to non-cooperative countries or territories or if it is about an offshore financial centre" presents a high-risk and in these circumstances enhanced CDD is to be applied. There is, however, no other specific requirement to pay special attention to such customers.

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)

1255. As in the previous paragraph, although there are general provisions requiring reporting entities to pay special attention to all complex and unusually large transactions, this is not specifically related to countries not sufficiently applying FATF Recommendations.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBPS)

1256. As stated above, the FI Guidelines for DNFBP highlight that in these circumstances enhanced CDD is to be applied.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.4)

1257. The AMLCF Law reporting requirement is expanded to the rest of the professional activities. The Financial Inspectorate has published Guidance on its web site for auditors, sole auditors, private and legal persons that provide accountancy services and tax advisory services which explains in details those professions' role in reporting (including AMLO reporting – Suspicious transactions and/or customers, complex or unusually large transactions, advising about ML/FT.)

Additional Elements – Reporting of All Criminal Acts (c. 16.5)

1258. DNFBPs, like other reporting entities, must report to AMLO when they suspect or have justified reasons to suspect that funds represent incomes obtained by criminal activities that on a national level would constitute a predicate criminal offense.

Effectiveness and efficiency

Applying Recommendation 13

1259. The evaluators have concerns over the effectiveness of the implementation of requirements of R.16 in view of the very low level of reporting from DNFBP. For instance, there were no STRs reported by lawyers in 2009, 5 STRs have been received from them in 2010 and only 3 in 2011.

1260. In the opinion of the evaluators all DNFBPs, apart from notaries, have submitted an insufficient number of reports.

1261. Although guidelines have been issued and trainings have been provided to these sectors, there is still a lot to be done in respect of the level of awareness of DNFBPs regarding the reporting obligation.

Table 29: Number of STRs sent by DNFBPs

Reporting entities	2009	2010	2011	2012
Organisers of games of chance	**0**	**0**	**1**	**0**
Notaries public	**2**	**23**	**7**	**15**
Lawyers	**0**	**5**	**3**	**1**
Real estate	**0**	**0**	**0**	**0**
Dealers in precious metals and stones	**0**	**0**	**0**	**0**
Accountants /auditors	**0**	**0**	**1**	**0**
Total from reporting entitles	**2**	**28**	**12**	**16**

* To 30 June 2012

1262. Reporting by some sectors raises questions. The low number of STRs from some of the reporting entities (casinos, real estate, dealers in precious metals and stones, accountants/auditors) raises some concerns. Different reasons were given by Croatian Authorities to explain this low level of reporting by certain entities. For example, although there were no reports sent by real estate sector, it is noted, that in practice, real estate agents are not involved at the settlement stage of real estate transactions which may explain the lower reporting levels.

1263. The evaluation team found that, although DNFBPs met during on-site visit were well aware of their obligations under the law, the awareness of what might constitute money laundering and terrorism financing could be still improved. Increased awareness of what transactions might constitute ML or TF would assist in the submission of a larger number of STRs.

Applying Recommendation 14

1264. There is insufficient awareness and understanding of the legal protection offered by the AMLTF Law for breach of any restriction on disclosure of information.

Applying Recommendation 15

1265. While, at the meetings during the on-site visit, some DNFBPs (such as auditors) appeared to be well aware and adequately understood the requirements of the national AML/CFT framework, representatives of other DNFBPs (such as lawyers, real estate agents etc.) failed to demonstrate adequate appreciation for the importance of appropriately applying those requirements in their business activities.

Applying Recommendation 21

1266. During on-site visit, the DNFBPs failed to demonstrate that they pay special attention to persons from countries not sufficiently applying the FATF Recommendations.

4.2.2 Recommendations and comments

Applying Recommendation 13

1267. The evaluation team noted that from 2009 to June 2012 very few STRs were submitted by some DNFBPs which raises doubts concerning effectiveness.

1268. AMLO has organised a number of training sessions, however, there is still a need for an awareness raising and training to ensure DNFBPs understand their obligations

1269. The action points identified with respect to financial institutions are also applicable to DNFBPs.

Applying Recommendation 14

1270. Recommended action points under R.14 also apply to the DNFBP sector.

1271. Awareness of the DNFBP sector should be increased.

Applying Recommendation 15

1272. Recommended action points under R.15 should extend to the DNFBP sector.

Applying Recommendation 21

1273. Recommended steps under R.21 also apply to the DNFBP sector.

1274. Guidance and training should be provided to DNFBPs relating to doing business with countries not sufficiently applying the FATF Recommendations.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors underlying overall rating
R.16	**PC**	***Applying Recommendation 13*** • The deficiencies under R.13 also apply to DNFBPs; **Effectiveness** • Concerns over the effective implementation, especially the low level of reporting from certain DNFBPs; ***Applying Recommendation 14*** • Deficiencies under Recommendation 14 also apply to DNFBPs; **Effectiveness** • Lack of awareness on the legal protection on the AML/CFT matters; ***Applying Recommendation 15*** • Deficiencies under Recommendation 15 also apply to DNFBPs; ***Applying Recommendation 21*** • Deficiencies under Recommendation 21 also apply to DNFBPs; • The lack of guidance and training for DNFBPs relating to doing business with countries not sufficiently applying the FATF Recommendations could have an impact on the effectiveness of implementation.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

Recommendation 24 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

1275. Croatia received a non-complaint rating in the 3rd round report due to the fact that there was no supervision or monitoring for AML/CFT requirements in place for DNFBPs (except for casinos). The AMLD was the only authority empowered to sanction reporting entities for non-compliance with AML/CFT requirements, and its only available tool was the pecuniary sanction. A broader range of proportionate and appropriate sanctions was missing. In the absence of statistics about the sanctions applied, there was a concern on effectiveness.Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

1276. The Tax Administration (TA) is a structural unit within the Ministry of Finance. It oversees the implementation of the AMLTF Law by organisers of games of chance. The works of the administration are organised through the Central Office, in addition to 20 regional offices and 122 branch offices. Among the total staff of 4,200, some 62 in gaming activities with 45 being directly involved in the supervision of gaming activities in the country. In the Central Office there are two Sectors for gaming:-

1. Sector for games of chance and local taxes with 14 employees,
2. Sector for gaming audit – 3 employees and 45 inspectors in the regional offices are charged with responsibility for gaming – total number is 62.

Among them, in the two sectors structure one person has a master's degree and 14 have university qualifications (12 economists and 2 lawyers) and in the Regional office must staff have college and secondary education.

1277. According to Art. 23 §1 of the Act on Games of Chance, casino games, betting games and slot machine games may be organised by companies with a registered office in the Republic of Croatia based on a decision of the Government of the Republic of Croatia and the authorisation of the Ministry of Finance. Art. 24 of the same law defines that the application for the gaming concession shall *inter alia* have the following mandatory enclosures: for a natural person founding the company, information on the beneficial owner of the legal entity, proof of clean criminal record for the authorised persons (director, founders of the company, supervisory board members).

1278. However, for a legal entity having applied for establishing a casino, there is no requirement preventing criminal associates from holding a significant interest. However, the Tax Authority claim that they always check that criminal associates do not hold a significant interest, although no procedures were provided to the evaluators.

1279. Clause 13, of Art. 4 §2 of the AMLTF Law defines organisers of games of chance such as lottery games, casino games, betting games, slot-machine gaming and games of chance on the Internet and via other telecommunications means, i.e. electronic communications as separate types of financial activity to be supervised for AML/CFT purposes. Further, Art. 85 of the Law, which defines specific mandates for different supervisory authorities, empowers the Tax Administration to conduct supervision of compliance with the AMLTF Law.

1280. The operation and control over games of chance are regulated by the Act on Games of Chance came into force since 1 January 2010. Art. 70 of the Act empowers the Ministry of Finance to control the legal entities organising games of chance. Paragraph 4 of the mentioned Art. states, that the authorised officials of the Ministry of Finance shall, during their control, inspect the premises and all procedures directly or indirectly related to the organising of games of chance in casinos, betting shops or slot machine clubs, the devices and aids for games of chance, the equipment for the supervision of games of chance, the audio and video devices and aids, the

business books, reports, records and other documents or data making it possible to determine the condition, and control the implementation of provisions related to the prevention of money laundering and terrorism financing.

1281. In the period from 1 January 2009 to 15 November 2012, the Tax Administration conducted 69 inspections including an AML/CFT element on casinos and applied 22 corrective measures.

1282. The sanctioning provisions provided in Chapter VII of the AML/CFT law apply to all reporting entities including casinos and operators of games of chance and their responsible officials (for further details see the analysis under R17).

Monitoring and Enforcement Systems for Other DNFBPS-s (c. 24.2 & 24.2.1)

1283. Clauses 15 and 16, of Art. 4 §2 of the AMLTF Law define trusts or company service providers, trading precious metals and gems and products made of them, real-estate intermediation, legal and natural persons performing matters within the framework of the following professional activities: a) lawyers, law firms and notaries public; b) auditing firms and independent auditors; c) natural and legal persons performing accountancy and tax advisory services as separate types of financial activity to be supervised for AML/CFT purposes. Further, Art. 85 of the Law, which defines specific mandates for different supervisory authorities, empowers the Financial Inspectorate to conduct supervision of compliance of all the reporting entities with the AMLTF Law.

1284. The same Art. of the law provides that the supervision of the reporting entities by the Financial Inspectorate shall be conducted on the basis of ML/TF risk assessment. To this end, the Financial Inspectorate developed a sector risk matrix considering the aggregate risk of each sector through:

- ML sector risk,
- TF sector risk,
- Risk of AML/CFT non-compliance,
- Sector awareness level, and
- Sector internal control arrangements.

1285. The matrix is periodically updated and adjusted in compliance with research and acknowledgements about sectors and with the results of reporting entities' supervision. The sector risk matrix provides a basis for supervision planning in a manner that the supervisory efforts are primarily channelled to high risk sectors and reporting entities.

1286. For details of supervisory powers of the Financial Inspectorate, which is in charge for the supervision of DNFBPs, see the analysis under the Recommendation 29.

1287. The penal provisions provided in Chapter VII of the AMLTF Law apply to all reporting entities, which includes all DNFBP, and their responsible officials (for further details see the analysis under R 17).

1288. The details of resources of the Financial Inspectorate are presented in the analysis under R 23. The table below depicts statistics on supervisory actions taken by the Financial Inspectorate with regard to DNFBPs in the period of 2009-2012. In practice the corrective measures applied relate to warning letters which include details of the steps to be taken to remedy the identified deficiencies.

Table 30: Statistics on supervisory actions taken by the Financial Inspectorate with regard to DNFBPs

Year	Number of reporting entities	2009	2010	2011*		Up to 31.10.2012		Total	No. of corrective measures
Reporting entity		On-site	On-site	Off-site	On-site	Off-site	On-site		
Lawyers	3,354	-	23	20	8	9	13	**73**	**15**
Public notaries	318	1	15	10	2	19	1	**48**	**15**
Accountants, auditors and tax advisors	7,500	10	23	58	21	44	6	**162**	**84**
Real estate intermediates	1,114	-	8	-	20	19	10	**57**	**31**
Precious metals and stones and its products traders	1250	-	-	32	15	21	9	**77**	
Trusts or company service providers	1	-	1	-	-	-	1	**2**	**1**
Total	**12,287**	**11**	**70**	**88**	**51**	**91**	**31**	**342**	**146**

*FI commenced off-site supervisions since 2011 with the adoption of the risk assessment matrix

** Assessed number, official registration data not available

1289. The Financial Inspectorate started conducting supervisions in the precious metals and gems sector in 2011 with the following results:

Table 31: Number of inspections conducted by the Financial Inspectorate in the precious metals and gems sector

Year	Off-site	On-site	Total of supervisions	Issued corrective measures
2011.	32	15	47	7
2012.*	21	9	30	12

*To October 31st.2012

1290. Although it might seem that the number of supervisory actions (both off-site and on-site) is rather low relative to the total number of reporting entities, the fact that the FI uses a risk-based approach through the risk assessment matrix completed on the basis of compliance questionnaires containing information on each individual reporting entity leads the assessment team to the conclusion that there has been significant progress and enhancement in terms of DNFBP supervision since the last evaluation.

Recommendation 25 (rated PC in the 3rd round report)

1291. Croatia received a partially compliant rating in the 3rd round report due to the fact that guidance was issued only for filing STRs, but not for general compliance with AML/CFT requirements.

Guidance for DNFBPs other than feedback on STRs (c. 25.1)

1292. In September 2011 the Financial Inspectorate issued general guidance on implementation of the AMLTF Law. The document articulates the purpose of the guidance, key measures that reporting entities must take for AML/CFT prevention, internal controls, customer due diligence,

on-going monitoring and reporting, data storing and evidence keeping, measures to be applied in business entities and societies with majority ownership etc. The guidance has four attachments including a basic list of suspicious activity indicators, high risk situations, risk assessment checking list, and high risk mitigation list.

1293. The Tax Administration has also prepared guidelines for organisers of games of chance for enforcing Anti Money Laundering and Terrorist Financing Law, and a monitoring methodology.

Feedback (applying c. 25.2)

1294. Starting from 2010, AMLO has produced an annual report which is available to both financial institutions and DNFBP. The report contains statistical information on the number of received STRs, cases opened and analysed by the FIU, and disclosures made to law enforcement authorities, as well as on the number of orders for temporary suspension of transactions within the period under consideration.

1295. In accordance with Art. 66 of the AMLTF Law, AMLO also provides feedback to reporting entities submitting STRs confirming receipt of the report and subsequently supplying information on any results arising if appropriate.

Adequacy of resources supervisory authorities for DNFBPs (R. 30)

1296. Details on resources of the Financial Inspectorate are provided in the analysis under R 23.

Effectiveness and efficiency (R. 24-25)

1297. Despite the significant progress in terms of the supervisory framework and practice for DNFBPs since the last evaluation, the efforts aimed at ensuring compliance of DNFBPs with AML/CFT requirements still need to be improved, especially when it comes to the identification of irregularities and infringements of applicable legislation, and application of sanctions. It is, however noted that the risk-based approach to supervision has been introduced and is being applied to the supervision of DNFBPs.

1298. During the on-site visit the evaluators met with both supervisors and representatives of the DNFBP sector. Overall the evaluators were impressed with the approach taken by the Financial Inspectorate and the responses received to their enquiries. Furthermore, the representatives of the DNFBP sector appeared to be well aware of their AML/CFT responsibilities and considered that the supervisory regime was sufficiently robust.

4.3.2 Recommendations and comments

Recommendation 24

1299. The Act on Games of Chance should be amended to include a requirement prohibiting criminal associates from holding of a significant interest in casinos.

1300. Further improve supervisory framework, specifically in relation to identification of irregularities and infringements of applicable legislation, and application of sanctions.

Recommendation 25 (c.25.1 [DNFBPs])

1301. The requirements of this Recommendation relating to DNFBPs have been met.

4.3.3 Compliance with Recommendations 24 and 25 (Criteria 25.1, DNFBPS)

	Rating	Summary of factors underlying overall rating
R.24	**LC**	• No requirement for preventing criminal associates from holding of a significant interest in casinos.
R.25	**C**	

4.4 Other non-financial businesses and professions/Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

Recommendation 20 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1302. Croatia was previously rated PC for R 20 as no analysis had been undertaken to identify non-financial businesses and professions (other than DNFBP) which were at risk of being misused for money laundering or terrorist financing. Furthermore, there appeared to be no strategy on the development and use of modern and secure techniques for conducting financial transactions that were less vulnerable to money laundering.

1303. Subsequent to the 3rd round evaluation Croatia amended the AML Law to designate certain additional categories of non-financial business as reporting entities. Among the defined types of operations/businesses covered by the AMLTF Law, Art. 4 of the Law specifies: artistic items and antiques; organising or carrying out auctions; and pawnshops. These designated businesses are therefore subject to the same requirements as financial institutions and DNFBP.

1304. For all these types of reporting entities, the Financial Inspectorate is the designated supervisor for AML/CFT compliance. The table below depicts statistics on supervisory actions taken by the Financial Inspectorate with regard to these DNFBPs in the period of 2009-2012.

Table 32: Statistics on supervisory actions taken by the Financial Inspectorate with regard to DNFBPs

Year	Number of reporting entities	2009	2010	2011		2012*		Total
Reporting entity		On-site	On-site	Off-site	On-site	Off-site	On-site	
Art and antiquities dealers	100	-	3	4	2	4	5	**18**
Auction houses	2	-	-	-	1	-	-	**1**
Pawnshops	1	-	-	-	-	-	2	**2**
Total	**1353**	**0**	**3**	**36**	**18**	**25**	**16**	**98**

* To 31 October 2012

1305. Additionally, in 2010, the Financial Inspectorate started conducting supervisions in the Artistic items and antiques sector. For this sector the Financial Inspectorate use accounting services by authorised accountants to conducted supervisions resulted with the following results:

Table 33: Number of inspections conducted by the Financial Inspectorate in the Artistic items and antiques sector

Year	Off-site	On-site	Total of supervisions	Written warnings	Indictment proposal
2010	0	2	2	0	1
2011	4	2	6	3	0
2012	4	5	9	0	0

1306. The requirements for internal controls, compliance and audit, as well as the sanctions provisions provided in the AMLTF Law apply to all reporting entities and their responsible officials (for further details see the analysis under R.15 and R.17).

1307. Art. 39 of the AMLTF Law establishes that cash transactions exceeding the amount of HRK 105,000 (approximately €14,000) or arrangements with non-residents valued in excess of €14,000 shall not be permitted when selling goods and rendering services. The same limitation applies to several interrelated cash transactions, as well.

4.4.2 Recommendations and comments

1308. This recommendation is fully met.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**C**	

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

Recommendation 33 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1309. Recommendation 33 was rated partially compliant based on the following deficiencies:

- Lack of definition of the beneficial owner in the legislation.
- Existence of bearer shares.

Legal framework

1310. The Companies Act is a comprehensive source of commercial law and regulates the formation, structure, operation, dissolution, merging, division and transformation of commercial partnerships and companies. The Court Registry Act regulates the process of registration of legal persons, organisation and operation of the Court Register.

1311. According to Art.2 of the Companies Act, legal persons in Croatia may exist in the following forms:

- public companies;
- limited partnership companies;
- joint stock companies;
- economic interest associations;
- limited liability companies; and
- simple limited liability companies

1312. It is noted that Arts. 148 and 149 of the Companies Act allow for the formation of silent partnerships. In a silent partnership the 'silent partner', in accordance with the concluded agreement, can invest assets into the company of another partner ('entrepreneur'). The silent partner participates in the profits and losses of the entrepreneur but does not bear any liability. The name of the silent partner is not set out in the deeds concluded by the entrepreneur. The silent partnership is not a legal person and is not registered in the court register.

1313. Companies start operations following their registration in the Court Register. The Court Register contains comprehensive information about the ownership of all classes of legal person as required by the Companies Act. The court register is public and is available online..

1314. The evaluators met with representatives of the Commercial Court in Zagreb. It was emphasised that all legal persons are required to be registered with the court and that all legal persons registered must have at least one natural person as a member. It was pointed out that false declarations are regarded as criminal offences.

1315. The Financial Agency (FINA) has established a single registry of accounts of natural and legal persons. This registry became fully operational on 1 January 2011. The content of the single registry of accounts, data coverage, data delivery deadlines, use and disclosure of data and access to the data from the single registry of accounts are laid down in the Rules on Single Registry of Accounts. The single registry of accounts is an electronic data base containing accounts of business entities in Croatia, citizens, local and regional self-government, as well as accounts the tax payers submit to the single registry of accounts (banks, housing savings and credit unions). The data in the single registry is divided into 2 categories:

a. publicly available data - data on the accounts of legal persons for which FINA is obliged on the request of each person to disclose data on the number of the account, bank, date of

the opening of the account, authorised person as well as whether the account is blocked or not; and

b. non-publicly available data - data on the accounts of natural persons, available only on the basis of a written request of the court or other authority as well as of the surveillance authorities and citizens to which the data refer).

1316. All legal persons are required to submit financial accounts to FINA by 30 June each year. If accounts are not filed after 3 years the legal person is removed from the court register.

Measures to prevent unlawful use of legal persons (c. 33.1)

1317. Since the 3rd round evaluation, the Croatia authorities have introduced a definition of beneficial owner into legislation which is set out in Art. 23 of the AMLTF Law. Art. 24 of the AMLTF Law requires the reporting entities to collect the information on the beneficiary owner of the customer.

1318. As set out above, the Court Register contains comprehensive information on the registered owners of legal persons as well as about persons who act on behalf of the companies. Legal persons are required to file information on change of control as well as annual financial information. This information is publicly available both to competent authorities and reporting entities.

1319. As previously stated it is a criminal offence to submit false information. The court officials confirmed that there had been very few instances of submission of false declarations.

1320. However, there is no requirement to provide details of the ultimate beneficial owner. Furthermore, although it is a criminal offence to submit false information, no steps are taken to verify the information submitted. The evaluators do, however, consider that the authorities have sufficient powers to obtain the necessary information, if required, as set out under the analysis of R.4, R.10, R.26 and R.29 above.

Timely access to adequate, accurate and current information on beneficial owners of legal persons (c. 33.2)

1321. According to Art. 4 of the Court Register Act, the register is public. The Register is available online (*sudreg.pravosudje.hr*) and allows searching for the companies by different criteria. The Register also allows searches for dissolved companies. Art. 59.3 of the AMLTF Act gives the FIU of Croatia the power to request any necessary information from reporting entities. This information also includes the records on beneficiary owners of the customers. Reporting entities interviewed during the on-site visit confirmed that publicly available data-bases, including the Court Register, are widely used in practice.

Prevention of misuse of bearer shares (c. 33.3)

1322. Amendments to Art.165 of the Companies Act do not allow joint stock companies to issue bearer shares. These amendments have been in force since 1 April 2008. Nevertheless, the bearer shares issued before 1 April 2008 have not been prohibited. No statistics were available concerning number or value of bearer shares that are still in circulation and the evaluators were not able to verify the effectiveness of the prohibition. The evaluators are not aware of any measures in place to mitigate the impact of bearer shares in circulation.

Additional element - Access to information on beneficial owners of legal persons by financial institutions (c. 33.4)

1323. Art. 4 of the Court Registry Act provides that the register is public and that anyone, even without proof of legal interest, shall have access to the data entered into the main book, in documents on the basis of which registration is carried out, and other documents and data stored in a collection of documents, except documents for which the law excluded the implementation of the principle of public register, and request to be issued a certificate or a certified copy or copies of documents and data stored in a collection of documents.

1324. Furthermore, Art. 4a of the Act prescribes the possibility that in addition to the Croatian Chamber of Commerce other entities as well make available data recorded in the main book by electronic communications network, or through the media for data transmission, in return for a fee at their request.

5.1.2 Recommendations and comments

1325. The Court Register should also contain information on the ultimate beneficial owner of legal persons.

1326. Croatia authorities should assess the number of bearer shares that are still in circulation and introduce measures to reduce the possible ML risks.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• Lack of information on the number of bearer shares still in circulation raises concerns over the effectiveness of appropriate measures to ensure that they are not misused for money laundering; • No measures in place to guard against abuse of companies by the use of bearer shares.

5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and analysis

Recommendation 34 (rated N/A in the 3rd round report)

Summary of 2008 factors underlying the rating

Legal framework

1327. There are no provisions under Croatian legislation that permit the formation of trusts. Furthermore, as trusts are not recognised it is not possible for a trust to conclude or enforce a contract through the courts. Therefore it can be concluded that R34 does not apply in Croatia. All other forms of legal arrangement are dealt with under R.33 above and SR.VIII below.

5.2.2 Recommendations and comments

1328. This Recommendation is not applicable.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and analysis

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

Summary of 2008 factors underlying the rating

1329. Special Recommendation VIII was rated NC in the 3rd round based on the following conclusion:

- No special review of the risks and nor any sort of on-going monitoring of the NPO sector had been undertaken.
- Financial transparency and reporting structures were insufficient and did not amount to effective implementation of criteria VIII.2 and VIII.3.

Legal framework

1330. In Croatia, the non-profit sector mainly comprises associations and foundations. The establishment, registration and legal status of associations are regulated by the Law on Associations which covers "*any form of voluntary association of natural or legal persons which, in order to protect and promote issues of public or mutual interest, environmental, economic, humanitarian, informative, cultural, ethnic and national, educational, social, professional, sports, technical, health care, scientific and other interests and goals as well as their beliefs, and without the intention of gaining profit, submit themselves to the rules that regulate organisations and activities of that form of association.*" The law is not, however, applicable to political parties or religious groups. An association acquires legal personality upon registration in the registry book of associations, but registration is not mandatory; associations that remain unregistered do not get the status of legal entities; these associations are governed by the provisions applicable to partnership, i.e. a contractual relationship pursuant to the Civil Obligations Act.

1331. According to the Law on Endowments and Foundations a foundation is defined as a property assigned to serve permanently by itself or by the incomes it acquires to the accomplishment of some generally beneficial or charitable purpose (cultural, educational, moral, scientific, etc.) while an endowment is the property assigned to serve to the same purpose during a particular period of time. A foundation can be transformed into an endowment when its incomes are no longer sufficient for permanent fulfilment of the foundation purpose.

1332. Foundations and endowments are formally established upon registration into the Registry of Foundations whereby they acquire legal personality. Foreign endowments or foundations, that is, entities with a seat abroad, are allowed to establish subsidiaries (missions) in Croatia provided that they have been duly established and registered pursuant to the law of the country of seat. Missions of foreign endowments or foundations, similarly to foreign associations, are not considered legal persons and they are required to be registered with the Register of Missions of Foreign Endowments and Foundations. Both registers mentioned above are maintained by the Ministry of Administration.

1333. Foreign associations or other organisational forms established without the intention of gaining profit and in accordance with the legal rules of the respective foreign state in case if they meet the conditions prescribed by the Law on Associations may conduct their activity in Croatia after being entered into the registry book of foreign associations (Art. 8). In addition, they do not acquire legal personality upon registration but only the right to pursue activities determined by their statute within the territory of Croatia, that is, such an association is considered a representative acting on behalf of its parental association in the home country. Croatian authorities stated that Register of Foreign Associations has been kept and maintained centrally by the Ministry of Administration since January 2004.

1334. The following table sets out the number of NPOs operating in Croatia at the time of the on-site visit.

Table 34: Number of NPOs operating in Croatia

Type of business	Supervisor	No. of Registered Institutions
a) Associations, registered in the Central Register of	Ministry of Administration - administrative	48,972

Associations	supervision State Administration Office - inspection and supervision over the operation of the association	
b) Foundations, registered in the Foundations Register	Ministry of Administration, Ministry of Finance and the State Audit Office.	194
c) Funds, registered in the Funds Register	Ministry of Administration, Ministry of Finance and the State Audit Office.	12
d) Registered churches and religious communities	Ministry of Administration and other ministries within the scope of their competence.	2,080

1335. Section 5.3.1 of the 3rd round report sets out the basic legal framework.

1336. Since the 3rd Round of Evaluation of Croatia in 2006 there have been some amendments related to the NPO sector legal framework. The amendments to the Regulation on Accounting of Non-profit Organisations (2009) established a special Register of NPOs in which all NPOs must be registered regardless of when they were established. This register is established and maintained by Ministry of Finance.

1337. There are also certain amendments in the AMLTF Law which specifically relate to NPOs, namely:

- Art. 3 23) of the AMLTF Law defines NPOs as being "*associations, endowments, foundations, religious communities and other persons which do not perform economic activity*". However, the Law does not include NPOs as reporting entities.
- Art. 87 2) & 3) of the AMLTF Law establishes a requirement for bodies in charge of conducting supervision over the activities of NPOs, to report suspicions of money laundering as a result of supervising NPOs.
- Art. 21 of the AMLTF Law sets out reporting entities responsibilities when doing business with NPOs. These requirements include:

  1. identifying the person authorised to represent, i.e. a representative and verify representative's identity;
  2. obtaining a power of attorney for representation purposes; and
  3. collecting CDD data on the NPO and each natural person who is a member of an NGO from a power of attorney issued for representation purposes and submitted by the representative to the reporting entity.

1338. Additionally, in order to improve supervision of NPOs, it has been proposed by the Ministry of Finance that a Law on the NPO Sector Accounting should be adopted after the period covered by the on-site visit.

1339. Foreign associations or other organisational forms established without the intention of gaining profit and in accordance with the legal rules of the respective foreign state in case if they meet the conditions prescribed by the Law on Associations may conduct their activity in Croatia after being entered into the registry book of foreign associations (Art. 8). In addition, they do not acquire legal personality upon registration but only the right to pursue activities determined by their statute within the territory of Croatia, that is, such an association is considered a representative acting on behalf of its parental association in the home country. Croatian authorities stated that Register of Foreign Associations has been kept and maintained centrally by the Ministry of Administration since January 2004.

Review of adequacy of laws and regulations (c.VIII.1)

1340. Between 10 November 2012 and 3 August 2012, AMLO organised meetings with state authorities responsible for the supervision of NPOs with the aim of enhancing cooperation and developing better mutual coordination and exchanges of information and with the ultimate intention of enhancing supervision over NPOs and prevention of their abuse for ML/TF. In the course of these meetings there was an exchange of information on irregularities concerning NPOs and the development of proposals for enhancing efficiency in the supervision of NPOs, with an aim to further strengthen implementation of AML/CFT measures in relation to NPOs and to prevent their abuse for ML/TF.

1341. As a consequence of these meetings there were a number of outcomes including:

- education of all state authorities involved with emphasis on possible abuse of NPOs for ML/TF;
- it was concluded that NPOs in Croatia presented a low risk for financing of terrorism, however, they could be vulnerable to money laundering; and
- proposal by the Ministry of Finance that a Law on the NPO Sector Accounting should be adopted.

1342. During meetings on the on-site visit the evaluators were advised that the following risks had also been identified:

- shortcomings in registers including lack of connectivity between registers and lack of data in original registry identified as a potential risk; and
- small NPOs (with assets below HKR 100,000) were not required to submit any reports.

1343. The evaluation team was informed that the typologies on terrorist financing were distributed to reporting entities and authorities in charge of supervision of NPOs in November 2012.

1344. Thus, since 3rd evaluation round the deficiency although some steps have been taken to identify risks and vulnerabilities in the NPO sector, no systematic review of the risks of the NPO sector have been undertaken.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1345. Apart from the typology reports referred to above, no outreach to the NPO sector appears to have been undertaken.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

1346. The supervisory authorities for the NPO sector are:

Ministry of Administration

The Ministry of Administration is responsible for the supervision of the activities of associations, foundations and funds as well as for the transparency of assets of the foundations and funds. The responsibilities of the Ministry are set out in Art. 26 (2) of the Law on Associations which provides that "*administrative supervision shall be carried out by the ministry competent for general state administration*". The Ministry of Administration together with its county branches (State Administrative Offices in Counties) is in charge of registering and maintaining register of NPOs in the Republic of Croatia. The Register is maintained in electronic form and available on the Ministry of Administration website.

State Administration Offices

The regional offices of the Ministry of Administration (State Administration Offices), conducts inspections of the NPO sector in accordance with Art. 26 (3) of the Law on Associations which states that "Inspectorate supervision shall be carried out by the county".

Tax Administration

The Tax Administration is responsible for supervision of NPOs regarding fulfilment of the Income Tax Law and the Profit Tax Law;

Financial Inspectorate

The Financial Inspectorate is responsible for supervision of the foreign associations' supervision of other NPOs conducts exclusively by other competent body's request, Foreign Exchange Law.

1347. The following table sets out details of the number of inspectors and number of supervisory visits undertaken.

Table 35: Number of inspectors and number of supervisory visits undertaken by the state bodies

State administrative body	No. of inspectors	No. of supervisions				Total No. of supervisions
		2009	2010	2011	2012	
City of Zagreb Office for General Administration	5	20	21	87	57	185
State Audit Office	30	36	33	21	70	160
Offices for State Administration in Counties	20	40	60	120	100	320
Tax Administration	306	34	41	82	153	310
Ministry of Finance, Sector for Budget Supervision and Supervision of Concessions	3	1	2	6	4	13
Financial Inspectorate	2	12	4	2	2	20

1348. As previously noted, Arts. 87 2) & 3) of the AMLTF Law has established a requirement for bodies in charge of conducting supervision over the activities of NPOs, to report suspicions of money laundering as a result of supervising NPOs.

1349. In accordance with Art. 3 of the NPOs Accountancy Regulation, the NPO sector entities are obliged to maintain business books and to create financial reports. Furthermore, all NPOs are obliged to maintain information on the purpose and objectives of their activities, list of activities, objectives, and membership as set out in Art. 11 of the Law on Associations, and Art. 18 of the Law on Endowments and Foundations).

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

1350. Art 4 (3) of the Law on Associations requires that an association shall keep a record of its members. Art.11 of the Law on Associations requires that each association shall have a statute. It then goes on to stipulate under Art. 11 §3 that the statute of an association shall contain the provisions regulating: name and the seat of the association; representation; aims; activities for the realisation of aims; membership; bodies of the association, method of their election, their powers, their quorum and voting rule, and duration or their mandate; and dissolution of the association. Art. 11 §4 also sets out certain other non-mandatory provisions concerning area of activity, property rights and dispute resolution.

1351. The purpose and objectives of the NPOs' activities as well as the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees appear to be required under Art.11 §3.

1352. The NPO registers are available on the internet site of Ministry of Administration and on the internet site of Ministry of Finance.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

1353. Art. 27 of the Law on Associations states that if a state official empowered for inspectorate supervision over associations establishes that an association has violated this law or other laws, he may: order the elimination of detected shortcomings and irregularities in specified time limit; and instigate offence proceedings.

1354. Art. 39 of the Law on Associations sets out penalties for failure to keep record of its members in accordance with Art. 4 (3).

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

1355. NPOs are registered by the Ministry of Administration. An association only acquires legal personality upon registration in the Registry of Associations. However, registration is not mandatory; Art. 14 (1) of the Law on Associations states "*Registration in the registry is voluntary and shall be conducted upon the request of the founders of the association*".

1356. As previously stated, the NPO registers are available on the internet site of Ministry of Administration and on the internet site of Ministry of Finance.

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

1357. The NPO sector is obliged to maintain business books and to create financial reports according to Art. 3 of the Regulation on the NPO Sector Accounting. However, there is no clear demand for the time period and the Croatian authorities relay on the scope of work of the reporting entities. The evaluators were informed that the regulatory requirements imposed on NPOs, including the statutory duty to prepare and submit annual returns, ensure that NPOs must maintain basic records including changes to directors, and income and expenditure.

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)

1358. As noted above, since 2010 AMLO has organised semi-annual meetings with state authorities responsible for supervision of NPOs with a purpose of enhancing cooperation and developing better mutual coordination and exchange of information, with a final aim of enhancing supervision over NPOs. The evaluators were also informed that a Protocol on cooperation and establishment of inter-institutional working group for suppression of money laundering and financing terrorism was in 2007. Among other matters, the mechanisms within the scope of the Protocol facilitate the exchange of information between relevant state authorities. It is, however, noted that although a number of government departments are involved in the supervision of the NPO sector there is no coordinated approach to supervision and no cooperative arrangements are in place.

1359. The work of the supervisors of NPO sector is not linked to the work of the LEAs that would usually play a key role in combating the abuse of NPOs by terrorist groups including by continuing their on-going activities with regard to NPOs (for example additional control for the cash entering or leaving the Croatia and comparison with and involvement of the NPO sector; checking NPOs with significant participation of foreign individuals etc.).

1360. The Croatian authorities stated that during the course of an investigation the appropriate access to information on administration and management of a particular NPO may be obtained in the

framework of criminal procedure legislation. All registration information is publicly available via the internet. At the same time there is no mechanism in place that allow for prompt investigative or preventative action against any type of an NPO that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisation other than the normal remedies under the Criminal Procedure Code. Moreover, LEAs being capable to take action where necessary through criminal process at the same time are not aware of any potential risks at a national level in this sector.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

1361. During the mission the evaluators were informed that AMLO's international exchange of financial intelligence with foreign FIUs, as well as Interpol and Europol channels could be used for respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support.

Effectiveness and efficiency

1362. There is no clear evidence that Croatian authorities have sufficient resources for supervision and monitoring of the NPOs.

1363. The level of governmental terrorist awareness specially in relation to a domestic cooperation need to be strengthened by participation of all involved authorities with providing outcomes in writing (informing NPOs of their obligations and potential risks).

5.3.2 Recommendations and comments

1364. The regulation of the NPO sector is fragmented and carried out by a number of authorities. It is advisable that the NPO legislation as well as the whole system to be harmonised on the basis of assessment of current legal framework and efficiency of the system. The Croatia authorities responsible for the supervision of NPO sector need to have a complete picture of the whole sector, particularly as to what are the most vulnerable NPOs.

1365. LEAs should be more involved and play a key role in the combat against the abuse of NPOs by terrorist groups, including LEAS ongoing activities with regard to NPOs.

1366. Croatian authorities need to:

- undertake the sector specific review for the purpose of identifying those NPOs that are or may be at risk of being misused for TF;
- commence an outreach programs to the sector;
- raise NPOs awareness of the risks of being misused for TF;
- enforce supervision and monitoring of all NPOs; and
- harmonise legislation with regard to all types of NPOs (especially with regard to criteria VIII.2 and VIII.3 and demonstration of the appropriate measures (sanctions for violation) to all NPOs (primary legislative level).

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• Lack of the comprehensive review as well as regular update in relation to the vulnerability of NPOs to terrorist financing risks; • No requirement to maintain, for a period of at least five years, records of domestic and international transactions; • Apart from the issuance of typology reports, there has been insufficient outreach to the NPO sector and little awareness raising on risks for NPOs to be misused for TF.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1 Description and analysis

Recommendation 31 (rated C in the 3rd round report)

Summary of 2008 factors underlying the rating

1367. Recommendation 31 was rated 'Compliant' in the 3rd evaluation round.

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

1368. The evaluators were informed that on 1 March 2007 the Protocol on cooperation and establishment of the Inter-institutional Working Group on AML/CFT has been signed on ministerial level. It is a strategic document, with the purpose of promoting further coordination and enhancement of inter-agency cooperation in AML/CFT. It came into force on the day of its signature.

1369. The Inter-institutional Working Group on AML/CFT (IIWG) includes 11 government institutions and agencies, as follows:

- Anti-Money Laundering Office (AMLO);
- State Attorney's Office of the Republic of Croatia;
- the Ministry of the Interior – the Police Directorate;
- the supervisory services of the Ministry of Finance (the Financial Inspectorate; the Customs Administration; Tax Administration and the Financial Police);
- the Croatian Financial Services Supervision Agency;
- the Croatian National Bank;
- the Security-Intelligence Agency; and
- the Ministry of Justice.

1370. On 22 September 2009 the Ministry of Foreign Affairs and European Integration joined the work of Working Group on AML/CFT. As the Financial Police of the Ministry of Finance was abolished on 7 March 2012 11 institutions now participate in the work of IIWG. A representative of AMLO is elected as president of IIWG

1371. Additionally, at a strategic level, on 31 January 2008, the Croatian Government adopted the Action Plan on Fight Against ML/TF setting out 150 activities for 11 institutions (legislative, institutional and operational) for current and permanent development of the overall AML/CFT system with the aim of harmonising it with the relevant international standards. Twice a year, the Ministry of Finance reports to the Croatian Government on the progress of each institution and the AML/CFT system as a whole.

1372. One of the results of implementation of the Action plan on fight against money laundering and terrorism financing (educations of reporting entities), is awareness raising in the field of prevention of ML/TF, especially in DNFBP sector.

1373. The work of the State Attorney's Office, Police and other authorities is prescribed by the Criminal Procedure Act, Act on State Attorney's Office, Act on Office for Suppression of Corruption and Organised Crime, Act on Police Affairs and Authorities and the Protocol which the State Attorney's Office of the Republic of Croatia and the General Police Directorate signed for the purpose of more efficient application of the Law, and which defines the common work of the State Attorney's Office and the Ministry of the Interior-General Police Directorate.

1374. During the on-site visit, the authorities confirmed that there was very good co-operation between AMLO and the National Bank of Croatia, particularly in the area of awareness raising and providing guidance to entities from the financial sector. It was generally noted by the

evaluators that there appeared to be a good working relationship between all competent authorities.

1375. The goals and tasks of IIWG are cooperation and coordination of all 11 institutions involved in achieving strategic and operational objectives in the fight against money laundering and terrorist financing, identification (and elimination of) weaknesses and risks in the process of combating money laundering and terrorist financing, and identifying obstacles that hinder the achievement of these strategic and operational goals. The objectives and tasks are to be achieved through the following activities:

a) ensuring, improving and accelerating the coordination, cooperation and information exchange within and between the involved institutions;
b) making suggestions to simplify/simplifying the access to information, including to databases;
c) simplifying the workflow and avoiding duplication of work and loopholes;
d) assessing regularly the status and achieved progress;
e) to coordinate the participation in international organisations and working groups as well as improving participation in and more active use of national and international programs;
f) to analyse anti-money laundering and terrorist financing legislation and procedures and to start initiatives including the elaboration of recommendations for their modification and improvement;
g) to make suggestions in case of misunderstandings between the institutions involved in fight against money laundering and terrorist financing;
h) to create a common web site covering all issues regarding prevention of money laundering and terrorist financing (hosted and updated by the FIU);
i) to enhance know how and awareness by organising training, seminars and workshops for the staff of the involved institutions as well as for the reporting entities;
j) to draft guidelines addressed to particular reporting institutions,

1376. The IIWG has demonstrated its ability to operate at the strategic level, working through the regular semi-annual meetings and at the operational level in daily contact of authorities in solving a particular problem. It should be noted that the working group has established a list of 44 persons responsible for communication; each institution within the protocol was required to determine the representative in the working group, deputy representative, contact person (liaison officer) and vice-contact person.

1377. Between 2007 and 2011 ten regular and three extraordinary meetings of the Group were held. In the first half of 2012 one regular meeting was held and one extraordinary meeting. In the course of meetings, participants exchange information on all relevant activities in the AML/CFT field (including results of members' participation in other meetings, projects, activities in relation to NPO sector etc.) and are informed on the results of the AML/CFT system in previous periods with emphasis on judicial statistics in order to discuss and review effectiveness of the system.

1378. At the meeting of IIWG held on 12 May 2011, the IIWG Subgroup for Supervision for was established. The first meeting was held on 28 June 2011. The IIWG Subgroup for Supervision meets with the aim of strengthening coordination and exchange of experiences and best practices of the bodies responsible for overseeing the implementation of measures and actions to prevent money laundering and terrorist financing.

1379. At the meeting held on 8 September 2011 the Operational IIWG subgroup was established with the purpose of providing mutual feedback in specific cases related to money laundering or the financing of terrorism and work on specific cases and coordination procedures.

1380. According to the Protocol, a number of urgent, targeted, "*ad hoc*" working meetings between stakeholders and institutions involved in specific cases were held. If necessary, based on the established protocol of cooperation contacts between the involved institutions on specific subjects are made on a daily basis.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS)(c. 31.2)

1381. It was confirmed to the evaluators that regular consultations are held with reporting entities through training as well as through providing guidelines and opinions on concrete questions.

1382. In particular, AMLO provides an interpretation function. When AMLO receives a question related to the implementation of AMLTF Law it prepares an opinion/interpretation and then consults with the relevant AML/CFT supervisor of the reporting entity which submitted the question. After consultations, the answer is sent to the reporting entity indicating that this opinion/interpretation is given in consultations with supervisor.

1383. The FI also confirmed that they respond to questions from reporting entities on a daily basis.

Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)

1384. Regarding mutual cooperation of AMLO with other bodies, according to Art. 58, §1 and 2 of the AMLTF Law certain designated bodies should sign a protocol on cooperation and on the establishment of an inter-institutional money laundering and terrorist financing working group for the purpose of achieving the required strategic and operational objectives

1385. Furthermore, Art. 64. of the AMLTF Law sets out the manner in which AMLO may commence analytical processing of suspicious transactions including cooperation with other state entities in Croatia. This requirement of the AMLTF Law has a direct influence on strengthening cooperation between AMLO and other competent bodies both on strategically and operational level.

1386. Consequently, AMLO has concluded following agreements and protocols on cooperation with state authorities[46]:

Table 36: AMLO agreements and protocols on cooperation with state authorities

	Year	Institutions
1	2011	AMLO– USKOK
2	2005	AMLO– Agency for Supervision of Pension Funds and Insurance Companies
3		AMLO– Direction for Supervision of Insurance Companies
4	2004	AMLO – Commission for Securities of the Republic of Croatia

1387. AMLO participates in the implementation of following agreements concluded by the Ministry of Finance:

Table 37: Agreements concluded by the Ministry of Finance

	Year	Institutions
1	2007.	MFIN – MoJ - MoI – SOA – State Attorney's Office – CNB – HANFA (IIWG)
2		MFIN – MoI (Additional Protocol between AMLO and General Police Directorate in December 2011 – access to IS)
3	2006.	MFIN – CNB

[46] AMLO is planning to conclude other agreements which will further enhance operational and strategic cooperation with the Tax Administration, Financial Inspectorate and the Customs Administration.

1388. AMLO keeps statistics on suspicious transactions received from the competent authorities and of the proposals for opening of analytical cases received from the competent authorities in accordance with Art. 64 of the AMLTF Law.

1389. When performing duties in their competencies the competent authorities (State Attorney's office, USKOK, POLICE and courts), as well as the supervisory bodies (CNB, HANFA, Financial Inspectorate, Tax Administration, Customs Administration), and other state authorities identify suspicion on activities that are, or could be related to money laundering or terrorist financing, they are obliged to immediately notify in writing AMLO in accordance with Arts. 58 and 64 of the AMLTF Law. Accordingly, AMLO on the initiative of the other bodies may begin the analytical processing of suspicious transactions and activities related to research of the financial aspect of the most serious offenses.

1390. And as a result of the cooperation, in 2011 AMLO has opened a total of 98 cases in association with different state authorities.

Table 38: Number of opened cases by AMLO jointly with different state authorities

	2009	2010	2011
Police	70	60	52
USKOK	5	21	14
Tax Administration	8	9	9
Customs	4	6	7
State Attorney's Office	5	9	5
Financial Inspectorate	6	3	4
Financial Police	4	1	2
Ministry of Science and Education			2
Security Intelligence Agency	9	7	1
Court			1
CFSSA - HANFA			1
CNB		1	
Others	3		
Total	**114**	**117**	**98**

Recommendation 30 (Policy makers – Resources, professional standards and training)

1391. The resources of the Croatian policy makers cooperating within the Inter-institutional Working Group on AML/CFT seemed adequate at the time of the on-site. As noted above there is a list of 44 people who are responsible for communication.

Effectiveness and efficiency

1392. The evaluators were advised that there are various mechanisms in place which facilitate domestic co-operation and policy development between all stakeholders. The Croatian Authorities appear to have established satisfactory mechanisms to facilitate co-operation between the agencies involved in investigating ML and TF.

1393. The Croatian authorities have displayed strong co-ordination and co-operation at the policy level. The various government authorities communicate during the development of new policies to combat money laundering and terrorist financing using the platform of the Inter-institutional Working Group on AML/CFT.

1394. During the on-site visit it was confirmed to the evaluators that there was a high level of co-operation between the relevant bodies.

1395. Nonetheless, there remains a concern that there are still low numbers of convictions in respect of money laundering with only one stand-alone conviction reported. It would appear that more co-ordination is required between prosecutors and law enforcement on the difficulties which each are facing. Similarly, more cooperation is needed between police and the FIU to ensure that the FIU better understands what, if any, problems are faced in investigation reports submitted.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

1396. It seems that Croatia has established a mechanism for reviewing the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis. There is an AML/CFT national action plan in place. At the time of on-site visit, Croatia was conducting the Preliminary National Risk Assessment. Nonetheless, as noted above, it is unclear to the evaluators how deep the revisions of the system as a whole are in practice. The evaluators remain concerned about the reasons for the low number of money laundering convictions being achieved needs serious analysis and that the coordinating bodies should undertake this task in the context of the forthcoming national risk assessment.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1397. The Croatian authorities have provided satisfactory information on resources used to set up and maintain the system for combating money laundering and terrorist financing on the policy level. Professional standard requirements are set out in the law and other domestic normative acts and codes on professional standards.

6.1.2 Recommendations and Comments

Recommendation 31

1398. Coordination efforts should be focussed on achieving more and better quality convictions for money laundering.

1399. While there is significant co-operation and coordination at the operational level the low number of reports from DNFBP points to a need for even more coordination by AMLO with DNFBP bodies.

1400. Croatia should develop a system for measuring the overall effectiveness of the AML/CFT regime.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**LC**	• More coordination needed between AMLO, the Police and prosecutors on the reasons for the low number of money laundering convictions; • More coordination required with DNFBP given low numbers of STRs submitted.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Recommendation 35 (rated PC in the 3rd round report) & Special Recommendation I (rated PC in the 3rd round report)

Recommendation 35 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1401. Recommendation 35 was PC rated in the 3rd round based on the following factors:

Implementation of the Palermo and Vienna Conventions

- The scope of the money laundering offence is limited to "banking, financial or other economic operations".
- It is unclear if indirect proceeds deriving from property other than money are covered.

Implementation of the Terrorist Financing Convention

- The present incrimination of terrorist financing appears not wide enough to clearly sanction:
  - the provision or collection of funds for a terrorist organisation for any purpose, including legitimate activities;
  - the collection or provision of funds with the unlawful intention that they should be used in full or in part by an individual terrorist for any purpose (as above); and
  - as far as domestic terrorism is concerned - the collection of funds with the intention or in the knowledge that they should be used in full or in part to carry out terrorist acts as referred to in Art. 2(a) and (b) of the Terrorist Financing Convention, irrespective of whether or not the funds are actually used to (attempt to) carry out a terrorist act.

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

Summary of 2008 factors underlying the rating

1402. Special Recommendation I was rated PC in the 3rd round based on the following factors :

- Croatia has failed to implement several provisions of the Terrorist Financing Convention, notably an autonomous terrorist financing offence.
- There is no legal structure for the conversion of designations under S/RES/1267(1999) and its successor resolutions as well as S/RES/1373(2001).
- A comprehensive and effective system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place.
- There is no system for effectively communicating action taken by the authorities under the freezing mechanisms to the financial sector and DNFBP.

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1403. Croatia has signed and *ratified* all the conventions specified by Criterion 35.1 and SR.I as follows:

- the Vienna Convention (UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988) applies to Croatia by succession as it was originally ratified by Yugoslavia in 1990;
- the Palermo Convention (UN Convention Against Transnational Organised Crime 2000) was ratified on 7 November 2002 and entered into force on 29 September 2003;
- the Terrorist Financing Convention (1999 UN International Convention for the Suppression of the Financing of Terrorism) was ratified on 1 October 2003 and is binding on Croatia since 31 December 2003; and
- Conventions listed in the Annex of the FT Convention have been signed and ratified by Croatia. (See the table in ANNEX II).

1404. Since the ratification of any of these conventions does not necessarily mean full implementation as required by R.35 and SR.I, the Methodology requires assessors to make sure that the most relevant articles of the respective conventions are actually implemented. The comments made earlier in respect of the physical elements of the money laundering offence also apply here.

1405. As for the Terrorist Financing Convention, the relevant articles the implementation of which has to be checked are Arts. 2 to 18 (namely, Arts. 2-6 and 17-18 in relation to SR.II; Art. 8 in

relation to SR.III and Arts. 7 and 9-18 in relation to SR.V). With regard to Art. 2 of the said Convention, the *criminalisation* of the financing of terrorism, as discussed above (see 2.2.2) has been improved. Under the newly adopted Criminal Code, the financing of terrorism is a separate criminal offence set out under Art. 98.

1406. The 2008 MER described numerous deficiencies in the legal framework for criminalising TF and recommended Croatia to criminalise the FT as an autonomous offence and to address all of the essential criteria of SR.II and the requirements of the IN for SR.II in order to cover all forms of terrorist acts provided for in the convention and all forms of financing of terrorist organisations, and financing of individual terrorists.

1407. Croatia ratified the International Convention for the Suppression of the Financing of Terrorism (FT Convention) on 1 October 2003 and is a party to all nine conventions and protocols listed in the Annex to the TF Convention.

1408. The new TF offence, as set out above, is largely in line with the requirements of SR.II. It extends to any person who provides or collects funds, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out the following criminal offences: 97 (Terrorism); 99 (Public instigation of Terrorism); 100 (Recruitment for Terrorism); 101 (Training for Terrorism); 137 (Kidnapping); 216 (Destruction or Damage of Public Utility Installations); 219 (Misuse of Radioactive Substances); Attacking an Aircraft; Ship or Fixed Platform); 224 (Endangering Traffic by a Dangerous Act or Means); 352 (Murdering an Internationally Protected Person); 353 (Kidnapping an Internationally Protected Person); 354 (Attacking an Internationally Protected Person); and 355 (Threat to a Person under International Protection).

1409. While the FT self-standing offence does not cover all activities contemplated in the various Conventions and Protocols referred to in the Annex to the TF Convention, the provision and collection of funds apply to the "*terrorism offence*", whose scope includes a number of specific acts, as listed in Art. 97.

1410. Art. 98 of the new CC (Financing of terrorism) provides in para. 3 that "*The funds referred to in paragraphs 1 and 2 of this Article shall be confiscated*."

1411. There are no special provisions related to possibility to confiscate property of corresponding value of funds.

1412. In conclusion the evaluators explained under R.3 above that the legal provisions related to provisional measures of seizure applicable for "*funds*" used in the commission of a TF offense only partially cover the hypothesis in which "*funds*" should be seized as long as the subject matter of these measures provided by the CPC is limited to "*objects which have to be seized* (confiscated) *pursuant to the CC*" (Art 261 of the CPC) and it is unclear if the scope of "objects" extends entirely over the scope of "*funds*".

1413. Arrangements for sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action have not been established.

1414. Croatia has not given consideration to establishment of a mechanism in line with the recommendation done through Art.8 of the TF Convention.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1)

1415. Croatian law complies with many provisions of the Vienna Convention (See ANNEX II for further information)

1416. Croatia adopted the new Criminal Code, including a separate money laundering offence (Art. 265). The new Criminal Code entered into force on 1 January 2013. According to the Croatian legislation an "*all crimes approach*" is applied and with regard to the implementation of the offence of illicit trafficking in narcotic drugs and psychotropic substances this is specified in Art. 190 (Unauthorised Possession, Manufacture of and Trade in Drugs and Substances Banned in

Sports). The new Criminal Code updated the article on money laundering (Art. 265) and the offence appears to be broadly in line with the Vienna Convention. However there is a concern with regard to the physical and material elements of the offence as well as the definition of laundered property. Further details concerning the criminalisation of money laundering are set out under R. 1 above.

1417. According to the new Criminal Code, the jurisdiction over the offences is established (Art. 11-18) under the general part of the Criminal Code that applies to the offences designated in the special part of the Criminal Code. The confiscation is regulated mainly by the Act on Proceedings for the Confiscation of Pecuniary Gain Resulting from Criminal Offences and Misdemeanours but the instrumentalities and property derived from proceeds of crime within the scope of "*pecuniary benefit*" remains uncovered. (Please see R. 3 above). The money laundering offence is extraditable but the effectiveness is beyond the assessment of the 4th round.

1418. Croatia may provide a number of different types of mutual legal assistance with respect to drug-related ML offenses.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c.35.1)

1419. Croatian law complies with many provisions of the Palermo Convention (See ANNEX II for further information)

1420. The Croatian authorities indicated that Art. 328 (Criminal Association) and Art. 329 (Committing a Criminal Offence as a Member of a Criminal Association) of the new Criminal Code are articles which implemented the criminalisation of participation in an organised criminal group. The Article on money laundering (Art. 265) has been updated and the offence appears to be broadly in line with both the Palermo and Vienna Conventions. The Croatian authorities have adopted the new AMLTF Law and other related normative acts ensuring comprehensive, domestic regulatory and supervisory regime for banks and non-banking financial institutions. The liability of legal persons is prescribed by the Act on the Responsibility of Legal Persons for the Criminal Offences This act establishes the level of sanctions as differentiated fines or termination of legal persons based on the guilt of the responsible natural person. (Please see R.1 and R.3 and additionally the Criterion mentioned above).

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1421. Croatia has criminalised terrorist financing as required under the Terrorist Financing Convention. However, as described in the analysis under SR. II, R. 3, SR. III and R. 36, Concerning the Terrorist Financing Convention, after enacting the TF offence in accordance with section 2.2 of the Convention it remains to be examined if the preventive measures in Art. 18 of the Convention, including full identification of beneficial owners and consideration of licensing of money or value transfer services (MVT) have been met.

1422. Croatia law complies with many provisions of the TF Convention (See ANNEX II for further information).

1423. The new Criminal Code establishes a separate terrorist financing offence (Art. 98) and the offence appears to be broadly in line with the TF Convention. The following important shortcomings need to be addressed with respect to the full implementation of the Terrorist Financing Convention:

- There is no legal definition of the terms "*terrorist*" and "*terrorist organisation*". The scope of these terms derived from logical and systemic interpretation of different articles of the CC leads to a narrower scope than that of the FATF standards;
- Financing of an individual terrorist should be explicitly provided by the FT offence; and
- Ambiguities regarding the scope of provisional measures related to "*funds*" used or intended to be used in TF offense.

1424. Since 3rd round of evaluation, Croatia has updated the Act on international restrictive measures but UNSCR 1373 is not implemented as well as remain pending the issues of the procedure for consideration of the foreign designations and requests for the freezing. (See SR. II, SR.III and R.3 and additionally the Criteria mentioned above for further information).

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1425. The Act on International Restrictive Measures and successor Governmental Decisions regulates the application of the UNSCR 1267, pending issue is the UNSCR 1373 and establishment of the procedure for consideration of the foreign designations and requests for the freezing. (See SR.III for further information).

Additional element – Ratification or Implementation of other relevant international conventions

1426. Croatia ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) in 1997 which entered into force in December 1998.

1427. Croatia signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) on 28 April 2008. This Convention has been ratified on 10 October 2008 and entered into force on 1 February 2009.

1428. During the mission the evaluation of the implementation of these Conventions has also been made. A detailed report of the degree of the implementation of the CETS No.198 has been issued under the specific monitoring mechanism of the Council of Europe in 2013.

6.2.2 Recommendations and comments

1429. Croatia has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. However, the existing legislation does not fully cover requirements under Recommendations 1 and 3 and Special Recommendation II. Therefore, it is recommended that Croatia should take necessary measures to remedy identified deficiencies under Recommendations 1 and 3 and Special Recommendation II to fully implement the Vienna, Palermo and TF Conventions.

1430. In addition, the Croatian authorities should also take steps to address the deficiencies identified under SR.III to fully implement the requirements of the UNSCRs.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	*Vienna and Palermo Convention* • The purposive element of disguising which should characterise the conversion or transfer is not fully covered (R1); • The purposive element of helping any person involved in the commission of the predicate offence to evade the legal consequence of his or her action is not fully covered (R1); • Disguise as "*actus reus*" is not provided (R1); • The perpetrator of the predicate offence could not be the perpetrator of the ML offences committed through the actions of concealment (R1); • The person who commits the predicate offence could not be the perpetrator of the ML offence committed through acquisition, possession or use of the proceeds of crime (R1); • Potential difficulties in determining the scope of the concept of "*pecuniary advantage*" as "*corpus delicti*" for the ML offence. Proceeds without subsequent increase are not subject matters of ML offence (R1);

		• The subject matter of the ML offence appears not to cover all types of property; the concept of "*pecuniary advantage*" provided by the CC appears not to fully cover the scope of the concept of "*property*" and "*proceeds of crime*" in the international standards (i.e. legal documents or instruments evidencing title to, or interest in such assets appears to be not covered) (R1); • Facilitating and counselling are not explicitly provided by the Criminal Code as ancillary offences (R1); • The parallel and inadvertent provisions related to proceeds and laundered property, subject to confiscation create confusion in the understanding of the scope of the confiscation regime (R3); • The definition of the pecuniary advantage, as the subject matter of confiscation, provided by the new CC, does not explicitly cover incorporeal assets and legal documents or instruments evidencing title to, or interest in such assets (R3); • The concept of "*pecuniary advantage*" adds supplementary features and an additional burden of proof, to determine proceeds of crime, property laundered and proceeds from ML, subject to confiscation regime, in comparison to property subject to confiscation in the meaning of the FATF standards (R3); • The confiscation of the instrumentalities is conditioned by the supplementary element of the risk that they will be reused in another criminal activity (R3); • The confiscation of property of corresponding value of the instrumentalities is not provided (R3); • The provisions related to provisional measures are heterogeneous; the references to property subject to confiscation in different pieces of legislation are done using different terminology (R3); • The possibility to take provisional measures ex-parte is explicitly provided only by the Act on Confiscation and consequently it is related only to pecuniary advantage in the meaning of this Act (R3); *Convention for the Suppression of the Financing of Terrorism* • The scope of the terms "terrorist" and "terrorist organisation", derived from logical and systemic interpretation of different articles of the CC, is narrower than envisaged by the FATF standards (SR II); • Ambiguities regarding the scope of provisional measures related to "*funds*" used or intended to be used in TF offense.
SR.I	**PC**	• The scope of the terms "terrorist" and "terrorist organisation", derived from logical and systemic interpretation of different articles of the CC, is narrower than envisaged by the FATF standards (SR II); • Ambiguities regarding the scope of provisional measures related to "*funds*" used or intended to be used in TF offense; • Deficiencies under SR.III.

6.3 Mutual legal assistance (R. 36, SR. V)

6.3.1 Description and analysis

Recommendation 36 (rated LC in the 3rd round report)

Summary of 2008 factors underlying the rating

1431. Recommendation 36 in the third round of evaluation was rated LC based on the following conclusion:

- The definitional problems with the domestic offences intended to cover the financing of terrorism would severely limit mutual legal assistance based on dual criminality.

Legal framework

1432. The legal framework in Croatia for mutual legal assistance includes the full range of conventions: Vienna; Palermo; TF conventions; the Strasbourg Convention; the Convention on mutual assistance in criminal matters and its additional protocols; and CETS 198 which have all been signed, ratified and are in force.

1433. Mutual legal assistance (MLA) is also regulated by domestic legal acts: the new Criminal Procedure Code which came into force on 1 September 2011 which established, through Art 19(c), that the county courts have jurisdiction over performing the activities related to international legal assistance, extradition and criminal law cooperation; the Law on Mutual Legal Assistance in Criminal Matters (OG 178/04) (which was in force during the 3rd mutual evaluation visit and has not been amended, further referred to as the MLA Act); the Act on Confiscation (i.e. Chapter IX Recognition and Enforcement of Foreign Decision); the Law on USKOK and other laws.

1434. Pursuant to Art. 140 of the Constitution of the Republic of Croatia the main principles applicable in the field of international cooperation in criminal matters are the precedence of international treaties over national law and the direct applicability of the conventions. This article is reading as follows: "*international agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects.*"

1435. Accordingly, Art. 1(1) of the MLA Act provides that mutual legal assistance is regulated by this law "*unless provided otherwise by an international treaty*". As a consequence, relevant provisions of the MLA Act are applicable only in non-treaty based cooperation or for the regulation of issues not covered by the otherwise applicable treaty. To the extent in which the said Act contains no special procedural rules, the provisions of the Criminal Procedure Act, the Act on Confiscation, the Law on USKOK and other laws are to be applied accordingly.

1436. Art.3 (1) of the MLA Act states that the Act regulates:

1. *mutual legal assistance in criminal proceedings pending in the Republic of Croatia or a foreign country (procuring and transmitting articles to be produced in evidence, service of writs and records of judicial verdicts, appearance before the court of witnesses for testimony and other acts necessary to carry out the court proceedings),*
2. *procedures of extradition to the Republic of Croatia of prosecuted or convicted persons based on verdicts of domestic courts,*
3. *acts of extradition of foreigners prosecuted or convicted based on judicial verdicts of the state requesting extradition,*
4. *acts of taking over and surrendering criminal prosecution,*
5. *acts of enforcement of foreign judicial verdicts in criminal matters.*

1437. The Ministry of Justice is the central judicial authority responsible for mutual legal assistance both in general terms, that is, in the context of the MLA Act and specifically under the 1959 Strasbourg Convention (ETS No. 030). According to Art. 6(1) and (2) of the MLA Act, the Ministry of Justice is responsible for transmitting the requests of domestic judicial authorities to foreign counterparts as well as for receiving foreign rogatory letters. Nevertheless, in case of the 1990 Strasbourg Convention (ETS No. 141) it is not the Ministry of Justice but the Ministry of Interior which is designated as central authority for mutual legal assistance (Declaration of the Republic of Croatia in pursuance of Article 23, paragraph 1, of the said Convention, deposited on 11 October 1997).

1438. The MLA Law provides that, as an exception, domestic judicial authorities may directly address the request for MLA to a foreign judicial authority, when so explicitly provided by this

Act and subject to condition of reciprocity, or when such a communication is envisaged by an international treaty (direct communication). Transmitting and receiving of the requests for MLA may be realised also through Interpol as long as a copy of the request is communicated to the Ministry of Justice. In urgent cases and subject to reciprocity, the Ministry of Justice may transmit and received request for MLA through Interpol.

1439. Croatia became an EU member state on 1st of July 2013. The legal framework for MLA and extradition within EU space became a part of the legal system of Croatia accordingly but this subject goes beyond the scope of the present evaluation[47].

Widest possible range of mutual assistance (c.36.1)

1440. According to Art.1 of the MLA Act, MLA "*is provided in respect of criminal acts the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting state*."

1441. Neither the MLA ACT nor other piece of legislation provides a definition of "*criminal act*". A domestic competent authority shall decide on suitability and manner of execution of an act of mutual legal assistance from the request of a foreign judicial authority.

1442. Despite the fact that there are no refusal for execution of MLA requests indicated by the Croatian authorities or identified during the evaluation process, the evaluators are not convinced that the practice of execution of MLA request will not take into consideration the restrictive sense of the "*criminal acts*" (i.e. criminal acts provided as offences in the Croatian criminal legislation). If this will be the case the international cooperation related to ML offense will be limited to those acts which fit the definition of the ML offence as it is provided by Art. 265 of the new Criminal Code.

1443. As long as Art. 4, according to which MLA is afforded *in the widest sense*, the way in which "*criminal acts*" is understood is not a matter of concerns for the evaluators.

1444. Therefore existing deficiencies in the scope of ML and TF offences will not (or would affect) affect the ability of the Croatian authorities to provide MLA (this is also in line with the Footnote 38 for the Criterion 36.1). The evaluation team has been not informed about any cases of Croatia refusing MLA based on dual criminality.

1445. Art. 3 of the MLA Act details, to some extent, the scope of the Act, including the mutual legal assistance in criminal proceedings pending in the Republic of Croatia or a foreign country (i.e. procuring and transmitting articles to be produced in evidence, service of writs and records of judicial verdicts, appearance before the court of witnesses for testimony and other acts necessary to carry out the court proceedings).

1446. According to Art.5 of the MLA Act a domestic competent authority shall decide on suitability and manner of execution of an act of mutual legal assistance from the request of a foreign judicial authority, unless provided otherwise by the provisions of this Act or an international treaty.

1447. The MLA Act does not contain restrictive provisions related to the production, search and seizure of information, documents or evidence (including financial records) from financial institutions, or other natural or legal person (c.36.1(a)), the taking of evidence or statements from persons(c.36.1(b)), providing originals or copies of relevant documents and records as well as any other information and evidentiary items(c.36.1(c)), effecting service of judicial documents (c.36.1(d)), 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(c.36.1(b)).

[47] 1. It should also be noted in this context that the Act on Judicial Co-operation in Criminal Matters with Member States of the European Union includes detailed provisions related to judicial cooperation in respect of freezing property or evidence, confiscation order and recognition and enforcement of judgments upon entry into force in July 2013.

1448. Considering that, as it was discussed above, the provisions of the Criminal Procedure Act, the Law on USKOK and the Act on Confiscation can also be applied in proceedings conducted for the execution of a rogatory letter, it is beyond question that the procedural activities intended to identify and obtain evidence and also to identify, seize or confiscate the proceeds are generally available for use in response to requests for mutual legal assistance.

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1449. Art. 10 of the AMLTF Law states that:

> *(2) Domestic judicial authority executes the request of a foreign judicial authority without delay, taking into account procedural deadlines, as well as other specially determined deadlines explained in the request.*
> *(3) If a domestic judicial authority may foresee that it shall not be able to observe a specially determined deadline for execution of the request, while the explanation referred to in paragraph 2 of this Article expressly indicates that each postponement will lead to significant disruption of procedure before a foreign judicial authority, the domestic judicial authority shall indicate without delay the required time to execute the request. Domestic and foreign judicial authorities may thereafter agree on further acts required to be undertaken in connection with the request.".*

1450. The evaluators consider that the criterion is met.

Provision of assistance not prohibited or made subject to unreasonable conditions (c.36.2)

1451. The evaluation team has not been informed about any prohibition of mutual legal assistance according to the Croatian legislation or cases of MLA that became a subject to unreasonable, disproportionate or unduly restrictions. According to AMLTF Law Art. 4 the international legal assistance "*is afforded in the widest sense in accordance with the principles of domestic or public, the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights*".

1452. Art. 12 of the MLA Act provides the situations in which domestic competent authority may refuse the request for mutual legal assistance while Art.13 provides the cases in which the refusal is mandatory.[48] The evaluators consider that these provisions do not refer to unreasonable conditions.

[48] *Refusal of the request*
Article 12
(1) Domestic competent authority may refuse the request for mutual legal assistance:
1. if the request concerns an offence which is considered to be a political offence, an offence connected with a political offence,
2. if the request concerns a fiscal offence,
3. if the execution of the request would prejudice the sovereignty, security, legal order or other essential interests of the Republic of Croatia,
4. if it may reasonably be assumed that a person whose extradition is claimed would be in case of extradition criminally prosecuted or punished on account of his race, religious beliefs, nationality, affiliation with a particular social group or on account of his political beliefs, i.e. that that person's position may be prejudiced for any of these reasons,
5. if it concerns an insignificant criminal offence.
(2) Criminal offences or attempts to commit criminal offences against the values protected by international law, and participation in execution of such criminal offences, may not serve as basis for refusal of the request for mutual legal assistance in the context of paragraph 1 point 1 of this Article.
(3) Request for mutual legal assistance concerning the fiscal offence referred to in paragraph 1 point 2 of this Article shall not be refused solely based on the grounds it concerns an offence which is considered to be a fiscal offence pursuant to domestic law.
Article 13
(1) A domestic judicial authority shall refuse the request for mutual legal assistance:
1. if the prosecuted person has been acquitted in the Republic of Croatia for the same criminal offence based on the substantive-legal grounds or if a procedure against him has been discontinued, or if he was acquitted of the punishment, or if a sanction was executed or may not be executed pursuant to the law of the country in which the verdict has been passed,
2. if criminal proceedings are pending against the prosecuted person in the Republic of Croatia for the same criminal

Clear and efficient processes (c. 36.3)

1453. Chapter II of the MLA Act sets out detailed procedures for rendering MLA. Art. 6(2) of the MLA Act defines that "*the Ministry of Justice has jurisdiction to receive requests for mutual assistance of foreign competent authorities, and transmit them without delay to domestic judicial authorities, unless evident that the request should be refused*".

1454. In case of the 1990 Strasbourg Convention (ETS No. 141) it is not the Ministry of Justice but the Ministry of Interior which is designated as central authority for mutual legal assistance (Declaration of the Republic of Croatia in pursuance of Article 23, paragraph 1, of the said Convention, deposited on 11 October 1997).

1455. Art. 6(4) of the MLA Act also enables direct communication and states "*domestic judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when so explicitly provided by the provisions of this Act and subject to condition of reciprocity, or when such a communication is envisaged by an international treaty (direct communication)*". Furthermore, Art. 6(7) provides the channels for direct communication: "*In cases of direct communication referred to in paragraph 4 of this Article, domestic judicial authorities may, provided they fulfil the obligation referred to in paragraph 5 of this Article, transmit and receive requests for mutual legal assistance through the Interpol*". In case of direct communication, Art. 6(5) requires that copy of requests should be sent to the Ministry of Justice. In urgent cases and subject to reciprocity, the Ministry of Justice may transmit and received request for MLA through Interpol.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1456. Art. 12 (1) 2 of the MLA Act provides that "*domestic competent authority may refuse the request for mutual legal assistance … if the request concerns a fiscal offence*." Nevertheless this should be not the sole reason for refusal, according to Art. 12 (5)3 "*Request for mutual legal assistance concerning the fiscal offence referred to in paragraph 1 point 2 of this Article shall not be refused solely based on the grounds it concerns an offence which is considered to be a fiscal offence pursuant to domestic law*".

1457. In conclusion the essential criterion is met.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1458. There are no legal grounds for refusal to provide mutual legal assistance on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs.

1459. The information protected in respect of confidentiality or secrecy by special laws could be obtained in the context of execution of a MLA request in the same procedural conditions as in domestic penal cases.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1460. The powers of competent authorities required under R. 28 are available for use in response to requests for mutual legal assistance. Art. 1 (3) of the MLA Act extends the scope of the act to cover "*misdemeanour proceedings brought by the administrative authorities, in respect of acts which are punishable under the Croatian law by pecuniary fine, by virtue of being infringements of the rule of law and where in such proceedings the decision of the administrative authority may give rise to proceedings before a court having subject matter jurisdiction in criminal matters*". Art. 1 (3) extends this to legal persons.

offence, unless the execution of the request might lead to a decision releasing the prosecuted person from custody,
3. if the criminal prosecution, execution of a sanction or of a security measure or protective measure pursuant to the domestic law would be barred due to the absolute statute of limitation.
(2) The provisions referred to in paragraph 1 points 1 and 3 of this Article shall not apply in cases of reversal of the final verdict in the requesting state.

1461. This is further considered under R.40 below. Overall the competent authorities appear to have adequate powers to provide MLA when requested.

Avoiding conflicts of jurisdiction (c. 36.7)

1462. Chapter IV of the MLA Act describes the conditions for taking over and surrendering the proceedings by the Croatia authorities. According to Art. 62 of the MLA Act, Croatia may take over the proceedings based on a foreign request:

1. *when extradition is not allowed,*
2. *if a foreign judicial authority stated that if shall not further criminally prosecute the prosecuted person after the final decision of the domestic judicial authority.*

1463. Regarding the surrendering of proceedings to a foreign authority, Art. 65 provides that:

(1) if a foreigner domiciled in a foreign county committed an offence in the territory of the Republic of Croatia; criminal prosecution may be surrendered to that country, provided it does not object thereto.
(2) criminal prosecution may be surrendered for offences with prescribed punishment up to ten years of imprisonment."

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1464. Article 6 of the AMLTF Law provides for authorities competent to afford mutual legal assistance and the channels of communication. The rule established by paragraph 1 of this article is that domestic judicial authorities transmit the request for mutual assistance and information referred to in Art.18 (1) of this Act to foreign competent authorities through the Ministry of Justice. Pursuant to paragraph 2 the Ministry of justice has jurisdiction to receive requests for MLA of foreign competent authorities, and transmit them without delay to domestic judicial authorities. The only situation of direct communication is provided by Art. 6(4) which provides for the possibility to address directly the request for mutual legal assistance to a foreign judicial authority but not to receive directly this kind of request. In conclusion the availability of the powers of competent authorities required under R.28 is not relevant as long the hypothesis envisaged by the additional element (C. 36.8) is not applicable.

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

1465. International cooperation related to MLA or information exchange of Croatia with the parties of the TF Convention, is governed by the rules provided by the Convention itself according to Art.140 of the Constitution of the Republic of Croatia.

1466. All other relevant provisions of the international conventions in the field of international cooperation are accordingly applicable related to FT offense between the Croatia and the other parties of them. Relevant provisions of the MLA Act are applicable only in non-treaty based cooperation or for the regulation of issues not covered by the otherwise applicable treaty as it was described above in relation to the ML offence.

1467. *Criteria 36.1-36.7 (R 36)* are also applied on obligations from SR.V which follows from the general conditions for MLA set out in the MLA Act Art. 1(2).

1468. Under the result of the third round of evaluation was found out that the definitional problems with the domestic offences intended to cover the financing of terrorism would severely limit mutual legal assistance based on dual criminality. According to the new disposition of the terrorist financing offence the lack of criminalisation of collection and provision of funds to be used by an individual terrorist may potentially have an impact on MLA. The evaluation team has been informed that there were no requests of MLA in this regard received since the 3rd evaluation round.

Criterion V.2. in conjunction to Criteria 37.1-37.2 (in R37)

1469. The Croatian legislation, as stated above, does not contain any particular provisions concerning the issue of dual criminality as a prerequisite of rendering mutual legal assistance in criminal proceedings pending in the republic of Croatia or a foreign country.

1470. The applicable principles in this respect could be inferred reading in conjunction the provisions of the MLA Act (i.e. Art.1(2), Art.4, Art.5, Art.12 and Art.13).

1471. The evaluators cannot exclude the possibility that in the further jurisprudence a domestic competent authority charged with deciding on suitability of granting mutual legal assistance would consider that the MLA is affordable only related to "criminal acts"(Art.1(2) Mutual legal assistance is provided in respect of criminal acts…) that are provided as offences in Croatian criminal law. If this is the case, a MLA request related to financing of an individual terrorist might be rejected for the reasons described at the analysis of SRII (see above).

1472. Also the ambiguities of the scope of concepts of "*terrorist*" and "*terrorist organisation*" could produce the same effect.

1473. Art. 35 of the MLA Act provides that extradition shall not be allowed if the offence for which extradition is claimed is not a criminal offence in both domestic law and the law of the state in which it was committed. From this perspective the shortcomings identified in relation to criminalisation of FT offense in Croatia may have an impact on extradition issues.

1474. Criterion V.2 considered in conjunction to Criterion 37.1. and 37.2. is not met.

Criterion V.3 in conjunction to Criteria 38.1-38.5 (in R38)

c38.1

1475. The MLA requests related to FT offences should be executed by the Croatian authorities, pursuant to Art.10 (2) of the AMLTF Law, without delay.

1476. The procedural domestic mechanism for identifying, seizing and confiscating the funds which represents the subject matter of TF offence is applicable also for the execution of a MLA request.

1477. As described for R. 3, the object and means (instrumentalities) that were intended to be used or were used in the commission of a criminal offence shall be seized only if there is the risk that they will be reused for the purpose of committing a criminal offence. The evaluators consider that this shortcoming might have an impact in the execution of a MLA request related to TF offense as long as the request is addressed for the purpose of seizing and confiscation of instrumentalities used or intended to be used in commission of a TF offence.

c38.2

1478. The requirement of cV.3 corroborated to c38.2 refers to the legal possibility, in the context of the execution of a MLA request, to identify, seize and confiscate property of corresponding value of proceeds from FT offense and instrumentalities used in or intended for use in the commission of any FT offences. According to the Croatian legal system, the confiscation of corresponding value is possible only in relation to "*pecuniary advantage*" but not in relation to instrumentalities. As well the funds used in committing the FT offense could not be assimilated to the "*pecuniary advantage*", especially when they have a licit origin.

c38.3

1479. The evaluators have not been advised by the Croatian authorities about any legal provisions related to arrangements for co-ordinating seizure and confiscation action with other countries related to the FT offense.

c38.4

1480. The evaluators have also not been advised about the establishing in Croatia of an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.

c38.5

1481. The Croatian authorities have not indicated to the evaluators any legal provisions related to the authorisation of sharing of confiscated assets with another country when confiscation is directly or indirectly a result of co-ordinated law-enforcement actions.

Criterion V.4 in conjunction to Criteria 39.1-39.4 (in R39)

1482. Chapter III of the AMLTF Law is entirely dedicated to the extradition issues. According to Article 32 (1) a Croatian national may not be extradited for criminal prosecution or enforcement of a prison sentence in a foreign state.

1483. Only foreigners may be extradited to another state for the purpose of criminal prosecution or enforcement of a sanction implying deprivation of liberty, if that state requested extradition or has taken over criminal prosecution or enforcement of a criminal verdict, upon request of the Republic of Croatia, i.e. with its consent. The taking over of criminal prosecution or enforcement of a criminal verdict is provided by the Chapters IV and V of the AMLTF Law.

c39.1

1484. Extradition for the purpose of carrying out criminal proceedings, according to Art. 34(2) of the AMLTF Law, may only be granted for offences that are punishable pursuant to the domestic law by prison or security measures implying deprivation of liberty for the longest period of at least one year or by application of a more severe penalty.

1485. Art. 34(3) of the same Act provides that extradition for the purpose of enforcement of sanctions including deprivation of liberty may be granted when, a final verdict has been issued for the prison sentence or security measure implying detention, determined for a period of at least four months.

1486. The FT offense is provided in the Criminal Code with the punishment of imprisonment for a term between one and ten years. In conclusion FT offense is extraditable.

1487. Art.35 (3) of the AMLTF Law includes between the grounds for refusal to extradite the dual criminalisation.

1488. From this perspective the shortcomings in the definition of FT offence (see above the section related to SRII) restrain the applicability area of extradition related to FT offence.

c39.2

1489. As it was stated above, the Croatian nationals are not extraditable. The AMLTF Law contains provisions for taking over the proceedings when extradition is not allowed and a foreign judicial authority requests that. Art. 62 of the AMLTF Law provides as follows:

> *Upon request of a foreign judicial authority, the domestic judicial authority may take over carrying out criminal proceedings for a criminal offence committed abroad:*
>
> *1. when extradition is not allowed,*
> *2. if a foreign judicial authority stated that if shall not further criminally prosecute the prosecuted person after the final decision of the domestic judicial authority*.

1490. These conditions provided by Art. 62 are not in line with the international standards as they are resulted from reading Criterion V.4 in conjunction to Criterion 39.2(b).

1491. On one hand the decision to take over carrying out criminal proceedings for the TF offense committed abroad by a national is discretionary (i.e. "*may take over*"). On the other hand the

statement required to be done by the foreign judicial authority is an additional element which is not provided by the standards.

1492. However, according to the principle defined by Art. 14 of the new Criminal Code the criminal legislation of the Republic of Croatia shall be applied to a Croatian citizen or a persons with permanent residence in the Republic of Croatia who outside the territory of the Republic of Croatia commits a criminal offence other than those established in accordance with the provisions of Articles 13 and 16 of this Act, provided the criminal offence in question is also punishable under the law of the country in which it was committed. In conclusion, in the light of this principle the Criterion V.4 related to c39.2 is satisfied.

c39.3

1493. Related to the case referred to above there are no special restrictive conditions which could impede the cooperation of the Croatian authorities with their counterparts. It is reasonable to consider that the requirement of this criterion is met.

c39.4

1494. The AMLTF Law contains a detailed description of the procedure to be followed in the case of extradition requests and terms for different stages of procedure, which are applicable also for the requests related to FT offence and consequently the evaluators consider that the criterion is met.

Criteria 40.1-40.9 (in R40)

1495. The answers provided for the criterions under Recommendation 40, also apply for the obligations under Special Recommendation V. However, the shortcomings in the terrorist financing offense described in SR.II may affect the implementation in terrorist financing cases.

Additional element under SR V (applying c. 36.7 & 36.8 in R. 36, c.V.6)

1496. The comments on C.36.8 above are relevant also in relation to FT offense.

1497. The Croatian authorities informed the evaluators that the additional elements under R36.8. are applied in relation to obligations from SR.V.

1498. The hypothesis of the additional criterion 36.8 is the existence of a direct request from foreign judicial or law enforcement authorities to domestic counterparts. The AMLTF Law does not contain any provisions for this hypothesis. As an exception the only situation in which a direct request is possible is that described by Art. 6(4) when domestic authorities may directly address the request for MLA to a foreign judicial authority. Consequently the criterion V.6 is not met

C.V.7

1499. There are no provisions in Croatian law that would allow for the recognition and enforcement of foreign non-criminal confiscation orders in Croatia.

C.V.8

1500. Art. 54 of the AMLTF Law provides for simplified extradition procedure based on the consent of the extradited person to be surrendered to the requesting state.

C.V.9

1501. There are no mechanisms in place to explicitly permit an exchange of information with non-counterparts.

1502. AMLO may obtain relevant information from other authorities or persons at the request of a foreign FIU and that is applicable also for the information related to financing of terrorism.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1503. Art. 2 (1) of the MLA Law states that the Ministry of Justice has jurisdiction to receive requests for mutual assistance of foreign competent authorities, and transmit them without delay to domestic judicial authorities and domestic judicial authorities transmit the requests for mutual assistance and information to foreign competent authorities through the Ministry of Justice.

1504. At the same time according to the CETS 198 Croatia has designated the Ministry of the Interior, Police Directorate, Criminal Police Department, and State Attorney's Office of the Republic of Croatia as the central authorities, which are responsible for sending and answering requests made under this convention, the execution of such requests or the transmission of them to the authorities competent for their execution. However, overall, the Ministry of Justice is the central authority for MLA and extradition requests in accordance with Article 6 of the Law on Mutual Legal Assistance in Criminal Matters.

1505. During the on-site visit the authorities stated that they consider that they have adequate staff to deal with all incoming requests for MLA.

Recommendation 32 (Statistics – c. 32.2)

1506. The evaluators were not provided with comprehensive statistics on MLA. This has hindered the assessment of the effectiveness and efficiency of Croatia's MLA. During the mission Croatian authorities informed the evaluators that the Ministry of Justice keeps statistics in general on international legal assistance or other international requests for cooperation but not with regard to specific AML/CFT requests. Furthermore, there is no single register to maintain the statistics of AML/CFT requests in the framework of mutual legal assistance. At the same time the Croatian authorities stated that mutual legal assistance requests are usually responded to within three months and not exceeding six months in case of the necessity of translation.

1507. Lack of statistics on AML/CFT MLA requests appears contrary to the requirements of Art. 20 of the MLA Act which explicitly provides that, in case of ML/TF MLA requests, the data should be transmitted to the Ministry of Interior:

> *(1) when the request for mutual legal assistance concerns a criminal offence related to trafficking in humans and slavery, money laundering, counterfeiting money, illicit production, processing and sale of narcotic substances and poisons, production and dissemination of pornographic material, criminal offences related to organised crime and terrorism, and other criminal offences for which centralisation of data has been provided under international agreements, the domestic judicial authority conducting criminal proceedings, i.e. authority affording mutual legal assistance, shall be bound immediately to transmit the data on such criminal offences and perpetrators to the Ministry of Interior, while the first-instance court shall in addition transmit a final verdict.*
>
> *(2) if the request for legal assistance concerning the criminal offences referred to in paragraph 1 of this Article was forwarded to or received directly within the context of Art. 8 paragraph 2 of this Act, the domestic judicial authority shall also transmit without delay the data referred to in paragraph 1 of this Article to the Ministry of Justice.*

1508. The evaluators were provided with the figures of the Criminal Police Directorate, Sector for the support of criminal police, International Police Cooperation Department, namely the total number of exchanged messages but without the information on whether the request was granted or refused.

Effectiveness and efficiency

1509. The lack of statistics noted above has meant that it has not been possible to fully assess the effectiveness of Croatia's MLA regime. Nonetheless the evaluators received a number of very

positive responses to the questionnaire on international co-operation and a number of respondents were complimentary concerning the speed and quality of responses.

1510. It was particularly noted that USKOK accomplished intensive international mutual legal assistance in cases within its jurisdiction, and this assistance was based on the Law on International Legal Assistance in Criminal Matters and also on signed protocols and cooperation memorandum. Such mutual legal assistance and cooperation is carried out through the Department for International Cooperation and Joint Investigations.

6.3.2 Recommendations and comments

Recommendation 36

1511. As long as MLA is provided by Republic of Croatia based on international conventions which have precedence over national law and are from direct applicability, pursuant to the Croatian Constitution, the main international standards in this matter are met.

1512. The concerns of the evaluators are related mainly to the non-treaty based cooperation or for the regulation of issues not covered by the otherwise applicable treaty. The provisions of the MLA Act regulating mutual legal assistance in criminal matters are related to the concept of "criminal acts" which might have a restrictive interpretation in practice, in line with the definitions of offences in Croatian Criminal Code.

1513. Deficiencies of criminalisation of ML and FT offences might limit the execution of the MLA request when the dual criminality should be observed.

1514. Deficiencies identified in the confiscation regime, especially related to instrumentalities and confiscation of assets of corresponding value might also create problems in the context of MLA requests related to ML or FT offences and shall be corrected.

1515. Croatia should consider enlarging the legal possibilities to devise and apply a mechanism for determining the best venue for prosecution of defendants in the interest of justice in cases that are subject to prosecution in more than one country. The provisions intended to avoid conflict of jurisdiction in MLA Act, which limit the cases for taking over the proceedings to those in which the extradition is not allowed, shall be amended to create a more flexible mechanism.

1516. Arrangements for coordinating seizure and confiscation action with other countries should be established. Consideration should also be given to establishment of an asset forfeiture fund as well as to sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action. All this measures should be taken also considering the applicability for the FT offence.

Special Recommendation V

1517. As for R.36.

1518. Ambiguities regarding the scope of provisional measures related to "*funds*" used or intended to be used in TF offense could impede the execution of a MLA request related to TF offence.

Recommendation 30

1519. No recommendations.

Recommendation 32

1520. Since the third round of evaluation the issue with regard to the statistics is still pending. Croatian authorities should improve the collection and maintenance of statistics with more detailed and unified figures in respect of mutual legal assistance related to money laundering and associated predicate offences. Consequently, it has been difficult to assess the effectiveness of the MLA regime concerning money laundering, terrorist financing.

6.3.3 Compliance with Recommendation 36 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**LC**	• Deficiencies of criminalisation of money laundering and terrorist financing offences might limit mutual legal assistance based on dual criminality; • Deficiencies of the confiscation regime might impact on mutual legal assistance; • The mechanism for determining the best venue for prosecution in cases that are subject to prosecution in more than one country shall be improved. The legal possibilities to taking over the proceedings for the offences committed abroad should not be limited only to those cases in which the extradition is not allowed; **Effectiveness** • The lack of statistics on the number of MLA requests both received and sent has meant that it has not been possible to fully assess the effectiveness of Croatia's MLA regime.
SR.V	**LC**	• Deficiencies of criminalisation of terrorist financing offences might limit mutual legal assistance based on dual criminality; • Financing of an individual terrorist is not an extraditable offence as long as this behaviour is not criminalised; • Deficiencies of confiscation regime, in particular those related to instrumentalities and confiscation of corresponding value of funds and instrumentalities could impede the execution of a MLA request related to TF offence; • Ambiguities regarding the scope of provisional measures related to "*funds*" used or intended to be used in TF offense could impede the execution of a MLA request related to TF offence; • No arrangements for co-ordinating seizure and confiscation action with other countries; • No provisions related to an asset forfeiture fund into which all or portion of confiscated property will be deposited and will be used for law enforcement, health, education, or other appropriate purposes; • No legal provisions related to the authorisation of sharing of confiscated assets with another country when confiscation is directly or indirectly a result of co-ordinated law enforcement actions.

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1 Description and analysis

Recommendation 40 (rated LC in the 3rd round report)

Legal framework

1521. The Croatian authorities have the authority to collaborate with their foreign counterparts in their respective areas of competence. In the majority of cases, international cooperation may take place directly between authorities exercising similar responsibilities and functions in a manner foreseen by the international treaties or other special acts which regulate such cooperation.

1522. Arts. 67-72 of the AMLTF Law set out the authority for AMLO's relations with its foreign counterparts and cover the main aspects of international cooperation, such as information enquires made by AMLO to foreign FIUs, responses of AMLO to international enquires, spontaneous disclosures, as well as details on sent and received suspension requests.

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)

AMLO

1523. AMLO is empowered to provide a wide range of international cooperation, including dissemination of analytical reports, to its foreign counterparts on the basis of effective reciprocity as stipulated under Arts. 67-72 of the AMLTF Law. AMLO may sign memoranda of understanding with foreign financial intelligence units for the purpose of enhancing cooperation with regard to data, information and documentation exchange in the field of ML/FT detection and prevention. Whereas the signing of a MoU is not a mandatory precondition for AMLO to be able to exchange information, at the time of the evaluation AMLO had signed MOUs with counterparts from 36 countries[49]. Furthermore, AMLO had signed a Regional Protocol on AML/TF with the FIUs of Albania, Bosnia and Herzegovina, Montenegro, Serbia and Slovenia. AMLO is a member of Egmont Group of FIUs and exchanges information with foreign counterparts via the Egmont Secure Web, both spontaneously and upon request.

1524. It is, however, noted that the scope of AMLO's cooperation with international counterparts is limited to exchanges of information for the purpose of money laundering and terrorist financing prevention (Art. 67 §1), money laundering or terrorist financing detection (Art.68 §1), where a suspicion of money laundering or terrorist financing exists (Art. 69 §1 and 70 §1). The legislation does not extend this power to include underlying predicate offences as required by the standard. AMLO has, however confirmed that, in practice, they do exchange information on underlying predicate offences with international counterparts since the information on underlying predicate offences would be essential to investigating the money laundering offence.

1525. The table below shows the overall picture of incoming and outgoing requests and spontaneous disclosures to foreign counterparts in the period from 1 January 2009 to 30 June 2012.

Table 39: Number of incoming and outgoing requests and spontaneous disclosures to foreign FIUs

International Cooperation	2009		2010		2011		2012*		Total requests/disseminations
	Requests	Countries	Requests	Countries	Requests	Countries	Requests	Countries	
Requests from foreign FIUs	120	34	101	31	87	36	38	18	**346**
Requests to foreign FIUs	235	48	420	113	277	111	122	38	**1,054**
Spontaneous disseminations									**17**

* To 30 June 2012

1526. As can be seen from the above table exchanges of information are both spontaneous and upon request.

1527. The feedback received from a number of countries did not raise any particular issues as regards the timeliness of responses from AMLO and assessed positively the cooperation and quality of responses received.

[49] Including Czech Republic, Slovenia, Belgium, Italy, Panama, Lithuania, Lebanon, the "former Yugoslav Republic of Macedonia", Israel, Romania, Bulgaria, Liechtenstein, Australia, Albania, Serbia, Poland, Montenegro, Bosnia and Herzegovina, Ukraine, Georgia, Aruba, Netherlands Antilles, Republic of Moldova, Indonesia, Paraguay, USA, Turkey, UAE, Russia, Canada, Kosovo, San Marino, Guernsey, the Bahamas, Armenia, and Saint Marten.

1528. As a member of the Egmont Group of FIU's, AMLO can exchange information with other FIUs. AMLO observes, in relation with other FIUs, the principles for the exchange of information of the Egmont Group. In order to communicate with its foreign counterparts and to submit intelligence information in support of ML/TF investigations of other FIUs AMLO uses the Egmont Secure Web (ESW), which is a secure network provided by Egmont Group. The format developed by the OpWG is used for exchange of information.

1529. AMLO bases its MoUs on the model suggested by the Egmont Group. AMLO has signed a number of MoUs with other FIUs and is able to exchange information with foreign counterparts and to provide them with information spontaneously. A list of MoUs signed is set out in ANNEX XXX.

1530. AMLO is able to spontaneously deliver data and information, which collects or keeps in line with the provisions contained in the AMLTF Law, concerning customers or transactions in relation to which reasons for suspicion of money laundering or terrorist financing exist to a foreign financial intelligence unit under conditions of effective reciprocity. The Law stipulates that in terms of spontaneous delivery of data at AMLO's own initiative, AMLO shall be entitled to set additional requirements and limitations under which the foreign financial intelligence unit shall be allowed to use the received data.

1531. According to Art. 67 §4 of the AMLTF Law by way of derogation from the provisions contained in this Article and in Arts. 68, 69, 70 and 71 of the AMLTF Law, the condition of effective reciprocity shall not be applied to international cooperation between AMLO and foreign financial intelligence units and other foreign bodies and international organisations competent for money laundering and terrorist financing prevention from member-states.

1532. As an administrative FIU, AMLO receives and processes requests from other FIUs and provides all available information from the databases to which it has access.

1533. No concerns have been expressed by MONEYVAL countries with regards to the Croatian level of international cooperation.

Supervisory authorities

1534. Art. 7 of the Act on the Croatian National Bank (CNB) establishes that the CNB may be a member of an international institution and organisation competent for monetary policy, foreign exchange policy, payment operations, the supervision of credit institutions and other areas within its competence, and may participate in their work as well as represent the Republic of Croatia in these international institutions and organisations. Art. 31 of the same act provides that the CNB shall cooperate and share experiences with international institutions authorised for the supervision and oversight of credit institutions' operation. The CNB and other organisations authorised for the supervision and oversight of credit institutions may exchange all the data and assessments on credit institutions obtained in the course of the supervision and oversight, and the exchange of information shall not be considered as disclosure of banking secret.

1535. The CNB has signed MOUs in the field of banking supervision with the supervisory authorities of the Republic of San Marino, Austria, Germany, Bosnia and Herzegovina, Italy, Hungary and Turkey, and cooperation agreements with the Central Bank of Montenegro and the French Banking Commission. However, signing of MOU or a cooperation agreement is not a mandatory precondition for the CNB to be able to exchange information. The ability to exchange information arises from Article 31 Paragraph 2 of the CNB Act, which clearly prescribes that the CNB and other organisations authorised for the supervision and oversight of credit institutions may exchange all the data and assessments on credit institutions obtained in the course of the supervision and oversight. There is no constraint on responding to requests related to ML/TF issues.

1536. Similarly, Art. 18 of the Act on the Croatian Financial Services Supervisory Agency (HANFA) allows the agency to be a member of international organisations competent for the area

of the supervision of financial institutions and markets and states that the agency shall collaborate and exchange information arising from the supervision of the operations of supervised entities with similar foreign institutions that exercise supervision of financial institutions and markets.

1537. HANFA is a signatory of the International Organisation of Securities Commissions Multilateral Memorandum of Understanding concerning consultation and cooperation and exchange of information. HANFA has signed MOUs in the field of securities and insurance supervision with financial supervision authorities of Hungary, Austria, Kosovo, Germany, Slovenia, Montenegro and the "former Yugoslav Republic of Macedonia". MoUs as such are not conditions for the exchange of information. Requests in accordance with the MMoU cover a wide scope of information, and are not related only to AML/CTF issues. HANFA is currently an observer in ESMA and EIOPA and will become a full member on the day the Republic of Croatia enters the EU[50].

1538. Clauses 5 and 6, Art. 4 of the Act on the Financial Inspectorate (FI) provide that FI shall be authorised to cooperate with the authorised bodies of other countries and international organisations, pursuant to international contracts, as well as to participate in the providing of international legal assistance in minor offence proceedings that are conducted against legal persons. The FI has issued 4 requests for international legal assistance with regard to misdemeanours prescribed in Article 69 of the Foreign Exchange Act (cash transfer). The mentioned requests were sent through the Ministry of Justice, which forwarded the requests to the competent judicial authority in the relevant foreign countries. In particular, the 4 mentioned requests were sent to Bosnia and Herzegovina, Serbia, Germany and Netherlands. In all 4 cases, the FI requested information on addresses of defendants because previously sent summonses to the defendants for misdemeanour proceedings were returned undelivered.

1539. The Tax authority exchanges information with foreign counterparts on the basis of international agreements on avoiding double taxation. The Tax Administration has provided the following statistics on international cooperation in exchange of information on the basis of agreements on avoiding double taxation:

Table 40: Number of requests sent to foreign Tax authorities

YEAR	No. OF REQUESTS SENT TO FOREIGN TAX AUTHORITIES
2010	143
2011	116
2012	122

Law enforcement authorities

1540. International police cooperation is defined by the Law on Police, Criminal Procedure Act, Penal Code, Law on International Legal Assistance in Criminal Matters, as well as in bilateral and multilateral agreements. There are no unnecessary constraints on the rapid, constructive and spontaneous exchange of information.

1541. With a view to developing and strengthening direct cooperation in the pre-investigation stage of proceedings, the public prosecution service conducts and is improving cooperation with public prosecution services in other countries on the basis of the Memoranda on Agreement in the Realisation and Improvement of Cooperation in the Fight Against All Forms of Serious Crime (from 2005) concluded between the Public Prosecution Service of the Republic of Croatia and the Public Prosecution Services of Serbia, Bosnia and Herzegovina, Montenegro, the "former

[50] Croatia joined the EU on 1 July 2013

Yugoslav Republic of Macedonia", Albania, Ukraine, Bavaria, the United Kingdom, China, Canada and Chile.

1542. Lead state attorneys have signed the amended Memorandum of Understanding between the state attorneys of Albania, Bosnia and Herzegovina, Montenegro, the "former Yugoslav Republic of Macedonia" and Croatia on 25 January 2010 in Rome.

1543. On the basis of bilateral and multilateral Memoranda or Protocols, public prosecution services can obtain and exchange information, reports and documents, obtain statements from suspects and other persons, exchange laws and other pieces of legislation, as well as all other data contributing to the investigation and prosecution of cross border organised crime.

1544. The Republic of Croatia ratified an Agreement with Eurojust on 19 September 2008, to improve international cooperation in the fight against organised crime. The Deputy Chief Public Prosecutor is the representative of the Republic of Croatia in Eurojust.

1545. Since 2004 the public prosecution service, through its representative, has taken part in the work of the Southeast European Prosecutors Advisory Group (SEEPAG), attending regular meetings and also through direct contacts and exchange of information in several individual criminal cases. The same person participated as the liaison officer in the work of the network of prosecutors of West Balkan countries as part of the CARDS 2003 regional project. The representative of the Office for the Fight against Corruption and Organised Crime is also the liaison officer for the European Judicial Network (EJN).

1546. As a part of the State Attorney's office of the Republic of Croatia, Department for International Legal Cooperation was established with a duty of coordinating international mutual legal assistance and the work of the Council of Europe bodies, regional associations and state attorney's networks.

1547. The State Attorney's Office of the Republic of Croatia, via a certain contact person, continues to work within the framework of the regional project "Support to the State Attorney's Network in South East Europe" (PROSECO), by participating in regional meetings and conferences aimed at strengthening regional cooperation and developing amendments to the Memorandum of Understanding between state attorneys of South East Europe for strengthening the regional cooperation in combating organised crime from 30 March 2005.

1548. In the framework of the Criminal Police Directorate, Sector for Support to Criminal Police, there is a Department for International Police Cooperation in the framework of which the Sections of INTERPOL and EUROPOL are organised. The Telecommunication Centre which is working 24 hours a day (communication systems of INTERPOL-I 24/7, EUROPOL, SELEC, ILECUs) is established within the Department for International Police Cooperation. The Department includes translators and police officers for international police cooperation.

1549. According to the Conclusion of the Government of the Republic of Croatia from September 2010 the Department for International Police Cooperation represents the national coordination point and the central point of the first contact in exchange of data in international cooperation of all law enforcement agencies in the Republic of Croatia.

1550. For the purpose of exchange of experiences and data which are useful for criminal police, and implementation of commitments which follow from concluded bilateral and multilateral international agreements, this Department continually cooperatates with the representatives of criminal police of other countries, international institutions, governmental and nongovernmental organisations, in mediation of liaison officers and common police and customs centres (*Dolga Vas*).

1551. Cooperation is exercised through the exchange of experiences and data for the purpose of more efficient and detection of the most complex phenomena of crime, acquaintance with legal regulative and experiences which resulted in activities of police of other countries, as well as in

the framework of a part of process of integration of the Republic of Croatia in the European Union.

1552. The work of the Department for International Police Cooperation also includes the following activities:

- dealing with preparatory activities for international contacts within the General Police Directorate (Directorate included due to coordination of activities at the level of Criminal Police Directorate);
- performing the role of point of the first contact for foreign liaison officers;
- performing the role of the national central point for contacts with SELEC;
- keeping records on international contacts of the General Police Directorate (at the level of Criminal Police Directorate);
- preparation of documents necessary in international contacts of the General Police Directorate (at the level of Criminal Police Directorate);
- giving proposals for education, and international exchange of experts;
- active participation and coordination of activities related to harmonisation of legislation with EU rules of law (at the level of the Criminal Police Directorate);
- monitoring, participation and control in concluding and implementation of international contracts on police cooperation (at the level of the Criminal Police Directorate);
- monitoring and coordination of project activities and program of assistance (at the level of the Criminal Police Directorate); and
- controlling the work of Croatian liaison officers, the work of translators and other works for the purpose of improvement of relations in international cooperation.

1553. The Republic of Croatia cooperates with 25 accredited liaison officers, out of whom 10 are resident in the Republic of Croatia[51]. The Republic of Croatia nominated police liaison officers within Interpol, Europol and SELEC Centre, who are the common liaison officers of the police and customs, and in Israel, Serbia, Austria, Bosnia and Herzegovina and a common Slovenian-Austrian-Croatian liaison officer and SELEC Centre who is the common liaison officer of the Police and Customs.

1554. There are currently 38 bilateral agreements on police cooperation signed, out of which 29 agreements are in force, 16 bilateral international acts and 4 multilateral agreements[52].

1555. The Act on Mutual Legal Assistance in Criminal Matters contemplates the spontaneous transfer of information, even if a request for legal assistance has not been submitted. This permits the exchange of information obtained within the framework of an investigation with respect to actions criminally punishable when the Croatian Authorities consider that the disclosure of such information might assist the receiving state in initiating or carrying out investigations or court proceedings or might lead to a request for mutual assistance by that state. They may also impose other conditions for the use of such information at the receiving state.

1556. With reference to the issues of financial investigations and money laundering the Republic of Croatia actively participates in the work of the Camden Asset Recovery Inter-Agency Network (CARIN)[53].

[51] Representing Austria, France, Hungary, Japan, Kingdom of Spain, the Federal Republic of Germany (two police liaison officers and customs liaison officer), Italy and the Slovak Republic.

[52] SELEC, Europol, the Agreement between the Government of the Republic of Slovenia, the Government of the Republic of Austria and the Government of the Republic of Hungary on the work of the Centre for police cooperation in Dolga Vas and the Agreement on the Cooperation in the Area of Witness Protection between the Ministries of the Republic of Austria, Republic of Bulgaria, Republic of Croatia, Czech Republic, Hungary, Republic of Poland, Romania, Slovak Republic and Republic of Slovenia.

[53] a network of contact persons, practitioners from police ranks and state Attorney's Office for cooperation in the field of financial investigations and the search against the pecuniary gain through which data are exchanged during implementation

ILECU

1557. The Croatian International Law Enforcement Coordination Units Office (ILECU) (ilecu.croatia@ilecu.mup.hr) has the possibility to communicate with its international partners (other ILECU offices as well as other international relevant partners) through the INTERPOL I-24/7 secure mail channel. There are contact points established with a number of states[54]. The Croatian ILECU can also communicate with other state authorities through a ILECU secure channel. That cooperation is defined by a Memorandum of Understanding, concluded between the Ministry of Interior, Ministry of Finance – Customs Administration, Tax Administration and Anti-money laundering office and Ministry of Justice. The ILECU channel enables the exchange of information to the level of "unclassified".

Customs Administration

1558. The Ministry of Finance – Customs Administration realises its international cooperation with the customs services of other EU Member States on the basis of the Protocol 5 on the Stabilization and Association Agreement between the European Countries and their Member States and the Republic of Croatia (OG International Agreements 14/01) as well as on the basis of the bilateral contracts on custom cooperation entered into with some of EU Member States.

1559. Concerning the CEFTA members, the international cooperation is realised on the basis of the mutual assistance concerning custom issues within the Middle-European Contract on Free Trade (CEFTA) (OG IA 4/03), while the international cooperation with EFTA members is realised within the Agreement between EFTA States and the Republic of Croatia – Annex IV – Mutual Administrative Assistance in Customs Matters (OG IA 12/01).

1560. At the same time, the cooperation with the members of SELEC is realised on the basis of the Convention of the Southeast European Law Enforcement Centre (OG IA 5/11).

1561. The Ministry of Finance – Customs Administration participates in international joint customs operations aimed at preventing money laundering and to control legal trans-border cash movements (ATHENA, ATLAS).

1562. Furthermore, the Ministry of Finance – Customs Administration enters data regarding all illegal trans-border cash movement, in accordance with required parameters and excluding all personal data, in database of the World Customs Organisation through the CEN Comm system.

1563. The representatives of the Customs Administration confirmed that they are able to exchange information spontaneously with their foreign counterparts.

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)

Supervisory authorities

1564. Art. 556 of the Capital Market Act provides HANFA with the power to instigate an investigation upon request from a competent authority of a Member State and Art. 84 of the Insurance Act contains similar provisions. Furthermore, Art. 18 of the Act on Croatian Financial Services Supervisory Agency provides HANFA with the authority to "*collaborate and exchange information arising from the supervision of the operations of supervised entities as defined in Article 14 Paragraph 2 with similar foreign institutions that exercise supervision of financial institutions and markets.*"

of financial investigations with other countries members of CARIN network by establishment of the best practices and suggestions for improvement of the efficiency of the work.

[54] Albania, Bosnia and Herzegovina, Kosovo, Montenegro, The "former Yugoslav Republic of Macedonia", Slovenia and Serbia

1565. Art. 212 of the Credit Institutions Act provides the CNB with the power to carry out an on-site inspection at the request of a competent authority. Art. 4 §5 & 6 of the Financial Inspectorate Act provides the FI with the authority to "*to cooperate with the authorized bodies of other countries and international organisations and to participate in the providing of international legal assistance in minor offence proceedings that are conducted against legal persons*".

Law enforcement authorities

1566. On the law enforcement side, the investigations requested in mutual legal assistance requests may be carried out through the channels and procedures provided under bilateral or multilateral treaties or agreements. Art. 10 of the Police Duties and Powers Act provides that "*On conducting police duties the police shall cooperate with foreign police forces and other authorities in a manner foreseen by an international treaty or a special act.*" Art. 201 of the Criminal Procedure Code carries similar provisions which state that: "*Under the conditions provided for in the international agreement and a special law, the joint investigation may be undertaken for criminal offences provided for by this agreement and a special law*."

1567. Art. 3 §19 of the Customs Service Act requires the Customs Service to cooperate with foreign customs and other services and international organisations and Art 9 §32 provides the authority to "*collaborate and exchange the data with international organisations and professional associations in the field of the system of customs and special taxes, customs services of her countries and with competent border bodies of neighbouring countries*."

AMLO

1568. Art. 57 of the AMLTF Law defines that AMLO is empowered to acquire and analyse "*information, data and documentation supplied by the reporting entities and other competent bodies*" and request "*Requiring data or other documentation necessary for money laundering and terrorist financing detection purposes from all government bodies, local and regional self-government units and legal persons with public authorities*". On the other hand, there is no limitation as to whether such requests and the obtaining of information may be performed based on inquiries from foreign counterparts. The evaluation team was also informed that, once requests from foreign FIUs are received, AMLO opens cases and initiates the analytical processing of the subjects and transactions specified in the request. While conducting analytical processing, AMLO practices collecting additional information from all reporting entities and state bodies.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

AMLO

1569. Arts. 67 to 72 of the AMLTF Law set out the conditions on which exchanges may be made. The requesting country must have given appropriate undertakings for protecting the confidentiality of the information, controlling the use which will be made of it and ensuring that it will only be used for the purpose for which it is communicated. As regard to AMLO, within the framework of carrying out money laundering and terrorist financing prevention and detection tasks, it may extend requests to foreign financial intelligence units to supply AMLO with data, information and documentation needed for money laundering or terrorist financing prevention and detection purposes.

1570. It is noted that grounds for refusing to deal with a request are set out in Art. 69 §2 which states *"The Office may refuse the satisfaction of the request of the foreign financial intelligence unit in the following cases:*

1. *if the Office deems on the basis of the facts and circumstances indicated in the request that the reasons for suspicion of money laundering or terrorist financing have not been supplied;*
2. *if the supply of data would jeopardize or could jeopardize the carrying out of a criminal procedure in the Republic of Croatia, i.e. if it could in any way damage the national interests of the Republic of Croatia.*"

1571. AMLO is allowed to use data, information and documentation obtained this way solely for the needs of its analytical-intelligence work and for purposes provided for by AMLTF Law.

1572. Without a prior consent given by a foreign financial intelligence unit, AMLO shall not be allowed to submit the received data, information and documentation to or present them for examination by a third person, natural or legal, i.e. to other body, or to use them for purposes contrary to the conditions and limitations set by the foreign financial intelligence unit to which the request was extended, and shall be obliged to apply the confidentiality classification to such data at least to the extent applied by the body which supplied such data.

Supervisory authorities

1573. It appears that sectoral laws covering the performance of supervisors such as the CNB, the HANFA and the Financial Inspectorate do not set up any unreasonable or unduly restrictive conditions on the exchange of information. Furthermore, the analysis of some MOUs[55] revealed no such limitations.

1574. In particular, the CNB Act contains provisions relating to cooperation with international institutions authorised for the supervision and oversight of credit institutions' operation (Article 31). Furthermore, the Credit Institutions Act contains provisions relating to cooperation with the competent authorities of third countries (Article 226) and cooperation and exchange of information between the CNB and the competent authorities of the Member states (Article 222), the latter shall enter into force on the date of accession of the Republic of Croatia to the European Union. Pursuant to the above mentioned provisions the CNB has a legal basis to exchange all the information it needs to conduct regular supervision with all the relevant supervisory authorities. With the competent supervisory authorities from the countries of origin of the majority owners of Croatian banks, the CNB has signed MOUs.

1575. With regard to the exchange of information with the competent supervisory authorities from the countries that are not members of the European Union there were very few such situations encountered prior to the on-site visit. However, in such situations, the CNB has used its legal right to request such information or data, notwithstanding the absence of a signed MOU. As a rule, any such authority responds to request for cooperation and delivers to the CNB the required data and information. During 2011 and 2012 the CNB contacted the competent supervisory authorities in Slovenia, Russia, the Czech Republic and Switzerland, while at the same time the competent supervisory authorities from Romania and Albania contacted the CNB. The above mentioned exchanged data and information were primarily related to the verification of individuals in the process of licensing board members of banks.

Law enforcement authorities

1576. The Police are allowed to provide foreign police authorities and certain international organisations, at their request, with personal data if the country to which the personal data is being delivered has an adequately regulated system of personal data protection or has ensured an appropriate level of protection, as well as on the basis of international treaties. Pursuant to the Art. 24 §4 of the Police Duties and Powers Act "*before taking personal data out of the Republic of Croatia, if there are grounds for suspicion regarding the existence of appropriate regulation of personal data protection, i.e. an appropriate level of protection, an opinion of the authority responsible for protection of personal data shall be obtained*".

[55] For example between CNB and Federal Financial Supervisory Authority (Germany), Supervision Agency of Turkey, Bank of Italy, HANFA and Insurance Supervision Agency of Slovenia, Insurance Supervision Agency of the "former Yugoslav Republic of Macedonia".

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

AMLO

1577. The Ministry of Justice confirmed that it will provide the assistance regardless of possible involvement of fiscal matters as required by criterion 40.7, however the domestic competent authority may refuse the request for mutual legal assistance if it concerns an insignificant criminal offence (Art. 12 §3 of the Act on Mutual Legal Assistance in Criminal Matters).

Supervisory authorities

1578. See the analysis for Criterion 40.6

Law enforcement authorities

1579. It was stated by the Croatian law enforcement authorities that they do not refuse requests solely on the basis of fiscal matters.

1580. According to the Art. 12 §3 of the Act on Mutual Legal Assistance "*request for mutual legal assistance concerning the fiscal offence referred to in paragraph 1 point 2 of this Article shall not be refused solely based on the grounds it concerns an offence which is considered to be a fiscal offence pursuant to domestic law.*"

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

FIU

1581. It was stated by the Croatian Authorities that AMLO does not refuse requests solely on the grounds of financial or DNFBP secrecy or confidentiality laws.

Supervisory authorities

1582. See the analysis for Recommendation 4.

Law enforcement authorities

1583. It was stated by the Croatian law enforcement authorities that they do not refuse requests solely on the grounds of financial or DNFBP secrecy or confidentiality laws.

Safeguards in use of exchanged information (c.40.9)

1584. In July 2007 there were two acts enacted by the Croatian parliament: Information Security Act and the Secrecy of Information Act. The first one applies to government agencies, local and regional authorities and other entities with public authority that, within their scope of work, use classified and unclassified information, as well as to legal and natural persons who gain access to classified and unclassified information. The second lays down the principles of a common system to determine and safeguard access to classified information regarding public security, defence, foreign affairs and the intelligence and security services, and for the classification of that information. It applies to all government agencies, local and regional authorities, holders of public authority and other entities which, in performing their duties, acquire or gain access to such classified information, as well as to individuals working in these agencies and companies.

AMLO

1585. Art. 68 §3 of the AMLTF Law provides that without a prior consent given by a foreign financial intelligence unit, AMLO shall not be allowed to submit the received data, information and documentation to or present them for examination by a third person, natural or legal, i.e. to other body, or to use them for purposes contrary to the conditions and limitations set by the foreign financial intelligence unit to which the request was extended, and shall be obliged to apply the confidentiality classification to such data at least to the extent applied by the body which supplied such data.

1586. AMLO uses the information it receives from other FIUs for the specific purposes for which it has been requested. Without a prior consent given by a foreign financial intelligence unit, AMLO is allowed to submit the received data, information and documentation to or present them for examination by a third person, natural or legal, i.e. to other body, or to use them for purposes contrary to the conditions and limitations set by the foreign financial intelligence unit to which the request was extended, and is obliged to apply the confidentiality classification to such data at least to the extent applied by the body which supplied such data. The condition of effective reciprocity shall not be applied to international cooperation between AMLO and foreign financial intelligence units and other foreign bodies and international organisations competent for money laundering and terrorist financing prevention from member-states.

Supervisory authorities

1587. The general condition of keeping as a business secret exists in Art. 55 of the CNB Act, that is the officials of the CNB shall be obliged to keep as a business secret any documents and data of which they become aware in the course of carrying out their duties and tasks, and whose disclosure to an unauthorised person would harm the reputation and interests of the CNB, credit institutions and other legal persons which are authorised by or whose operation is supervised by the CNB.

1588. Similar provisions are in place for the HANFA and the FI employees, particularly employees of the HANFA are bound to preserve the confidentiality of documents and data that they learn of in the performance of their duties and activities (Art. 9 of the HANFA Act), and the employees of the FI shall be required to protect a business secret and classified data which are learned of during the course of the performance of supervision and other tasks from their authority, pursuant to the determined degree of secrecy (Art. 36 of the FI Act).

Law enforcement authorities

1589. The mode of use confidential data of Customs Administration and the mode of protecting such data is stipulated by the ordinance of the Minister of Finances.

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)

AMLO

1590. Art. 57, §1, Section 6 of the AMLTF Law prescribes that AMLO can exchange data, information and documentation with foreign financial intelligence units and other international bodies competent for money laundering and terrorist financing prevention matters.

1591. Furthermore Art 67 §4 of the AMLTF Law contains a derogation from Arts. 68 to 71 from the condition of effective reciprocity with regard to international cooperation between AMLO and other foreign bodies and international organisations competent for money laundering and terrorist financing prevention from member-states.

Supervisory authorities

1592. Article 31 of the CNB Act contains provisions relating to cooperation with international institutions authorised for the supervision and oversight of credit institutions' operation. Pursuant to Paragraph 1 of the said Article, and in order to improve the supervision and oversight of credit institutions' operation, the CNB can cooperate and share experiences with international institutions authorised for the supervision and oversight of credit institutions' operations. Pursuant to Paragraph 2 of the said Article, the CNB and other organisations authorised for the supervision and oversight of credit institutions may exchange all the data and assessments on credit institutions obtained in the course of the supervision and oversight. The exchanged data referred to in the said paragraph may not be made available to unauthorised persons by any of the authorised organisations. Pursuant to Paragraph 3 of the said Article the exchange of information

set forth in Paragraph 2 shall not be considered as disclosure of banking secret. In practice, the supervisory bodies are limited to exchanging information with their international counterparts.

Law enforcement authorities

1593. The Police are authorised to cooperate with other non-law enforcement agencies if the relationship is regulated by bilateral and multilateral international agreements (eg SELEC). The Police as a central service of the Ministry of the Interior also participates in investigations of criminal offenses committed against the financial interests of the European Commission, and as the authority of the system for combating fraud and some other forms of irregularities in the system, cooperates with the European Anti-Fraud Office (OLAF) concerning the issue of the protection of EU financial interests. The AFCOS Network as an element of the AFCOS system has been established by a Decision of the Government of the Republic of Croatia from 8 August 2008 (OG 92/08).

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5) (rated LC in the 3rd round report)

1594. The answers provided for the criterions under Recommendation 40, also apply for the obligations under Special Recommendation V. However, the shortcomings in the terrorist financing offense described in SR.II may affect the implementation in terrorist financing cases.

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

1595. The answers provided for the criterions under R.40, also apply for the obligations under Special Recommendation V. However, the shortcomings in the terrorist financing offense described in SR.II may affect the implementation in terrorist financing cases.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1596. Details of international cooperation and exchange of information are set out in the relevant sections above. Although AMLO and the Criminal Police Directorate maintain statistics concerning exchange of information, no statistics were available concerning exchange of information or cooperation between supervisors.

Additional elements

1597. Other national authorities may also use AMLO as the FIU channel to obtain information from other countries, reporting the reason for the request and as long as the request is based on the applicable regulations on prevention of money laundering and the financing of terrorism. AMLO may obtain relevant information from other authorities or persons at the request of a foreign FIU. In these cases, when the information is requested from the competent national authority, or from the subject institutions, the request must state the reason the information is require, that is, that the original applicant is a foreign FIU. The evaluators were informed by the representatives of the Financial Inspectorate that the Inspectorate does not exchange the information related to money laundering the financing of terrorism directly. For such cases it uses AMLO.

Effectiveness and efficiency

AMLO

1598. AMLO maintains statistics on the number of formal requests made or received by AMLO. No information on requests that were refused was provided. No figures are available on the number of spontaneous referrals made by AMLO to foreign authorities.

1599. From January to June 2012, AMLO has sent 122 requests abroad and processed 38 requests from different countries. In 2011, 277 information requests were submitted to foreign FIUs and 87 requests from other countries were received and processed. In 2010, the FIU sent 420 information requests abroad and processed 101 requests from different countries. In 2009, the FIU sent 235 information requests abroad and received 120 requests from foreign FIUs. The number of requests

exchanged with foreign counterparts confirms an effective international cooperation of AMLO. A table setting out the exchange of information by AMLO is set out in table 39 under C. 40.1 above

Law enforcement authorities

1600. It seems to be sufficient international co-operation conducted by law enforcement authorities, although it is hard for the evaluators to form a full picture of the situation in light of the lack of more comprehensive statistics regarding the exchange of requests between the authorities and their foreign counterparts.

1601. The Criminal Police Directorate, Sector for the Support of Criminal Police, International Police Cooperation Department have provided the following chart of exchanged messages. The messages exchanged below represents the total number of exchanged messages (received/sent) through all available telecommunication channels (including, fax, I-24/7, Interpol@mup.hr, Intranet, Europol, Selec and ILECU), in which data was contained. This includes data about messages exchanged relating to money laundering.

Table 41: Messages Exchanged with the International Police Cooperation Department

Year	2006	2007	2008	2009	2010	2011	2012*
Number of messages	76,339	76,283	81,344	86,502	100,571	122,273	69,179

*First six months

6.4.2 Recommendation and comments

FIU

1602. The evaluators consider that AMLO operates a satisfactory regime on international co-operation. There are no indications that co-operation would be ineffective or would not be used. AMLO maintains statistics concerning requests from/to foreign authorities however it does not include the nature of the request and whether it was granted or refused.

1603. Arts. 68 to 70 of the AMLTF Law merely permit AMLO to exchange information for the purpose of money laundering and terrorist financing but do not extend this permission to the underlying predicate offences as required by the standard. These articles should be amended to include a power to provide international co-operation on underlying predicate offences.

Supervisory authorities

1604. The supervisor authorities should maintain statistics on exchange of information and cooperation with their counterparts.

Law enforcement authorities

1605. It seems that law enforcement agencies have sufficient basis for international information exchange that allow them international cooperation however there is a lack of adequate and detailed statistics concerning the number of formal requests made to or received by law enforcement authorities from foreign counterparts in order to demonstrate the effectiveness of this co-operation to the evaluation team.

1606. All law enforcement agencies should maintain comprehensive statistics on international cooperation.

6.4.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	• No provision in the AMLTF Law for AMLO to cooperate or exchange information on the underlying predicate offence; **Effectiveness:** • Effectiveness issues regarding law enforcement authorities; • Lack of comprehensive statistics means that it has not been possible to fully assess the effectiveness of international cooperation.
SR.V	**LC**	• Shortcomings in the terrorist financing offense described in SR.II may affect the implementation in terrorist financing cases; **Effectiveness:** • Effectiveness issues regarding law enforcement authorities.

7 OTHER ISSUES

7.1 Resources and Statistics

1607. 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**	• AMLO appears to be understaffed.
R.32	**PC**	• Lack of statistics on additional requests made by AMLO for supplementary information broken down by reporting entities and authorities; • Lack of detailed statistics to assist in systematic review of effectiveness of the whole AML/CFT system relating to domestic cooperation; • Lack of detailed analysis on reasons for the low number of convictions for stand-alone money laundering given the level of economic crime in Croatia; • There are no comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing relating to mutual legal assistance; • Lack of statistics on other forms of international cooperation by supervisory authorities on AML/CFT issues; • Lack of statistics on other forms of international cooperation by law enforcement agencies on AML/CFT issues.

7.2 Other Relevant AML/CFT Measures or Issues

1608. N/A

7.3 General Framework for AML/CFT System (see also section 1.1)

1609. N/A

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to Croatia. *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[56]
Legal systems		
1. Money laundering offence	**PC**	• The purposive element of disguising which should characterise the conversion or transfer is not fully covered; • The purposive element of helping any person involved in the commission of the predicate offence to evade the legal consequence of his or her action is not fully covered; • Disguise as "*actus reus*" is not provided; • The perpetrator of the predicate offence could not be the perpetrator of the ML offences committed through the actions of concealment; • The person who commits the predicate offence could not be the perpetrator of the ML offence committed through acquisition, possession or use of the proceeds of crime; • Potential difficulties in determining the scope of the concept of "pecuniary advantage" as "*corpus delicti*" for the ML offence. Proceeds without subsequent increase are not subject matters of ML offence; • The subject matter of the ML offence, as it is defined by the new CC does not cover all types of property (i.e. legal documents or instruments evidencing title to, or interest in such assets); • Facilitating and counselling of ML offense are not explicitly provided by the Criminal Code as ancillary offences and there are no legal reasons to consider that these acts would be investigated,

[56] These factors are only required to be set out when the rating is less than Compliant.

		prosecuted and convicted as offences in the absence of a committed ML offense; • Shortcomings in the definition of TF as a predicate offence; **Effectiveness** • Only two cases of conviction for non-self ML offense and no convictions for autonomous ML; • The overall effectiveness of ML criminalisation raises concerns considering a relative low number of convictions for ML, given the level of proceeds generating offences in Croatia; • Due to the timing of its introduction there was no opportunity to assess the effectiveness of the new Criminal Code.
2. Money laundering offence Mental element and corporate liability	*LC*	• *Significant backlogs both in general terms and especially in money laundering cases are seriously threatening the effectiveness of the AML system.*
3. Confiscation and provisional measures	**PC**	• The definition of the pecuniary advantage, as the subject matter of confiscation, provided by the new CC, does not explicitly cover incorporeal assets and legal documents or instruments evidencing title to, or interest in such assets; • The concept of "*pecuniary advantage*" adds supplementary features and an additional burden of proof, to determine proceeds of crime, property laundered and proceeds from ML, subject to confiscation regime, in comparison to property subject to confiscation in the meaning of the FATF standards; • The confiscation of the instrumentalities is conditioned by the supplementary element of the risk that they will be reused in another criminal activity; • The confiscation of property of corresponding value of the instrumentalities is not provided; • The provisions related to provisional measures are heterogeneous; the references to property subject to confiscation in different pieces of legislation are done using different terminology; • The possibility to take provisional measures ex-parte is explicitly provided only by the Act on Confiscation and consequently it is related only to pecuniary advantage in the meaning of this Act; **Effectiveness** • Limited effectiveness of the general confiscation regime; • The parallel and inadvertent provisions related to proceeds and laundered property, subject to confiscation create confusion in the understanding of the scope of the confiscation regime;

		• Ambiguities regarding the scope of provisional measures related to "*funds*" used or intended to be used in TF offense; • No comprehensive tools (e.g. manuals, guidance) for the practitioners to ease the application of different and parallel provisions related to confiscation regime.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• The Leasing Act requirement on the data confidentiality inhibits information sharing (the implementation of the FATF Recommendation) in cases of terrorist finance; • It is unclear whether credit institutions are allowed to share information about their clients CDD to their correspondent banks; • No special provision in AMLTF Law that the contract for the correspondent banking relationship should determine a correspondent bank´s ability to submit the data gathered in the course of identification and verification of the customer based on an enquiry. **Effectiveness** • The banking secrecy regulations may give rise to the possibility to inhibit the implementation of the FATF Recommendation 4.
5. Customer due diligence	**PC**	• There is no requirement to verify whether any person purporting to act on behalf of a person is so authorised; • Financial institutions are not required to obtain from customers information on a foreign legal person's or foreign legal arrangement's form, directors and powers to bind; • The AMLTF Law creates blanket exemptions from the CDD requirements where the risk of money laundering and terrorist financing is low; • The application of simplified CDD measures to customers resident in a third country is not limited to countries which are in compliance with and have effectively implemented FATF Recommendations; • Derogation under Art. 10 §2 allows the postponement of all CDD measures, not just verification and there is no requirement that CDD measures should be completed as soon as reasonably practicable after the initial contact in case of the reporting entity is allowed to conduct the CCD measures during the establishment of a business relationship with a customer; • There are no clear provisions in the law which requires adopting risk management procedures

		concerning the conditions under which business relationship is permitted to utilise prior to verification of the identity of the customer; **Effectiveness** • Effectiveness and efficiency of implementation CDD measures in regard to beneficial owners and in business relationships with non-resident customers is not demonstrated.
6. Politically exposed persons	**PC**	• The definition of foreign politically exposed person is not in line with the FATF Recommendations; • The provisions do not apply to foreign PEPs who are temporarily or permanently resident in Croatia; • No specific requirement to obtain senior management approval to establish or continue a business relationship where the customer is found to be or becomes a PEP; • There is no clear provision that reporting entities are obliged to determine whether a customer's beneficial owner is a politically exposed person; • There are no requirements to identify situations when the customer or beneficiary owner subsequently becomes a PEP in the course of a business relationship; • Other than in the Financial Inspectorate's Guidelines, there is no requirement to identify the source of wealth of PEPs. **Effectiveness** • Lack of clarity over what procedures were to be followed to identify a PEP´s family members or persons known to be close associates of such persons.
7. Correspondent banking	**PC**	• No clear requirement to document the respective AML/CFT responsibilities of each institution; • The requirements regarding correspondent banking relationships only apply to third countries; • No requirement to ascertain that the AML/CFT measures implemented by the respondent institution are adequate and effective; • No clear requirement to obtain approval from senior management before establishing new correspondent relationships.
8. New technologies and non face-to-face business	**C**	
9. Third parties and introducers	**LC**	• There is no requirement that the delegating party obtain the necessary information concerning, inter alia, elements of the customer due diligence process; • There is no clear obligation for financial

		institutions to take adequate steps to satisfy themselves that data of CDD will be made available from the third party without delay.
10. Record keeping	**LC**	• There is no requirement in law or regulation to keep documents longer than five years if requested by a competent authority; • There is no regulation and no guidance regarding the keeping of business correspondence.
11. Unusual transactions	**LC**	• There is no specific requirement in the law to keep analyses about the background and purpose of transactions for at least five years; • There is no specific requirement to make transaction records available to auditors; **Effectiveness** • The lack of further guidance for other reporting entities as to what analysis of complex and unusual transactions might consist of could have an impact on the effectiveness of implementation; • Although the rest of the financial sector was in general aware of the obligation to examine the unusually large transactions, they considered this as a form of suspicious transactions reporting.
12. DNFBPS – R.5, 6, 8-11	**PC**	***Applying Recommendation 5*** • Deficiencies under Recommendation 5 also apply to the DNFBP sector; ***Applying Recommendation 6*** • Deficiencies under Recommendation 6 also apply to the DNFBP sector; ***Applying Recommendation 8*** • There is no obligation in the AMLTF Law requiring DNFBPs to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risks associated with non-face to face business relationships or transactions; ***Applying Recommendation 10*** • Deficiencies under Recommendation 10 also apply to the DNFBP sector; ***Applying Recommendation 11*** • Deficiencies under Recommendation 11 also apply to the DNFBP sector; • Lack of adequate guidance on identifying complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose could have an impact on the effectiveness of application.
13. Suspicious transaction reporting	**LC**	• The reporting requirement does not include funds which are "linked or related to" terrorism generally and (partially) to "those who finance terrorism"; **Effectiveness** • Low number of STRs submitted by certain

		categories of reporting entities raises effectiveness questions.
14. Protection and no tipping-off	**LC**	• No protection of directors, officials and other natural persons contributing to the direction, management or representation of a reporting entity.
15. Internal controls, compliance and audit	**LC**	• No explicitly defined legal provision for compliance officers to be designated at management level; • Lack of clarity in Article 44 of the AMLTF Law might provide an option for reporting entities to exempt them from the obligation of appointing a compliance officer; • No formal requirement and practical implementation of employee screening procedures.
16. DNFBPS – R.13-15 & 21	**PC**	***Applying Recommendation 13*** • The deficiencies under R.13 also apply to DNFBPs; **Effectiveness** • Concerns over the effective implementation, especially the low level of reporting from certain DNFBPs; ***Applying Recommendation 14*** • Deficiencies under Recommendation 14 also apply to DNFBPs; **Effectiveness** • Lack of awareness on the legal protection on the AML/CFT matters; ***Applying Recommendation 15*** • Deficiencies under Recommendation 15 also apply to DNFBPs; ***Applying Recommendation 21*** • Deficiencies under Recommendation 21 also apply to DNFBPs; • The lack of guidance and training for DNFBPs relating to doing business with countries not sufficiently applying the FATF Recommendations could have an impact on the effectiveness of implementation.
17. Sanctions	**PC**	• No specific sanctions for the failure to comply with some requirements of the AMLTF Law; • The range of sanctions for AML/CFT non-compliance is not commensurate with those applicable for different violations of relevant laws in the financial sector; **Effectiveness** • Low number of sanctions applied raises concerns about the effectiveness of the AML/CFT sanctions regime.
18. Shell banks	**C**	

19. Other forms of reporting	*Compliant*	
20. Other DNFBPS and secure transaction techniques	**C**	
21. Special attention for higher risk countries	**LC**	• There are no specific provisions on the application of counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations.
22. Foreign branches and subsidiaries	**PC**	• There is no clear requirement that financial institutions should pay special attention in case of jurisdictions which do not or insufficiently apply the FATF Recommendations; • There is no clear requirement that the financial institutions should apply the higher standards in branches and subsidiaries in host countries in the event that local requirements are not fully in line with international standards or the host countries standards are higher; • Although there is a requirement to advise AMLO, there is no requirement to notify CNB, FI or HANFA as primary supervisory authorities.
23. Regulation, supervision and monitoring	**PC**	• No requirement to obtain information on ultimate beneficial owners and, respectively, their criminal background for insurance companies and pension companies; • The requirement to prevent criminals from holding shares or managerial positions in financial institutions does not appear to be fully met; • Failure to include criminal associates into the scope of the measures aimed at prevention of criminals from holding a controlling interest or management function in financial institutions; • No licensing or registration for money and value transfer (and other financial) services offered by the Croatian Post; • Lack of legislatively defined licensing requirements and procedures for business entities engaged in factoring activities; **Effectiveness** • Lack of MoUs between all supervisory agencies could lead to confusion/inefficiency due to overlaps in the work of different supervisory agencies; • Insufficient coverage of inspections in terms of supervisory cycle and AML/CFT compliance check.
24. DNFBPS - Regulation, supervision and monitoring	**LC**	• No requirement for preventing criminal associates from holding of a significant interest in casinos.
25. Guidelines and Feedback	**LC**	• Only a limited amount of information is provided to financial institutions on ML/TF trends.

Institutional and other measures		
26. The FIU	**C**	
27. Law enforcement authorities	*Largely Compliant*	• *There have been no convictions or final decisions in any money laundering case since 2003 (effectiveness).*
28. Powers of competent authorities	*Compliant*	
29. Supervisors	**C**	
30. Resources, integrity and training[57]	**LC**	• AMLO appears to be understaffed.
31. National co-operation	**LC**	• More coordination needed between AMLO, the Police and prosecutors on the reasons for the low number of money laundering convictions; • More coordination required with DNFBP given low numbers of STRs submitted.
32. Statistics[58]	**PC**	• Lack of statistics on additional requests made by AMLO for supplementary information broken down by reporting entities and authorities; • Lack of detailed statistics to assist in systematic review of effectiveness of the whole AML/CFT system relating to domestic cooperation; • Lack of detailed analysis on reasons for the low number of convictions for stand-alone money laundering given the level of economic crime in Croatia; • There are no comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing relating to mutual legal assistance; • Lack of statistics on other forms of international cooperation by supervisory authorities on AML/CFT issues; • Lack of statistics on other forms of international cooperation by law enforcement agencies on AML/CFT issues.
33. Legal persons – beneficial	**PC**	• Lack of information on the number of bearer shares still in circulation raises concerns over the

[57] 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.

[58] 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 37, 38 and 39.

owners		effectiveness of appropriate measures to ensure that they are not misused for money laundering; • No measures in place to guard against abuse of companies by the use of bearer shares.
34. Legal arrangements – beneficial owners	**N/A**	
International Co-operation		
35. Conventions	**PC**	*Vienna and Palermo Convention* • The purposive element of disguising which should characterise the conversion or transfer is not fully covered (R1); • The purposive element of helping any person involved in the commission of the predicate offence to evade the legal consequence of his or her action is not fully covered (R1); • Disguise as "*actus reus*" is not provided (R1); • The perpetrator of the predicate offence could not be the perpetrator of the ML offences committed through the actions of concealment (R1); • The person who commits the predicate offence could not be the perpetrator of the ML offence committed through acquisition, possession or use of the proceeds of crime (R1); • Potential difficulties in determining the scope of the concept of "*pecuniary advantage*" as "*corpus delicti*" for the ML offence. Proceeds without subsequent increase are not subject matters of ML offence (R1); • The subject matter of the ML offence appears not to cover all types of property; the concept of "*pecuniary advantage*" provided by the CC appears not to fully cover the scope of the concept of "*property*" and "*proceeds of crime*" in the international standards (i.e. legal documents or instruments evidencing title to, or interest in such assets appears to be not covered) (R1); • Facilitating and counselling are not explicitly provided by the Criminal Code as ancillary offences (R1); • The parallel and inadvertent provisions related to proceeds and laundered property, subject to confiscation create confusion in the understanding of the scope of the confiscation regime (R3); • The definition of the pecuniary advantage, as the subject matter of confiscation, provided by the new CC, does not explicitly cover incorporeal assets and legal documents or instruments evidencing title to, or interest in such assets (R3); • The concept of "*pecuniary advantage*" adds

		supplementary features and an additional burden of proof, to determine proceeds of crime, property laundered and proceeds from ML, subject to confiscation regime, in comparison to property subject to confiscation in the meaning of the FATF standards (R3); • The confiscation of the instrumentalities is conditioned by the supplementary element of the risk that they will be reused in another criminal activity (R3); • The confiscation of property of corresponding value of the instrumentalities is not provided (R3); • The provisions related to provisional measures are heterogeneous; the references to property subject to confiscation in different pieces of legislation are done using different terminology (R3); • The possibility to take provisional measures ex-parte is explicitly provided only by the Act on Confiscation and consequently it is related only to pecuniary advantage in the meaning of this Act (R3); *Convention for the Suppression of the Financing of Terrorism* • The scope of the terms "terrorist" and "terrorist organisation", derived from logical and systemic interpretation of different articles of the CC, is narrower than envisaged by the FATF standards (SR II); • Ambiguities regarding the scope of provisional measures related to "*funds*" used or intended to be used in TF offense.
36. Mutual legal assistance (MLA)[59]	**LC**	• Deficiencies of criminalisation of money laundering offences might limit mutual legal assistance based on dual criminality; • Deficiencies of the confiscation regime might impact on mutual legal assistance; • The mechanism for determining the best venue for prosecution in cases that are subject to prosecution in more than one country shall be improved. The legal possibilities to taking over the proceedings for the offences committed abroad should not be limited only to those cases in which the extradition is not allowed; **Effectiveness** • The lack of statistics on the number of MLA requests both received and sent has meant that it has not been possible to fully assess the

[59] The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 28.

		effectiveness of Croatia's MLA regime.
37. Dual criminality	*Largely Compliant*	• *The definitional problems with the domestic offences intended to cover the financing of terrorism would severely limit mutual legal assistance based on dual criminality.*
38. MLA on confiscation and freezing	*Largely Compliant*	• *Because financing of terrorism is insufficiently, if at all, criminalised in the current domestic legislation, the requirement of dual criminality for extradition would mean that not all kinds of terrorist financing offences would be extraditable.*
39. Extradition	*Largely Compliant*	• *In the complete absence of statistics it is not possible to determine whether and to what extent Croatia provides effective and timely response to foreign requests concerning freezing, seizure or confiscation.* • *Croatia has not considered establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.* • *There are no arrangements for coordinating seizure or confiscating actions with other countries.* • *Croatia has not considered authorising the sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action.*
40. Other forms of co-operation	**LC**	• No provision in the AMLTF Law for AMLO to cooperate or exchange information on the underlying predicate offence; **Effectiveness:** • Effectiveness issues regarding law enforcement authorities; • Lack of comprehensive statistics means that it has not been possible to fully assess the effectiveness of international cooperation.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• The scope of the terms "terrorist" and "terrorist organisation", derived from logical and systemic interpretation of different articles of the CC, is narrower than envisaged by the FATF standards (SR II); • Ambiguities regarding the scope of provisional measures related to "*funds*" used or intended to be used in TF offense; • Deficiencies under SR.III.
SR.II Criminalise terrorist	**LC**	• The scope of the terms "terrorist" and "terrorist organisation", derived from logical and systemic

financing		interpretation of different articles of the CC, is narrower than envisaged by the FATF standards.
SR.III Freeze and confiscate terrorist assets	**PC**	• The scope of "assets", subject matter of the freezing mechanism in Croatia is narrower than the scope of "funds or other assets" as it is provided by the FATF standards; • The freezing actions referred to under Art. 11 of the IRM Act extend only to assets owned, held or belonging in any way to the subject to whom restricted measures are being applied to, and to assets controlled or supervised by that subject. Assets controlled jointly or indirectly are not explicitly covered; • The situation envisaged by the UNSCRs in terms of control or possession of funds by persons acting on behalf of the subject or acting at their direction does not appear to be explicitly covered; • Funds derived or generated from assets owned or controlled directly by the designated persons, terrorist, those who finance terrorism or terrorist organisations, are only partially covered (art. 3 para 2 (c), (e), (f) of the IRM Act); • The obligation to not make funds available, directly or indirectly, to designated persons is limited to the scope of funds as they are defined by the IRM Act; • The condition which is reaffirmed in c.III.1 (freezing to take place without prior notification) is approached only at the level of guidelines and freezing assets with prior notice to the designated persons involved is not punishable. Safeguards are not strong enough to maintain the surprise effect intended by the UN Resolution; • There is no effective mechanism in place to designate persons in the context of UNSCR 1373(2001); • There is no legal procedure to examine and give effect to, if appropriate, the actions initiated under the freezing mechanism of other jurisdictions; • There is no procedure the consolidated list to be sent to the reporting entities; • Unclear provisions for funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly, wholly or jointly, by designated persons, terrorists, those who finance terrorism or terrorist organisations. (mix of III.1 and III.4(b)); **Effectiveness** • There is a general lack of understanding by the reporting entities about the mechanism of freezing of funds used for terrorist financing.
SR.IV Suspicious transaction	**LC**	• The reporting requirement does not include funds

reporting		which are "linked or related to" terrorism generally and (partially) to "those who finance terrorism".
SR.V International co-operation	**LC**	• Deficiencies of criminalisation of terrorist financing offences might limit mutual legal assistance based on dual criminality; • Financing of an individual terrorist is not an extraditable offence as long as this behaviour is not criminalised; • Deficiencies of confiscation regime, in particular those related to instrumentalities and confiscation of corresponding value of funds and instrumentalities could impede the execution of a MLA request related to TF offence; • Ambiguities regarding the scope of provisional measures related to "*funds*" used or intended to be used in TF offense could impede the execution of a MLA request related to TF offence; • No arrangements for co-ordinating seizure and confiscation action with other countries; • No provisions related to an asset forfeiture fund into which all or portion of confiscated property will be deposited and will be used for law enforcement, health, education, or other appropriate purposes; • No legal provisions related to the authorisation of sharing of confiscated assets with another country when confiscation is directly or indirectly a result of co-ordinated law enforcement actions. • Shortcomings in the terrorist financing offense described in SR.II may affect the implementation in terrorist financing cases; **Effectiveness:** • Effectiveness issues regarding law enforcement authorities.
SR.VI AML requirements for money/value transfer services	**LC**	**Effectiveness** • Effectiveness of implementation not fully demonstrated (also due to the lack of compliance checks).
SR.VII Wire transfer rules	**LC**	• No specific requirement for financial institutions to consider the lack of complete originator information as a factor in assessing whether a wire transfer or related transactions are suspicious and, as appropriate, whether they are thus required to be reported to FIU. **Effectiveness** • No evidence of effective mechanisms available for ensuring compliance of certain money transfer service providers (such as the Croatian Post and electronic money institutions); • Croatian Post did not demonstrate an appropriate understanding of the requirements related to wire

		transfers.
SR.VIII Non-profit organisations	**PC**	• Lack of the comprehensive review as well as regular update in relation to the vulnerability of NPOs to terrorist financing risks; • No requirement to maintain, for a period of at least five years, records of domestic and international transactions; • Apart from the issuance of typology reports, there has been insufficient outreach to the NPO sector and little awareness raising on risks for NPOs to be misused for TF.
SR.IX Cross Border declaration and disclosure	**LC**	• No requirement to retain the identification data in instances when a declaration exceeds €10,000, where there is a false declaration, where there is a suspicion of ML or TF; • No powers to apply sanctions to persons who make a false declaration.

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1)	Art. 265 of the Criminal Code should be amended to ensure that concealment, disguise, acquisition, possession and use, as well all the types of property, are fully covered by legislation. To be in line with the Vienna and Palermo Conventions, conversion or transfer of a pecuniary advantage for the purpose of disguising its illicit origin should be explicitly covered by the ML offense. The Croatian authorities should amend Art.265 §1 since it does not appear to be fully in line with the international standards as long as the purposive elements provided within do not explicitly comprise the alternative purposive element in Art. 6, §1.a (i) of the Palermo Convention - "*helping any person involved in the commission of the predicate offence to evade the legal consequence of his or her action*". Disguising of the true nature, source, location, disposition, movement or ownership of or rights with respect to property (Art. 6, §1.a (ii) of the Palermo Convention) should be covered by Art. 265 of the new CC. Article 265§.2 of the new CC should be amended so that the subject matter of concealment of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, is related to the pecuniary advantage *derived by another from criminal activity*, the perpetrator of the predicate offence could be the perpetrator of the ML offences committed through the actions of concealment. The Croatian authorities should take measures to amend Art 265 §.3 of the new CC to cover acquisition, possession and use of the pecuniary advantage. Croatia should amend the definition of "*pecuniary advantage*" to remove a supplementary and difficult burden of proof for the practitioners when they will come to determine the constitutive elements of the ML offence, in particular related to "*corpus delicti*". The scope of the subject matter of the ML offence and the way in which it may be interpreted in different pieces of legislation which provide a definition for "*pecuniary advantage*" (i.e. the Criminal Code, the Act on Confiscation, the USKOK Act; the Act on Responsibility of Legal Person for Criminal Offences)

	should be clarified and harmonised. The definition of "*pecuniary advantage*" provided through Art.87 (21) of the new CC does not comprise legal documents or instruments evidencing title to, or interest in such assets. These elements should be included in the definition of the subject matter of ML offence at the level of substantive penal legislation and should be eliminated discrepancies between the concepts used by this legislation and the procedural laws. There should be clear provisions in place for criminalising of "facilitating" and "counselling" the commission of a ML offence where these conducts are occurred before a committed ML offence or an act of aiding or abetting (e.g. counselling is committed before the execution of *actus reus* of ML offence and this execution, for various reasons, is not done). Steps need to be taken to increase the number of money laundering indictments and convictions, including: • Addressing the issue of the evidence required to establish the predicate criminality in autonomous money laundering cases; • Clarifying in legislation or guidance that the underlying predicate criminality can be proved by inferences drawn from objective facts and circumstances in money laundering cases brought in respect of both domestic and foreign predicate offences; • Providing guidance to prosecutors on the amount of evidence needed to establish underlying predicate offence; • Prosecutors challenging the courts with more 3rd party ML cases based on the above mentioned guidance and also with autonomous ML offences. A more proactive approach to the investigation and prosecution of money laundering offences based on strategic analysis and focused on organised and other categories of serious crimes should be adopted by the law enforcement agencies and the prosecutorial authorities.
2.2 Criminalisation of Terrorist Financing (SR.II)	An express wording with regard to the collection and provision of funds to be used or in the knowledge that they will be used by an individual terrorist should be introduced. Croatia should provide a recommendation to prosecutors and law enforcement agents, through guidance or other similar, to take into consideration the definition of "*funds*" provided by the TF Convention for determining the scope of "*funds*" (*sredstva*) as "*corpus delicti*" of FT offence. The scope of the terms "*terrorist*" and "*terrorist organisation*" should clearly cover the scope of these terms envisaged by the FATF standards. A clear and comprehensive definition of the terms "*terrorist*" and "*terrorist organisation*", in line with the international standards might be helpful to eliminate any

	possible formal obstacles for jurisdiction of TF offence as it is required by criterion c.II.3. To evade any possible misinterpretation in practice, would be helpful to mention through guidance or similar tools for prosecutors and law enforcement agents that the conditions provided at the last part of Art. 98 para.1 are applicable only to "*any other criminal offence*" but not to the offences listed within the content of the same paragraph.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	Provisions in the Criminal Code, CPC, the Act on Confiscation, the USKOK Act, and the Act on Responsibility of Legal Person are considered to determine the subject matter of provisional measures of seizing and of confiscation should be revised by the Croatian authorities to harmonise the system and to eliminate the inadvertent and inconsistent provisions, to eliminate overlaps or apparent duplications in the regulation and to standardise (and reduce the number of) legal terms used to designate issues related to seizure and confiscation. The provisions of the CC related to confiscation should contain clear references to the scope of the word "property" used to define the concept of "pecuniary advantage" so clearly include incorporeal assets and legal documents or instruments evidencing title to, or interest in such assets. The Croatian authorities should revise the wording "*increase or prevention of decrease in the property which came about as a result of the commission of a criminal offence*" used to define "*pecuniary advantage*" in order to remove any supplementary features and an additional burden of proof to determine the property laundered and proceeds from ML, subject to confiscation regime. The provisions related to confiscation of instrumentalities should be amended, since the confiscation of the instrumentalities is conditioned by the supplementary element of the risk that they will be reused in another criminal activity and this is not in line with the FATF standards. Provisions related to confiscation of property of corresponding values of instrumentalities used or intended to be used or were used in the commission of any ML, FT or other predicate offence should be introduced within the legal system of confiscation in Croatia. The provisions related to provisional measures are heterogeneous and the references to property subject to confiscation in different pieces of legislation are done using different terminology (the CPC uses - "objects" but not "proceeds" in a broader sense, in Art. 261; "pecuniary advantage" in Art. 271; no references to "instrumentalities", the Act on Confiscation uses "pecuniary advantage", the USKOK Act uses "instruments, income or assets"). This situation should be changed observing the scope of the subject matter of the provisional measures envisaged by the FATF

	standards. The provisions related to the possibility to apply temporary confiscation *ex-parte* should be introduced into the CPC. Art 261 of the CPC should be amended since it is limited to "*objects which have to be seized* (confiscated) *pursuant to the CC*" and it is unclear if the scope of "objects" entirely extends over the scope of "funds". The Croatian authorities need to put more emphasis on confiscation and resources into financial investigation to improve the current results. The Croatian authorities should continue to raise awareness of/train criminal prosecution authorities and judges on seizure and confiscation issues. Periodic and systematic analyses of the results in this area obtained by law enforcement and prosecutors could help the decisional factors to better understand what are the real causes for lack of effectiveness of some units and to act accordingly regarding the need of training, of resources for financial investigations and of a better coordination between all the authorities involved. Greater emphasis should be placed on proactive approach to identify and trace property that is, or may become subject to confiscation, in the major generating proceeds crime, especially on economics and organised crimes. Manuals or guidance related to practical and theoretical issues of the confiscation regime would be very welcome for the law enforcement and prosecutors.
2.4 Freezing of funds used for terrorist financing (SR.III)	Based on the provisions of the IRM Act "*assets*" are limited to financial means and benefits of any kind, which is much narrower than the scope of the concept of "*funds or other assets*" used by the FATF Recommendation. Parallel references to the subject matter of the freezing mechanism (i.e. "*assets*" in the IRM Act, "*funds and other financial assets or economic resources*" in the Government Decision No. 2516/2010) in different pieces of legislation should be avoided. The IRM Act provisions for the UNSCR 1373 should be implemented through a further Government Decision which should clearly provide for the procedure for listing persons by the decision of the Croatian authorities in respect of domestic terrorists as well as the procedure for listing of persons based on foreign countries designations. These persons should be included, according to this procedure, in the consolidated list which should be made available to reporting entities.. Croatia should establish a publicly available consolidated list of persons designated under the IRM Act (especially those who have been listed domestically or based on foreign designations). The Croatian authorities should implement UNSCR 1373,

	establish a procedure for consideration of foreign designations and develop a procedure for making the consolidated list of designated persons available to the reporting entities. Appropriate training and awareness raising for all reporting entities needs to be established. In particular, an effective system of communication with the DNFBP sector in respect of the obligation under SR.III should be established. The condition which is reaffirmed in C.III.1 (freezing to take place without prior notification) is approached only at the level of guidelines and freezing assets with prior notice to the designated persons involved is not punishable. Safeguards should be introduced that are strong enough to maintain the surprise effect intended by the UNSCRs. The freezing actions referred to under Art. 11 of the IRM Act extend only to assets owned, held or belonging in any way to the subject to whom restricted measures are being applied to, and to assets controlled or supervised by that subject. Assets controlled jointly and indirectly should be covered. The situation envisaged by the UNSCRs in terms of control or possession of funds by persons acting on behalf of the subject or acting at their direction should be explicitly covered by the Croatian legislation. Funds derived or generated from assets owned or controlled directly by the designated persons, terrorist, those who finance terrorism or terrorist organisations, should be fully covered by the Croatian legislation. The guidelines issued by AMLO and by the Standing Coordination Group for Monitoring the Implementation of International Restrictive Measures should be collaborated to fully and clearly comprise the obligations of reporting entities in respect of assets of the listed persons. There is a need to adopt a detailed procedure (guidance) with regard to all steps needed to be taken after the freezing in order to ensure the un-freezing and clarifying their obligations according to the freezing mechanism.
2.5 The Financial Intelligence Unit and its functions (R.26)	The annual report should clearly cover the ML/TF trends.
2.6 Cross Border Declaration or Disclosure (SR.IX)	A requirement to retain the identification data in instances when a declaration exceeds €10,000, where there is a false declaration or where there is a suspicion of ML or TF, should be introduced. Powers should be introduced to apply sanctions to persons who make a false declaration.
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*** A domestic ML/TF risk assessment should be conducted in order to facilitate a national understanding of the risks the country is facing and which would allow for proper risk-based CDD programmes and policies to be adopted and implemented by the financial sector. The AMLTF Law should be amended to: • Require reporting entities to ensure that a person acting on behalf of a person is so authorised; • Require reporting entities to obtain from customers information on a foreign legal person's or foreign legal arrangement's form, directors and powers to bind; • remove the blanket exemptions from the CDD requirements and to apply simplified CDD, even in circumstances where the risk of money laundering and terrorist financing is low; • limit the situations when financial institutions are permitted to apply simplified CDD measures to customers resident in third country to countries which are in compliance with and have effectively implemented FATF Recommendations; • Amend Art. 35 §1 to include "*specific higher risk scenarios*"; • Clarify that the derogation under Art 10 §2 refers only to verification procedures, not all CDD procedures and require that CDD measures should be completed as soon as reasonably practicable after the initial contact in situations where the reporting entity is allowed to conduct CCD measures during the establishment of a business relationship with a customer; and • define risk management procedures to be applied in circumstances where a business relationship is commenced prior to verification of the identity of the customer. ***Recommendation 6*** The definition of PEP should be brought into line with the FATF definition. The definition should also clarify that it includes and foreign PEPs who are temporarily or permanently resident in Croatia. Financial institutions should be required to obtain senior management approval to establish or continue the business relationship where the customer or beneficial owner subsequently becomes or is found to be a PEP. There should be a clear requirement in the law for financial institution to:

	• Identify the source of wealth; • determine whether a customer's beneficial owner is a PEP; and • extend the requirements concerning identification of PEPs to situations where the customer or beneficiary owner subsequently becomes a PEP. ***Recommendation 7*** The requirement regarding correspondent banking relationships should be applied irrespective of whether the respondent institution is located in the EU or EEA or in a third country. Financial institutions should be required to obtain approval from senior management before establishing new correspondent relationships. There should be a clear provision requiring banks and other credit institutions to gather sufficient information about a respondent institution in order to fully understand the nature of the respondent business and economic activities, as well as about reputation of the institution and the effectiveness of supervision exercised over the credit institution. There should be a clear requirement to document the respective AML/CFT responsibilities of each institution. Requirements concerning a correspondent relationship which involves the maintenance of "payable-through accounts" should be introduced in the AMLTF Law.
3.3 Reliance on third parties (R.9)	A requirement that the delegating party obtain the necessary information concerning, *inter alia*, elements of the customer due diligence process should be introduced in either law or regulation. A clear obligation for financial institutions to take adequate steps to satisfy themselves that data of CDD will be made available from the third party should be introduced.
3.4 Financial institution secrecy or confidentiality (R.4)	Croatia should amend the Credit Institutions Act provisions so that it is clear that credit institutions are allowed to share information about their clients CDD to their correspondent banks. Croatia should amend the Leasing Act provisions so that data confidentiality requirement shall not apply in cases of individual regulations on terrorist finance issues. Croatia should add to the AMLTF Law a special regulation that the contract for the correspondent banking relationship should determine a correspondent bank´s ability to submit the data gathered in the course of identification and verification of the customer based on an enquiry. There should be more emphasis on clarification of legal regulation of banking secrecy.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10*** The AMLTF Law should be amended to require Financial institutions to maintain records for a longer period if requested by a competent authority in specific cases upon proper authority. The AMLTF Law should be amended to require the keeping of business correspondence. The requirements for record keeping in different legal acts should be aligned as it is difficult to understand what is the special norm (*lex specialis*) or general norm (*lex generalis*) in case of AMLTF issues. ***Special Recommendation VII*** A specific requirement for financial institutions to consider the lack of complete originator information as a factor in assessing whether a wire transfer or related transactions are suspicious and, as appropriate, whether they are thus required to be reported to FIU should be introduced.
3.6 Monitoring of transactions and relationship reporting (R.11 and R.21)	***Recommendation 11*** The AMLTF Law or related Guidelines should be amended to include a requirement to retain analyses about the background and purpose of transactions for at least five years. Further guidance for reporting entities (except banks) as to what analysis of complex and unusual transactions might consist in is required. A requirement to make transaction records available to auditors should also be introduced in legislation. ***Recommendation 21*** A requirement should be introduced to require financial institutions to examine and monitor transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations, if they do not have an apparent economic or visible lawful purpose, and have written findings available to assist competent authorities and auditors. Clear procedures should be introduced that where a country continues not to apply or insufficiently applies the FATF Recommendations, the Croatian authorities should be able to apply appropriate counter-measures.
3.7 Suspicious transaction reports and other reporting (R.13-14, 25 & SR.IV)	***Recommendation 13 and Special Recommendation IV*** The Croatian authorities should enhance outreach to housing saving banks, insurers, companies issuing payment and credit cards and other reporting entities (with low reporting). The reporting requirement should be amended to also refer to: • funds that are "linked or related to"; and

	• "those who support terrorism". ***Recommendation 14*** The protection provided by Art. 76 of the AMLTF Law should explicitly be extended to directors, officials and other natural persons contributing to the direction, management or representation of a reporting entity. ***Recommendation 25/c. 25.2 [Financial institutions and DNFBPs]*** More sector oriented guidance on money laundering and terrorist financing should be issued by the Croatian Authorities in order to assist the reporting entities (especially those with low reporting) in properly identifying suspicious transactions.
3.8 Internal controls, compliance, audit and foreign branches (R.15 and R.22)	***Recommendation 15*** A legally defined provision for compliance officers to be designated at management level should be introduced. The language of the law potentially providing an option for reporting entities to exempt them from the obligation of appointing a compliance officer should be revised to avoid any ambiguity in interpretation. A formal requirement and practical implementation of employee screening procedures should be introduced. ***Recommendation 22*** A requirement should be introduced that the financial institutions should pay special attention in case of jurisdictions which do not or insufficiently apply the FATF Recommendations. A requirement should be introduced that financial institutions branches and subsidiaries in host countries should apply the higher standard in the event that local requirements are not fully in line with international standards. A requirement should be introduced that in cases where the legislation of a third country does not permit the application of equal measures as in Croatia, the reporting entity should be required to notify the CNB, FI or HANFA as competent supervisory authorities.
3.9 Shell Banks (R.18)	Further guidance should be provided to banks on how to identify instances where a bank is a shell bank.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 and 25)	***Recommendation 23*** Expedite and conclude the signing of MOUs between the relevant supervisors; introduce defined principles and consistent practice of referring specific supervision cases to the FI. Introduce a requirement to obtain information on ultimate beneficial owners and, respectively, their criminal background for insurance companies and pension companies.

	Introduce provisions to prevent criminals from holding shares or managerial positions in financial institutions. Provide for inclusion of criminal associates into the scope of the measures aimed at prevention of criminals from holding a controlling interest or management function in financial institutions. Provide for the licensing or registration of money and value transfer (and other financial) services offered by the Croatian Post. Legislatively define licensing requirements and procedures for business entities engaged in factoring activities. Ensure sufficient coverage of inspections to provide for a reasonable supervisory cycle and AML/CFT compliance checks, stemming from an adequate planning of supervision and resulting in the disclosure of irregularities/infringement of AML/CFT requirements. ***Recommendation 17*** Ensure that specific sanctions are stipulated for the failure to comply with all requirements of the AMLTF Law (e.g. in relation to Arts. 43 and 75). The range of sanctions for AML/CFT non-compliance should be brought into line with those applicable for different violations of relevant laws in the financial sector. Powers should be in place to publish all sanctions applied for AML/CFT breaches.
3.11 Money and value transfer services (SR.VI)	Establish a requirement for legal persons holding a qualifying interest in an electronic money institution to submit information on the beneficial owner.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	Training and supervision of the DNFBP sector should be enhanced in order to increase the effectiveness of implementation. ***Recommendation 5*** The steps recommended under R.5 above should be extended to the DNFBP sector. Further guidance should be provided on the steps to be taken in respect of awareness about risk based approach and the identification of the beneficial owners and guidance should be adopted for the process of understanding the ownership and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements, including cases when somebody exercises ultimate effective control.

	Recommendation 6 The steps recommended under R.6 above should be extended to the DNFBP sector. More emphasis on awareness raising in relation to PEPs amongst the DNFBPs sector is recommended to increase effectiveness. ***Recommendation 8*** An obligation in the AMLTF Law requiring DNFBPs to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risks associated with non-face to face business relationships or transactions should be introduced. ***Recommendation 9*** The steps recommended under R.9 above should be extended to the DNFBP sector. ***Recommendation 10*** The steps recommended under R.10 above should be extended to the DNFBP sector. ***Recommendation 11*** The steps recommended under R.11 above should be extended to the DNFBP sector. Further guidance should be provided for DNFBP entities regarding analysis of complex and unusual transactions.
4.2 Suspicious transaction reporting (R.16)	***Recommendation 13*** There is a need for an awareness raising and training to ensure DNFBPs understand their obligations in respect to STR regime; The action points identified with respect to financial institutions under R.13 above are also applicable to DNFBPs; ***Recommendation 14*** The steps recommended under R.14 above should be extended to the DNFBP sector. Awareness of the DNFBP sector should be increased. ***Recommendation 15*** The steps recommended under R.15 above should be extended to the DNFBP sector. ***Recommendation 21*** The steps recommended under R.21 above should be extended to the DNFBP sector. Guidance and training should be provided to DNFBPs relating to doing business with countries not sufficiently applying the FATF Recommendations.

4.3 Regulation, supervision and monitoring (R.24-25)	***Recommendation 24*** The Act on Games of Chance should be amended to include a requirement prohibiting criminal associates from holding of a significant interest in casinos. Further improve supervisory framework, specifically in relation to identification of irregularities and infringements of applicable legislation, and application of sanctions.
4.4 Other non-financial businesses and professions/Modern secure transaction techniques (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	The Court Register should also contain information on the ultimate beneficial owner of legal persons. Croatia authorities should assess the number of bearer shares that are still in circulation and introduce measures to reduce the possible ML risks.
5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Non-profit organisations (SR.VIII)	The regulation of the NPO sector is fragmented and carried out by a number of authorities. It is advisable that the NPO legislation as well as the whole system to be harmonised on the basis of assessment of current legal framework and efficiency of the system. The Croatia authorities responsible for the supervision of NPO sector need to have a complete picture of the whole sector, particularly as to what are the most vulnerable NPOs. LEAs should be more involved and play a key role in the combat against the abuse of NPOs by terrorist groups, including LEAS ongoing activities with regard to NPOs. The Croatian authorities should: • undertake the sector specific review for the purpose of identifying those NPOs that are or may be at risk of being misused for TF; • commence an outreach programs to the sector; • raise NPOs awareness of the risks of being misused for TF; • enforce supervision and monitoring of all NPOs; and • harmonise legislation with regard to all types of NPOs (especially with regard to criteria VIII.2 and VIII.3 and demonstration of the appropriate measures (sanctions for violation) to all NPOs (primary legislative level).

6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	***Recommendation 31*** Coordination efforts should be focussed on achieving more and better quality convictions for money laundering. While there is significant co-operation and coordination at the operational level the low number of reports from DNFBP points to a need for even more coordination by AMLO with DNFBP bodies. Croatia should develop a system for measuring the overall effectiveness of the AML/CFT regime.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	***Recommendation 35*** Croatia should take necessary measures to remedy identified deficiencies under Recommendations 1 and 3 and Special Recommendation II to fully implement the Vienna, Palermo and TF Conventions. ***Special Recommendation I*** The Croatian authorities should take steps to address the deficiencies identified under SR.III to fully implement the requirements of the UNSCRs, in particular implement the mechanism set out in Chapter 5a of the AML/CFT Act.
6.3 Mutual Legal Assistance (R.36 & SR.V)	***Recommendation 36*** The Croatian authorities should remedy the deficiencies in the criminalisation of ML and FT offences that might limit the execution of the MLA request when the dual criminality is observed. Deficiencies identified in confiscation regime should be corrected, especially those related to instrumentalities and confiscation of assets of corresponding value that might also create problems in the context of MLA requests related to ML or FT offences. Croatia should develop the legal possibilities to devise and apply mechanisms for determining the best venue for prosecution of defendants in the interest of justice in cases that are subject to prosecution in more than one country. The provisions intended to avoid conflict of jurisdiction in MLA Act, which limit the cases for taking over the proceedings to those in which the extradition is not allowed, should be amended to create a more flexible mechanism. Arrangements for coordinating seizure and confiscation action with other countries should be established. Consideration should also be given to establishment of an asset forfeiture fund as well as to sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action. All these measures should also be taken

	considering the applicability for the FT offence. ***Special Recommendation V*** Ambiguities regarding the scope of provisional measures related to "funds" used or intended to be used in TF offense should be remedied since they can impede the execution of a MLA request related to TF offence.
6.5 Other Forms of Co-operation (R.40 & SR.V)	Arts. 68 to 70 of the AMLTF Law should be amended to include a power to provide international co-operation on underlying predicate offences.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	***Recommendation 30*** The Croatian authorities should allocate further resources to both services of AMLO in order to support better performing of their work in all areas described under the AMLTF Law. The Croatian authorities should take measures to reduce the level of turnover of staff in AMLO. ***Recommendation 32*** AMLO should maintain statistics on additional requests made by AMLO for supplementary information broken down by reporting entities and authorities according to Arts. 59 and 63 of the AMLTF Law. Since the third round of evaluation the issue with regard to the statistics is still pending. Croatian authorities should improve the collection and maintenance of statistics with more detailed and unified figures in respect of mutual legal assistance related to money laundering and associated predicate offences. The supervisor authorities should maintain statistics on exchange of information and cooperation with their counterparts. Law enforcement should maintain adequate and detailed statistics concerning the number of formal requests made to or received by law enforcement authorities from foreign counterparts in order to demonstrate the effectiveness of this co-operation. All law enforcement agencies should maintain comprehensive statistics on international cooperation.
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
R.23	There is no need to licence or register the Croatian Post (CP) for money and value (and other financial) services. The CP currently provides certain payment services (e.g. cash depositing in and cash withdrawal from accounts, the execution of one-off payment transactions, etc.). However, the CP does not render these services in its own name and for its own account, but in the name and for the account of the Croatian Postal Bank (CPB), pursuant to the Decision on Outsourcing (based on the Credit Institutions Act). Generally, all banks are licensed to provide payment services by virtue of Article 155, paragraph (2) of the Payment System Act. Consequently, the CPB takes on the responsibilities and obligations arising from such a way of providing payment services. In view of this, the CPB is also obliged to carry out the measures and actions prescribed for obligated persons in Article 4 of the AML/CFT Law with respect to these activities. As concerns the money transfer services provided in post offices, please be informed that in December 2010, the CPB entered into an International Payment Services Cooperation Agreement with the Western Union (WU), under which it undertook to provide money transfer services in the RC in its own name and for its own account, using the know-how and brand of the WU. According to the Agreement, the CPB does not provide the money transfer services as a WU agent, but in its own name and for its own account, applying the technological model developed by the WU. In March 2011, the CPB concluded a Framework Contract with the CP on strategic partnership and outsourcing of part of activities in the area of payment and other CPB services, which, among other things, provided for the outsourcing of part of activities related to the provision of money transfer services by the CPB, to the Croatian Post, which were to be carried out by the CP in the name and for the account of the CPB.

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Croatia has been a member country of the European Union since July 2013. It has implemented **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 Law on Liability of Legal Persons for Criminal Offences (Official Gazette no. 151/03, 110/07 and 45/11) establishes the prerequisites for sanctioning and applying punitive measures and criminal proceedings for criminal offences of legal entities. The legal persons as referred to in this Act can also be foreign persons considered legal persons under the Croatian law. Art. 3 of the law stipulates that the legal person shall be punished for a criminal offence of a responsible person if such offence violates any of the duties of the legal person or if the legal person has derived or should have derived illegal gain for itself or third person. Under these conditions the legal person can be punished for the criminal offences prescribed by the Criminal Code and other laws prescribing the criminal offences.
Conclusion	Croatia is in compliance with both the Directive and the FATF Recommendations.
Recommendations and Comments	No recommendations.

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	According to Art. 37 AMLTF Law there is a clear provision that the

Analysis	reporting entities are not allowed to open, issue or keep anonymous accounts, coded or bearer passbooks for customers, i.e. any other anonymous products which would indirectly or directly enable the concealment of customer's identity. This provision applies to all credit institutions and financial institutions concerns all accounts in Kuna and in foreign currency. According to transitional provisions of AMLTF Law (Art. 103 (1) the reporting entities were obliged to close all anonymous accounts, as well as any other anonymous products, within 30 days upon the effective date of AMLTF Law - not later than 31 January 2009. For those anonymous products which were existing on that date, the reporting entities were obliged to conduct customer or other product user due diligence, during the first transaction by the customer or if it was impossible the funds were transferred to special accounts. Some concerns have remained about anonymous accounts and other anonymous products which were open prior to 2003.
Conclusion	Croatia is in compliance with both the Directive and the FATF Recommendations.
Recommendations and Comments	No recommendations.

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	Within the framework of customer due diligence with each transaction totalling HRK 105,000 (approximately €14,000) and more, regardless of whether the transaction is made as a single operation or as several transactions which clearly appear to linked as referred to in Art. 9 (1), 2) of AMLTF Law, the reporting entity shall collect information referred to in AMLTF Law. According to art 39 of the AMLTF Law there are restrictions of cash transactions exceeding the amount of HRK 105,000 (approximately €14,000) or in the arrangements with non-residents valued in excess of €15,000, if selling goods and rendering services or sales of real-estate or receiving loans or selling negotiable securities or stakes.
Conclusion	Croatia is in compliance with both the Directive and the FATF Recommendations.
Recommendations and Comments	No recommendations.

4.	**Beneficial Owner**
Art. 3(6) of the Directive (see Annex)	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF R. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a

	transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
Key elements	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	Art. 3 §24 of the AMLTF Law defines beneficial owner as a natural person who is the ultimate owner of a customer or who controls or otherwise manages the legal person or other entity (if the customer is a legal person) or a natural person who shall control another natural person on whose behalf a transaction is being executed or who performs an activity (if the customer is a natural person); Art. 23 of the AMLTF Law clarifies/specifies that the beneficial owner is the natural person who ultimately owns or controls a legal entity through direct or indirect ownership or a natural person who controls a sufficient percentage of shares of voting rights in that legal person, and a percentage of 25 per cent plus one share shall be deemed sufficient to meet this requirement or the natural person who otherwise exercises control over management of a legal person in case of legal persons, branches, representative offices and other entities subject to domestic and foreign law made equal with a legal person. The beneficiary owner shall be in case of legal persons, such as endowments and legal transactions such as trust dealings which administer and distribute monies : - where the future beneficiaries have already been determined, the natural person who is the beneficial owner of 25% or more of the property rights of the legal transaction; - where natural or legal persons who will benefit from the legal transactions have yet to be determined, the persons in whose main interest the legal transaction or legal person is set up or operates; - natural person who exercises control over 25% or more of the property rights of the legal transaction. A natural person who is controlling another natural person on whose behalf a transaction is being conducted or an activity performed is treated as beneficiary owner. Art 6 (6) a) i) of the AMLD clearly covers 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. There is no such provision in Croatian legislation.
Conclusion	There is a minor shortcoming in the definition of beneficiary owner. There is no clear indication to ownership of bearer shares.
Recommendations and Comments	Croatia should amend its legislation and add into the definition of beneficiary owner the natural person(s) the shareholders, who ultimately owns or controls a legal entity through ownership of the bearer share holdings.

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	According to Art. 4. para.(4) of the AMLTF Law the Minister of Finance may issue a rulebook to set terms and conditions under which the reporting entities referred to in paragraph 2 of this Article who perform financial activities only occasionally or within a limited scope and with which there is a negligible money laundering or terrorist financing risk may be excluded from the group of reporting entities obliged to implement measures as per this Law. This rulebook has not been issued, but there are legal grounds for its creation. There are no limitations or other concrete criteria in the law to which legal or natural person's financial activity on an occasional or very limited basis should respond. There is no provision for the possibility of withdrawing this regulation should circumstances change and no provision about establishment of risk-based monitoring activities or about any other adequate measures to ensure that the exemption granted by decisions pursuant to Art. 2(2) of Directive 2005/60/EC is not abused by possible money launderers or financers of terrorism.
Conclusion	Croatia has not fully implemented Art. 4 of Commission Directive 2006/70/EC.
Recommendations and Comments	Croatia should add into the law to concrete criteria about financial activity on an occasional or very limited basis and the possibility of withdrawing this regulation if the circumstances change and provision about establishment of risk-based monitoring activities.

6.	**Simplified Customer Due Diligence (CDD)**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	According to Art 35 (1) 2) and 3) of the AMLTF Law the reporting entities may at establishing the business relationship and at conducting transactions conduct a simplified customer due diligence, if the customer is reporting entity (financial institution) or state body, (local and regional

	self-government bodies, public agencies, public funds, public institutes or chambers) or publicly traded company. Rulebook issued by the Minister of Finance which entered into force on July 1, 2009 provides on the limited extent conditions under which the reporting entities shall make grouping of customers representing a negligible money laundering or terrorist financing risk (NN 76/09). Croatian art 14 of the AMLTF Law creates blanket exemptions from the CDD requirements for life insurance businesses and for companies for the issuance of electronic money on certain conditions which are in line with wording of the III AMLD art 11 (5) (in force). According to art 14 (3) the Minister of Finance may issue a rulebook to prescribe that a reporting entity may be excluded from the obligation of conducting customer due diligence when conducting certain transactions referred to in Art. 9, §1, item 2 of this Law and in respect of other products and transactions associated with them, which shall represent a negligent money laundering or terrorist financing risk. These regulations are not fully in line with the Methodology p 5.9. whereby minimum CDD (i.e. less detailed CDD) should nevertheless be accomplished.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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	According to art 32 (3) of the AMLTF Law a foreign politically exposed person is defined as any natural person with permanent address or habitual residence in a foreign country who shall act or had acted during the previous year (or years) at a prominent public function, including their immediate family members, or persons known to be close associates of such persons. This article gives possibility to apply the time limit for foreign politically exposed persons which is in line with art 2 (4) of the Commission Directive 2006/70/EC.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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 31 of the AMLTF Law limits the application of enhanced CDD to correspondent banking relationships with banks or other credit institution seated in a third country, it means to institutions from non-EU member countries. Reporting entities are obliged additionally gather the data about validity of the license, license issuing body and description of the systemic arrangements in the field of money laundering and terrorist financing prevention and detection and description of the implementation of relevant internal procedures. But there is no clear provision that banks or other credit institutions have the obligation to gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine the reputation of the institution and the quality of supervision. There is no clear requirement to document the respective responsibilities of each institution and no provisions with respect to payable-through accounts.
Conclusion	Croatia applies Art. 13(3) b) and c) and partially a) of the Directive and applies it to third countries. Croatia does not fully apply 13 (3) d) and e) and partially a) of the Directive.
Recommendations and Comments	Croatia should ensure that the responsibilities of the correspondent parties regarding AML/CFT duties are fully laid out in the correspondent banking arrangement and amend provisions with respect to payable-through accounts.

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	In art 34 of the AMLTF Law there is clear requirement that credit and financial institutions are obliged to pay a special attention to any money laundering and/or terrorist financing risk which may stem from new technologies enabling anonymity. There are various provisions in the AMLTF Law to focus on any money laundering threats.
Conclusion	Croatia does not fully apply Art. 13 (6) of the Directive.
Recommendations and Comments	Croatia should amend its legislation and add a clear obligation to pay special attention to any money laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity.

10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.

Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	According to the AMLTF Law at establishing business relationship with a customer the reporting entity may entrust a third party who is enumerated in the rulebook adopted by Ministry of Finance. According to the Rulebook the reporting entities are allowed to rely on certain, exhaustively listed third parties, consisting only of other supervised financial institutions who apply measures of customer due diligence, keeping records and data according to the provisions contained in EU Directive 2005/60/EC, the recommendations of the FATF, i.e. equivalent standards, the application of which measures are subject to supervision conducted in keeping with the provisions contained in EU Directive 2005/60/EC or have their business seat in a third country applying measures equal to the provisions contained in Directive 2005/60/EC.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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, auditing firms and independent auditors and tax advisors have the obligation to apply AMLTF preventative measures **in all their professional activities.** Auditing firms and independent auditors, legal and natural persons involved in the performance of accounting services and tax advisory services are obliged to keep data and the accompanying documentation they collected during the customer due diligence at establishing the business relationship or at conducting transactions for the period of ten years after the completion of customer identification.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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	Cash collections exceeding the amount of HRK 105,000.00 shall not be permitted in the Republic of Croatia, i.e. in the arrangements with non-residents valued in excess of EUR 15,000.00. The cash collection limitation shall pertain to all legal and natural persons who shall receive cash through the said transactions during the performance of their registered business activities. According to the AMLTF Law legal and natural persons performing business in relation to the trading precious metals and gems and products made of them, trading artistic items and antiques or organising or carrying out auctions are reporting entities.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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. 12	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	It´s allowed for casinos to use the customer due diligence requirements if they register, identify and verify the identity of their customers immediately on or before entry, regardless of the amount of gambling chips purchased. (AMLD art 10 (2)). There is no monetary threshold in Croatia. The AGC is harmonised with the relevant provisions of the AMLTF Law, prescribing that gaming operators shall operate according to the legislation regulating the prevention of money laundering and terrorist financing, particularly in cases of customer due diligence, identification of customer and customer's beneficial owner, suspicious transactions and terms for keeping customers' information.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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	AMLTF Law requires all obligated persons to report directly to AMLO (FIU). (art 42 and 54).
Conclusion	Croatia does not allow any of the obligated entities to report through a self-regulatory body; thus, Croatia does not make use of this option given by the EU Directive.
Recommendations and Comments	No recommendations.

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	The reporting entities are obliged to report suspicious transactions and transactions over certain threshold. The reporting entities shall be obliged to report to AMLO on each transaction being conducted in cash totalling HRK 200,000.00 and more in the manner prescribed by the Minister of Finance in a rulebook. The reporting entities are obliged to refrain from the conducting of a transaction for which the reporting entity shall know or suspect to be connected with money laundering, i.e. terrorist financing. The reporting entity shall be obliged to notify AMLO on such a transaction without any undue delay before the transaction execution, and to indicate in the report the reasons for suspicion of money laundering or terrorist financing, as well as the deadline within which the transaction is to be conducted. The reporting entities are obliged to produce a list of indicators for the detection of suspicious transactions and customers in relation with which reasons for suspicion of money laundering or terrorist financing shall exist. The list of indicators is basic guidelines for determining the reasons for suspicion of money laundering and terrorist financing.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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	The employees of the reporting entities may not be held disciplinary or criminally answerable for the infringement of classified data secrecy observance, i.e. data related to banking, professional, notary public, lawyer client privilege or other secret if they analyse data, information and documentation gathered in accordance with this Law for the purpose of establishing reasons for suspicion of money laundering or terrorist financing in relation to a customer or a transaction or they supply AMLO with data, information and documentation in keeping with the provisions contained in this Law or regulations passed on the basis of this Law. The reporting entities and their employees shall not be held accountable for any damage caused to customers or third persons if they act bona fide in line with the provisions contained of AMLTF Law while supplying AMLO with data, information and documentation on their customers.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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 art 75 of the AMLTF Law the reporting entities and their employees, members of management and supervisory boards and other managerial bodies and other persons who have any type of access and availability of data collected in accordance of AMLTF Law are not allowed to disclose the information to a customer or a third person that AMLO was or will be supplied with a piece of data, information or documentation on the customer or a third person or a transaction or AMLO had temporarily suspended the execution of a suspicious transaction, or AMLO requested ongoing monitoring of a customer's financial operations or that a pre-investigative procedure has commenced or might be commenced against a customer or a third person due to suspicion of money laundering or terrorist financing. Information previously referred is defined and marked as classified data and should be beard an adequate level of secrecy. Croatia has not implemented art 28 (3), (4), (5).
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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	Pursuant to Art. 5, §(3) of the AMLTF Law, the obligated entities are required to regularly inform their business units and companies in their majority ownership or in which they have predominant decision-making rights, with a seat in a third country, of internal procedures pertinent to money laundering and terrorist financing prevention and detection, especially in terms of customer due diligence, supply of data, keeping records, internal control and other significant circumstance related to money laundering and terrorist financing prevention and detection.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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	The AMLTF Law provides that where the legislation of the third country does not permit the application of the money laundering and terrorist financing prevention and detection measures within the scope laid down in the AMLTF Law, the reporting entity is required to inform AMLO of the matter without any undue delay and to institute adequate measures for the elimination of the money laundering and/or terrorist financing risk. The said provision further states that in the event that the legislation of a third country does not permit the application of equal measures as in Croatia, the reporting entity is required to notify AMLO.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

20.	Supervisory Bodies
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.

FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	The supervisory bodies the Financial Inspectorate of the Republic of Croatia, the Tax Administration, the Croatian National Bank, the Croatian Financial Services Supervision Agency are obliged to notify AMLO in writing without any undue delay of information pointing to the relatedness of a person or a transaction with money laundering or terrorist financing, irrespective of whether they obtained such information during the course of carrying out supervision activities or during the conducting of matters from their respective scopes of competence. In instances when bodies in charge of conducting supervision over the activities of non-profit organisations, save for supervisory bodies, establish during the conducting of supervision from their scopes of competence that there shall exist reasons for suspicion of money laundering or terrorist financing in relation with the activity of a non-profit organisation, its members or persons related with them, they shall be obliged to notify AMLO thereof in writing and without any undue delay.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

21.	**Systems to respond to competent authorities**
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	According to AMLTF Law the credit and financial institutions have the obligation to establish/create an adequate information system relevant for their respective organisational structures in order to be able to promptly, timely and completely provide AMLO with data as to whether or not they shall maintain or have maintained a business relationship with a given natural or legal person, as well as to the nature of such a relationship. Reporting entities are obliged to keep data collected on the basis of AMLTF Law art 78 and regulations a period of ten years after the execution of a transaction execution or the termination of a business relationship. The reporting entities must furnish AMLO with data, information and documentation without any undue delay, and no later than within fifteen days after the request receipt date.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

22.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive,

	which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	Croatia has extended obligations referred in the Directive not only to casino games but to different other organisers of games of chance: lottery games, betting games, slot-machine gaming, and games of chance on the Internet and via other telecommunications means, i.e. electronic communications. These categories of undertakings are not covered in art 2 (1) of the Directive and FATF Rec. According to AMLTF Law reporting entities are pawnshops and legal or natural persons performing business in relation to the trading precious metals and gems and products made of them, trading artistic items and antiques, organising or carrying out auctions. These categories of undertakings are not covered in art 2 (1) of the Directive, but are covered in FATF Rec.
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

23.	**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	Croatia addresses the issues of equivalent third countries on the limited extent and has implemented art 11 and art 16 (1) b). The reporting entities may at establishing the business relationship and at conducting transactions, except in instances when there are reasons for suspicion of money laundering or terrorist financing in relation to a customer or a transaction, conduct a simplified customer due diligence, if the customer is reporting entities – financial institutions or other equivalent institutions under the condition that such an institution shall be seated in a member-state or a third country. According to the Rulebook adopted by Ministry of Finance reporting entities are allowed to entrust the conducting of customer due diligence with third persons from countries which impose requirements equivalent to those laid down in the Directive. Croatia has not implemented art 28 (4), (5).
Conclusion	Croatia is in compliance with the Directive.
Recommendations and Comments	No recommendations.

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)15ANN