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

MONEYVAL(2010)26

Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

HUNGARY

30 September 2010

Hungary is a member of MONEYVAL. This evaluation was conducted by MONEYVAL and the report was adopted by MONEYVAL as a 4th round mutual evaluation report at its 33rd Plenary (Strasbourg, 27 September – 1 October 2010)

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LIST OF ACRONYMS USED

ACP	Act XIX of 1998 on Criminal Proceedings
AML Law	Anti-Money Laundering Law
AML/CFT Act	Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing
APS Act	Act CXL of 2004 on the General Rules of Administrative Proceedings and Services
BA	Bar Association
CCIB	Central Criminal Investigation Bureau
CDD	Customer Due Diligence
CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CIFE Act	Act CXII of 1996 on Credit Institutions and Financial Enterprises
CIT	Cash in Transit
The Council	Council of the European Union
CTR	Cash Transaction Reports
DNFBP	Designated Non-Financial Businesses and Professions
ECB	European Central Bank
ESW	Egmont Secured Web
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
EUROPOL	European Police Office
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FRM Act	Act CLXXX of 2007 on the Implementation of Financial and Asset-related Restrictive Measures ordered by the European Union, and on Respective Amendments of Other Laws
HCC	Hungarian Criminal Code
HCFG	Hungarian Customs and Finance Guard
HFIU	Hungarian FIU
HFSA	Hungarian Financial Supervisory Authority
HFSA Act	Act CXXXV of 2007 on the Hungarian Financial Supervisory Authority
HTLO/TMSA	Hungarian Trade Licensing Office, Trade and Market Surveillance Authority
HUF	Hungarian Forint (rate at time of on-site visit used €1 = HUF270)
ICSFT	International Convention for the Suppression of the Financing of Terrorism
IN	Interpretative Note
INTERPOL	International Criminal Police Organisation
IT	Information Technology
LEA	Law Enforcement Agency
MER	Mutual Evaluation Report
MFA	Ministry of Foreign Affairs
ML	Money laundering
MLA	Mutual Legal Assistance
MNB	National Bank of Hungary
MoF	Ministry of Finance
MoJLE	Ministry of Justice and Law Enforcement
MOU	Memorandum of Understanding
NCCT	Non-cooperative countries and territories
NEBEK	International Criminal Cooperation Centre
NPHQ	National Police Headquarters

NSO	National Security Office
PEP	Politically Exposed Persons
RIF	Risk Information Form
Sec.	Section
SECI Centre	Southeast Europe Cooperative Initiative Regional Centre for Combating Trans-border Crime
SIRENE	Supplementary Information Request at the National Level
SIS	Schengen Information System
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TF	Terrorist financing
UN	United Nations
UNSCRs	United Nations Security Council Resolutions
VMIF Act	Voluntary Mutual Insurance Fund Act

I. PREFACE

1. This is the second 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, 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 N/C or P/C 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 Hungary, and information obtained by the evaluation team during its on-site visit to Hungary from 18 to 23 January 2010, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant Hungarian government agencies and the private sector. 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 Inga Melnace (Deputy Director, Criminal Law Department, Ministry of Justice, Latvia) who participated as legal evaluator, Mr. Philipp Roeser (Financial Market Authority, Liechtenstein) who participated as financial evaluator and Mr. Paul Pitnik (Federal Ministry of Finance, Austria) who participated as financial evaluator for the FATF and Mr. Raul Vahtra (Chief Superintendent, Head of the Financial Intelligence Unit, Central Criminal Police, Estonia) who participated as a law enforcement evaluator and 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

    Appendices (relevant new laws and regulations)

Annex (implementation of EU standards).

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 17th Plenary meeting – 30 May to 3 June 2005), which is published on MONEYVAL's website. 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 2010 or shortly thereafter.

II. EXECUTIVE SUMMARY

Background information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in Hungary at the time of the 4th on-site visit (18 to 23 January 2010) 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 Hungary 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 Hungarian AML/CFT system.

Key findings

2. The core elements of Hungary's AML/CFT regime are established in the Hungarian Criminal Code (HCC), which contains the ML and TF offenses; Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (AML/CFT Act). A new AML/CFT Act was introduced in 2007, when Hungary transposed the third EU AML/CFT Directive, and it's Implementing Directive, into national law as well as introducing the financing of terrorism into preventive legislation.

3. Hungary has continued to develop and strengthen its AML/CFT regime since the third round report which was adopted in June 2005. There is, however, still a very low level of prosecutions for money laundering (ML) (*and of orders to confiscate assets*). In the view of the evaluators this significantly undermines the effectiveness of the regime. Furthermore, there appear to be deficiencies regarding the HFIU's operational independence and autonomy.

4. In terms of risk, as a consequence of Hungary's strategic location in central Europe, a cash-based economy, and a well-developed financial services industry, money laundering in Hungary is related to a variety of criminal activities, including illicit narcotics-trafficking, prostitution, trafficking in persons, fraud and organised crime. Other prevalent economic and financial crimes include official corruption, tax evasion, real estate fraud, and identity theft. Although there is a domestic terrorist organisation, the risk of the country being used as a base for terrorism or financing of terrorism is estimated as being low.

Legal Systems and Related Institutional Measures

5. Although minor legislative improvements have taken place since the publication of the 3rd Round MER, it can be concluded that the ML criminal provisions are largely in line with the material elements of the Vienna and Palermo Conventions.

6. The shortcomings with regard to the Vienna and Palermo Conventions, such as lack of physical element of conversion or transfer of property for the purpose of disguising the illicit origin of the property (unclear) and for the purpose of helping any person who is involved in committing the predicate offence to evade the legal consequences of his or her action and unnecessary requirement of the purpose element for the acts of concealment and suppression (disguise) of

location, disposition or ownership of or rights with respect to property, partial criminalisation of self-laundering and practical problems of proving the intent of concealing, in the view of the evaluators might have negative impact on the effective fight against money laundering by precluding the practitioners from using the full range of the norms of Vienna and Palermo Conventions.

7. The evaluators were concerned about the low number of convictions for money laundering offences compared to the large number of convictions for proceeds generating offences (18 since 2006). Moreover, the evaluators have considered not just the number of ML convictions but the type and quality of ML cases being brought forward after 16 years of criminalisation of ML in Hungary, against the background of proceeds generating crimes in the country and the comparative importance of the financial sector; though the Hungarian authorities were unable to provide the evaluators with the information relating to the types of ML convictions, almost all of the investigations (9 out of 10) in 2009 were related to self-laundering, which indicates that only the simplest cases are being taken forward.

8. The evaluation team welcomed the amendments made by Act XXVII of 2007 on the amendment of the Criminal Code with regards to financing of terrorism, making it possible to punish an attempt to provide or collect funds for an individual terrorist to commit a terrorist act. However, a number of shortcomings still prevent it from being fully in line with the requirements of SR II. The Criminal Code does not provide for an offence of terrorist financing in the form of provision or collection of funds with the unlawful intention that they should be used or in the knowledge that they are to be used by an individual terrorist for any purpose, it is unclear whether the financing of terrorist organisations' day to day activities are incriminated and provision or collection of funds for terrorist organisations' day to day activities is not covered.

9. The evaluators are aware that there has been a Hungarian domestic terrorist organisation and that since 2005 there have been 18 convictions for terrorist offences, however, the evaluators were not able to assess the possible financial dimension of these terrorist offences. Moreover, absence of any investigation, prosecution or conviction for terrorist financing raises concerns regarding the effectiveness and efficiency of the implementation of SR II.

10. While the legal framework for the confiscation regime is convincing in that it provides for a wide range of confiscation, seizure and provisional measures with regard to property laundered, proceedings from and instrumentalities used in and intended for use in ML and TF or other predicate offences, issues can be raised about its effectiveness particularly as in the context of the proceeds from proceeds generating crimes in the country.

11. The Hungarian legal background for asset/funds freezing related to terrorist financing has been created by the Act CLXXX of 2007 on the Implementation of Financial and Asset-related Restrictive Measures ordered by the European Union, and on Respective Amendments of Other Laws (FRM Act). The implementation of SR.III relies upon the application of binding EU legislation and overall coordination on dissemination of the lists is unclear and efficient coordination seems to be lacking. Although the FRM Act provides for the HFIU to constantly examine and monitor, on its own initiative, whether the designated persons have funds or economic resources which are subject to sanctions of the EU and the UNSC in Hungary, the scope of such powers and how they are used in practice is not clear. Furthermore, Apart from the HFSA, there is no clear supervision by other regulators of compliance with SR.III and no clear capacity by them to sanction in the event of non-compliance. In particular, lack of awareness of the UN and EU lists in the non-banking sector gives rise to concerns of effectiveness of implementation.

12. In 2007, the FIU functions were transferred from the National Police Headquarters to the HCFG which is an armed law enforcement and public administration body supervised by the Minister in charge of tax policy. The HCFG is an agency of the central body that has nationwide jurisdiction

and operates and manages its finances independently. Being a structural unit of the HCFG, there appear to be deficiencies regarding the HFIU's operational independence and autonomy. Furthermore, legislation does not expressly provide for the HFIU to have direct or indirect access, on a timely basis, to information to properly undertake its functions other than STR analysis. In particular, the evaluators considered that the low number of case reports submitted to law enforcement agencies for initiating open criminal ML/CFT investigations brings into question the effectiveness of the HFIU.

13. The current cross-border declaration system in place in Hungary is based on EU Regulation, hence it only applies to the movements at the borders between Hungary and non-EU Member States. Although the authorities stated that the HCFG carries out in-depth inspections along the internal and external borders of the EU by setting up mobile control units, there appears to be no legislative basis that covers all the requirements of SR IX on internal EU borders. In the evaluators' view this might have a negative impact on overall effectiveness of the cash control system. Furthermore, there is no administrative ability to stop/restrain or seize in the case of ML/FT and the sanctions available are not effective, proportionate or dissuasive.

Preventive Measures – Financial Institutions

14. Hungary has adopted and implemented a risk-based approach to AML/CFT, particularly in relation to customer/beneficial owner identification and verification requirements. Pursuant to the AML/CFT Act financial institutions are entitled to specify the extent of customer due diligence measures on a risk-sensitive basis. In this context the AML/CFT Act specifies minimum and maximum data sets for the identification of the customer and of the beneficial owner as well as for recording the details of the transaction order; although, the Law does not explicitly require enhanced monitoring in instances of enhanced due diligence.

15. Meetings with the private sector indicated a high level of awareness of the CDD requirements, and all categories of financial institutions appear to have developed a comprehensive understanding of the CDD and record-keeping obligations under the new AML/CFT Act. The Hungarian requirements on anonymous passbooks fall within the derogation of Article 6 of the EU's 3rd AML/CFT Directive, this is, however, not sufficient to meet the requirements of essential criteria. The definition of beneficial owner is not sufficiently broad and it is unclear whether this covers the ultimate beneficial owner and there is no explicit requirement to verify that a person purporting to act on behalf of the customer is so authorised.

16. The legislation on financial institution secrecy appears to enable the authorities to access the information that they require in order to exercise their functions in the fight against money laundering and terrorist financing and does not inhibit the implementation of the FATF recommendations. Furthermore, no problems appear to have been experienced in practice.

17. Overall the record keeping requirements were in line with the requirements of the Recommendations although, there is no provision to ensure that the mandatory record-keeping period may be extended in specific cases upon request of the authorities and financial institutions are not specifically required to maintain records of business correspondence.

18. The wire transfer rules are clearly laid out under the AML/CFT Act where necessary. All representatives of providers of payment services met during the on-site visit appeared to be aware of their obligations when conducting transfers of funds.

19. The reporting level from the financial sector appears to be satisfactory although other institutions and DNFBPs show a significantly low level of reporting and only banks have submitted reports on terrorist financing and the significant decrease in the number of STRs in 2009 gives a rise to concerns over the effectiveness of the reporting system. There is no clear provision in the

AML/CFT Act requiring reporting of predicate offences (including tax matters) to the HFIU and attempted transactions are not specifically covered. There are no specific guidance and indicators in place for obliged entities on reporting terrorist financing.

20. The HFSA is organised as a self-regulatory administrative body and has been established as the single regulatory body in charge of banking, insurance, securities and pension company supervision. The MNB is responsible for the licensing and supervision of companies that provide cash processing services in Hungary and has an independent supervisory authority. The HFSA and MNB have broad powers to supervise the relevant service providers and are able to use all their regulatory and prudential measures to control compliance with the AML/CFT requirements. Furthermore, the "fit & proper" requirements are only applicable to directors/executive officers and not to the senior management of financial institutions, with the exception of investment fund management companies. It was also considered that the sanctioning regime was not broad enough and that the sanctions available were not sufficiently dissuasive.

Preventive Measures – Designated Non Financial Businesses and Professions (DNFBP)

21. Overall the meetings with the private sector demonstrated high awareness and good understanding of the CDD and record-keeping obligations under the AML/CFT Act (apart from below mentioned exemptions). They also showed high awareness for sector specific and current AML/CFT risks. In particular, the extensive Model Rules issued by the competent authorities appear to provide a very useful basis for effective implementation of CDD and record keeping requirements. CDD as well as record-keeping requirements are integral parts of the inspection program for supervisors. However, the evaluators did note a weakness in the effective implementation of CDD requirements regarding real estate agents and dealers in high value goods.

22. Although all sectors appeared to be aware of their reporting responsibilities, the low number of STRs from the sector raises concerns about the effectiveness of the implementation by DNFBPs. In particular, there has been a significant decline in the number of STRs received from lawyers and notaries which appears to coincide with the implementation of new reporting arrangements.

Non-Profit Organisations

23. It would appear that, since the 3rd round evaluation report, insufficient steps had been taken to bring the Hungarian system into conformity with SR.VIII. A review of the sector has still not been undertaken and there has been insufficient outreach to the NPO sector. Concerns remain about the transparency of the sector and insufficient steps have been taken to strengthen the legal basis for supervision and oversight over NPO fundraising.

National and International Co-operation

24. The authorities have a variety of mechanisms in place to facilitate cooperation and policy development. There are also effective mechanisms to facilitate cooperation between the agencies involved in investigating ML and TF.

25. Hungary has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. The legislation has been amended in order to implement the Conventions, but existing legislation does not cover the full scope of these Conventions. Furthermore, measures still need to be taken in order to properly implement UNSCRs 1267 and 1373, in particular, legal persons do not appear to be liable for terrorist financing offences in practice and there is no definition of "funds" in the Criminal Code.

26. Legal provisions for providing mutual legal assistance are laid down in domestic law, bilateral and multilateral treaties and apply both to ML and FT and the possible forms of international

cooperation cover a wide range of forms. However, at the time of the assessment, the effectiveness of the system could not be established because of a lack of comprehensive and adequately detailed statistics on MLA requests.

27. The Hungarian authorities appear to have sufficient powers to enable them to provide different forms of assistance, information and cooperation without undue delay or hindrance. The responses received to MONEYVAL's standard enquiry on International Cooperation which was sent to MONEYVAL and FATF members received generally a positive response. However, as stated above, due to the lack of statistics it was not possible to assess how effectively the Hungarian authorities were responding to international requests for cooperation.

Other Issues

28. Overall, all supervisors and law enforcement agencies appeared to be adequately structured, resourced and trained.

29. It was considered that insufficient attention had been applied to the maintenance of meaningful statistics by the Hungarian authorities. This particularly applied in the areas of analysis of the outcome of STRs, investigations, criminal proceedings, convictions, provisional measures and confiscations. As a result the evaluators were concerned that the Hungarian authorities would not be able to perform a regular overview of the effectiveness and efficiency of the AML/CFT system based on statistical analysis. Similar concerns applied to areas such as cross border declarations, mutual legal assistance and international cooperation.

III. MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General Information on Hungary

1. As noted in the 3rd round report, Hungary acceded to the European Union in 2004. Hungary is bordered by Austria, Slovenia, Romania and Slovakia within the EU, and has 3 external EU borders, with Ukraine, Croatia and Serbia. Its population is 10,020,000 (as at August 2009). The official currency of Hungary is the Forint.

2. The reader is referred to the third round mutual evaluation report for the details of the form of government and principles of its legal system

Economy

3. Although Hungarian economy was hit exceptionally hard by the global economic crisis of 2008-2009, it continues to show moderate growth in the period from 2006-2009, as reflected in the table beneath. However, a significant downturn in the economy was recorded in 2009.

Table 1: Economic indicators

	2006	2007	2008	2009
GDP €bn.	89.89	101.11	105.64	93.00
GDP year growth in %	4.0	1.0	0.6	-6.3
GDP per capita €'ooo's	8.925	10.054	10.524	9.280
Inflation rate	3.9	8.0	6.1	4.2

Table 2: Overview of the Hungarian financial sector in terms of total assets

	Assets (€ m)		Structure (%)		% of GDP		No. of Institutions		
31 December	2008	2009	2008	2009	2008	2009	2007	2008	2009
Monetary financial institutions	**127 051**	**128 305**	**74**	**73**	**127**	**133**	**200**	**195**	**187**
Banks	121 093	122 386	71	70	121	127	43	47	47
Credit cooperatives	5 958	5 919	3	3	6	6	157	148	140
Non-monetary financial institutions	**43 988**	**47 651**	**26**	**27**	**44**	**50**	**536**	**535**	**545**
Insurers	8 331	8 821	5	5	8	9	76	75	73
Pension companies/funds	9 887	12 801	6	7	10	13	158	141	132
Investment funds	10 373	12 308	6	7	10	13	31	35	36
Leasing Companies	12 728	11 117	7	6	13	12	249	262	269
Brokerage companies, management companies	2 668	2 603	2	1	3	3	21	24	27
Others	0	0	0	0	0	0	0	0	0
Total	171 039	175 956	100	100	170	177	736	730	736

1.2 General Situation of Money Laundering and Financing of Terrorism

Recorded criminal offences

4. As a consequence of Hungary's strategic location in central Europe, a cash-based economy, and a well-developed financial services industry, money laundering in Hungary is related to a variety of criminal activities, including illicit narcotics-trafficking, prostitution, trafficking in persons, and organised crime. Other prevalent economic and financial crimes include official corruption, tax evasion, real estate fraud, and identity theft (copying/theft of bankcards).[1] The Hungarian authorities provided the evaluators with the number of reported offences causing damage the amounts of damage as well as amounts recovered from damages. The evaluators were also provided with the number of convictions on FATF designated categories of offences as shown below:

Table 3: Number of convictions for FATF designated categories of offences

FATF designated categories of offences	Number of convictions			
	2006	**2007**	**2008**	**2009**
Participation in organised criminal group and racketeering	664	534	634	627
Terrorism and terrorist financing	4	6	3	5
Trafficking in human beings and migrant smuggling	653	473	402	256
Sexual exploitation and sexual exploitation of children	599	524	450	515
Illicit trafficking in narcotic drugs and psychotropic substances	2,467	2,359	2,326	2,335
Illicit arms trafficking	413	381	443	467
Illicit trafficking in stolen and other goods	3,072	2,230	1,878	1,765
Corruption and bribery	431	369	302	230
Fraud	6,833	6,639	7,103	7,492
Counterfeiting currency	137	110	113	131
Counterfeiting and piracy of products	222	188	141	158
Environmental crimes	110	189	149	260
Murder, grievous bodily injury	28,086	26,637	24,499	23,684
Kidnapping, illegal restraint and hostage-taking	623	513	504	589
Robbery or theft	27,377	24,267	23,820	24,443
Smuggling	1,400	849	644	425
Extortion (included under Kidnapping, etc. above)				
Forgery	13,618	12,340	12,243	12,180
Piracy	957	698	742	700
Insider trading and market manipulation	0	0	2	7
Total number of all convictions	**87,666**	**79,306**	**76,398**	**76,269**

[1] United States Department of State, 2009 International Narcotics Control Strategy Report (INCSR).

Table 4: Criminal Damage investigated by all investigating authorities

Year	Total Reported Offences	Number of Reported Offences Causing Damage	Damage caused (HUF m)	Damage caused (€ m)
2006	425,491	253,647	139,666	939
2007	426,914	266,559	171,538	635
2008	408,409	251,293	167,889	621
2009	394,034	240,472	144,689	536

Table 5: Crimes against property

	All Crimes	Crimes against Property	Damage caused (HUF m)	Damage caused (€ m)
2006	425,941	260,147	95,382	353
2007	426,914	276,193	117,080	433
2008	408,407	265,755	100,911	374
2009	394,034	253,351	101,657	377

5. The main categories of offence that the Hungarian Financial Intelligence Unit (hereinafter referred to as HFIU) identified and disseminated as a result of notifications received were money laundering suspicions related to tax fraud, fraud, embezzlement and misappropriation of funds. In addition, the HFIU also identified and disseminated reports relating to money laundering concerning criminal bankruptcy, smuggling (illicit trafficking), and illegal trafficking of excise goods, misuse of narcotic drugs; unauthorised financial activity and unlawful acquisition of economic advantage.

6. Due to the consequences of the global financial crisis, some new risks have emerged. According to the experience and findings of the Hungarian Financial Supervisory Authority (hereinafter referred to as HFSA) gained during recent supervisory activities, savings co-operatives which have lost a part of their capital, have become vulnerable to investors who invest through offshore companies using the capital increase to conceal the origin of funds arising from illegal activities and thus hide the identity of the ultimate beneficial owners. These savings co-operatives are frequently controlled by a new management, appointed as representatives of these investors and are thus vulnerable to being used for money laundering and terrorist financing. This may facilitate weak monitoring and filtering procedures and/or in adequate analysis of the relationship of transactions and client/related clients financial service providers; this in turn could facilitate the turning of illegal money into legal. The HFSA has drawn the attention of financial institutions to the above risks and vulnerabilities by addressing the issue in its non-binding guidelines, recommendations and communiqués.

7. It appears from the data of the Unified Criminal Statistics of Investigation Authorities and Prosecution Service that in criminal proceedings, instituted for the crime of money laundering, ML offence has been committed relating to the following proceeds:

Table 6: Proceeds involved in money laundering offences

Year	Proceeds (in HUF)	Proceeds (in EUR)*
2005	1,402,013,500	5,192,642
2006	10,189,038,200	37,737,179
2007	11,989,728,700	44,406,402
2008	3,584,307,100	13,275,211
1st semester of 2009	17,449,117	64,626

* Calculated on the exchange rate €1 = 270 HUF)

Suspicious transaction reports (STRs) from reporting entities

8. With respect to the reporting of suspicious transactions, the situation has changed since the last evaluation. Overall, the number of STRs has declined, with a sharp decline in 2009. In 2003, there were 12,364 STRs and in 2004 there were 14,120 STRs. The overall number of STRs has decreased from 11,385 in 2005 to 10,001 in 2006 and to 9,480 in 2007. A slight increase was recorded in 2008 as 9,940. However, the number of STRs significantly decreased to 5,440 in 2009. While, 46,246 STRs were received for the period from 2005 to 2009, only 29 STRs (3 in 2005; 2 in 2006; 5 in 2007; 12 in 2008 and 7 in 2009) were related to terrorist financing cases including the reports made according to the Act CLXXX of 2007 *on the Implementation of Financial and Asset-related Restrictive Measures ordered by the European Union, and on Respective Amendments of Other Laws* (hereinafter: FRM Act), the remaining STRs were related to money laundering cases. Banks have been reporting the highest number of STRs. Out of the total of 46,246 STRs; banks reported 37,092 STRs (80% of the total number of STRs between 1 January 2005 and 31 December 2009). 3 of the reports submitted in 2009 were related to suspicions of terrorist financing, a further 4 reports were submitted in accordance with the provisions of the FRM Act which were not related to the financing of terrorism.

Cases disseminated to the competent authorities

9. In the period from 1 January 2005 to 31 December 2009, the HFIU forwarded 235 case reports on suspicious transactions relating to money laundering offences to law enforcement agencies. No cases have been forwarded regarding TF offences. The numbers of notifications on money laundering sent to the law enforcement authorities have been fluctuated, as indicated below:

   - 32 notifications in 2005;
   - 51 notifications in 2006;
   - 88 notifications in 2007;
   - 6 notifications in 2008;
   - 58 notifications in 2009.

10. The number of notifications on money laundering rose between 2005 and 2007 but significantly declined in 2008, increasing again in 2009. The Hungarian authorities only provided details of the predicate offences related to the above notifications for 2009. The predicate offences were mostly related to tax fraud (36 out of 58). Fraud, unauthorised financial activity, embezzlement and acquisition of economic advantage were the other predicate offences for the remaining notifications. The implementation of the new AML/CFT Act on 15 December 2007 removed certain restrictions on the dissemination of information and allowed dissemination of notifications without identifying the underlying criminality at

the time of dissemination. However, the overall number of notifications is considered to be very low.

Terrorist activity in Hungary

11. There were only a limited number of criminal proceedings instituted for acts of terrorism or similar crimes committed in Hungary.

12. According to the Hungarian authorities, acts of terrorism investigated by the National Bureau of Investigation Counter Terrorist and Extremist Department include hostage taking situation and similar attempts in prisons, banks with demands made on behalf of the perpetrators against the state or state agencies. Terrorism investigations also include certain threats against the government, state, political and jurisdiction institutions or their high officials. Funding of the costs of such crimes (including the costs of e-mails, letters, phone calls, knives or handguns) are typically covered and provided by the individual perpetrators.

13. The National Bureau of Investigation Counter Terrorist and Extremist Department started to dismantle the first domestic terrorist organisation (Hungarian Arrows Liberation Army) with initial arrests performed in April 2009. Beyond internet propaganda and blogging, the terrorist group's activities included Molotov cocktail attacks, handgun shots at politicians' properties, preparing improvised explosive device (IEDs) and triacetone triperoxide (TATP) based bombs and also recruiting and training their members by military standards. The evaluators were informed that financing of most of these activities was possible due to the donations of members, friends and supporters. One of the leaders ran his own business (selling folk and traditional items, clothes, etc.) and possibly applied part of his profit. The authorities advised that so far they have had no evidence of financial support received from domestic or international political or criminal organisations or sources arising from any criminal activity. No assets have been frozen.

14. As at the date of the on-site visit, there had not been any criminal investigations, prosecutions or convictions for terrorist financing offences in Hungary.

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

Financial Sector

15. As at 31 December 2009, the Hungarian financial system was comprised of 30 commercial banks, 8 specialised credit institutions[2], 139 saving co-operatives, 266 financial enterprises[3], 25 investment companies, 38 investment funds (management companies), 63 insurance companies, 64 pension funds, 37 health care funds, 15 mutual funds and 2 payment institutions. There are also 211 currency exchange offices. Currency exchange activities can only be performed by licensed banks or their contracted agents.

16. The number of licensed institutions remained largely stable compared to the 3rd round report. However, a market consolidation has been observed regarding the number of saving co-operatives and mutual funds.

17. The majority of large financial institutions are subsidiaries of major foreign financial groups. The only branches/subsidiaries of the Hungarian financial institutions are in Slovakia, Croatia, Romania, and Bulgaria.

18. The banks are considered to be the driving force in the whole financial sector, holding 70 percent of financial system assets, amounting to 127 percent of the Hungarian GDP.

[2] Licensed activities of specialised credit institutions are restricted to mortgage loans, home savings and loans, export credit. development credits for SMEs, project financing.
[3] Main services of financial providers are leasing and loans.

19. All financial institutions are licensed and supervised by the HFSA with the exception of cash processors, which are licensed and supervised by the National Bank of Hungary. As of 31 December 2009, 4 cash processors had been operating in Hungary.

20. Operations of investment service providers and commodity dealers are now established under Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers instead of the Capital Market Act.

21. The new AML Act was introduced in December 2007, implementing the 3rd EU AML/CFT Directive, and extended its scope to the accepting and delivering of domestic and international postal money orders.

22. Act LXXXV of 2009 on the Pursuit of the Business of Payment Services, in force since 1 November 2009 (implementing EU Directive 2007/64/EC), introduced "Payment institutions" to the Hungarian Financial System. The services provided by those payment service providers (money remittance and other payment services) are covered within the definition of "financial services" in Act CXII of 1996 on Credit Institutions and Financial Enterprises (CIFE Act) respectively in the AML/CFT Act. Apart from those services no new categories of financial institutions have been introduced since the 3rd round report.

23. Full details of the supervisory structure in Hungary are set out in the 3rd round report. With the coming into force of an amendment to the HFSA Act on 1 January 2010, there have been some major changes regarding the organisational structure of the HFSA. Inter alia, the HFSA became a self-regulatory administrative body, operated and managed independently and funded through an independent chapter vested by the Parliament in the central budget. The Parliament has exclusive jurisdiction to revise the principal amounts of the Authority's expense and revenue accounts. In future, the Chairman of the HFSA will account for the HFSA's activities directly to the Parliament. The HFSA's sanctioning regime has also been strengthened.

Designated Non-Financial Businesses and Professions (DNFBP)

24. Full details of the structure of DNFBPs in Hungary are set out in the 3rd round report. Since the 3rd round report was prepared, the scope of application of the AML framework has been expanded as a consequence of the implementation of the 3rd EU AML/CFT Directive. The new AML/CFT Act is also applicable to all natural or legal persons trading in goods by way of business and which allow cash payments above the amount of HUF 3.6 m (€13,333), which goes beyond the FATF categories of dealers in precious metals and dealers in precious stones. This new category of persons is supervised by the Hungarian Trade Licensing Office.

25. Moreover, "electronic casinos" have been introduced as a new category of land-based gaming units. The scope of the AML/CFT Act was extended accordingly. However, such type of game room had not commenced operation in Hungary at the time of the on-site visit.

26. Apart from these amendments there have been no major changes in the overall structure of DNFBPs since the 3rd round report. Actual numbers of registered DNFBPs and supervisory bodies for each type of DNFBPs are shown below:

Table 7: Designated non-financial businesses and professions

Type of business	Supervisors	No. of Registered Institutions
Casinos (including internet casinos)	Gaming Board Department of the Hungarian Tax and Financial Control Administration	5
Real estate agents	(HFIU)	
Dealers in precious metals	Hungarian Trade Licensing Office	2,744
Dealers in precious stones	N/A	N/A
Notaries	Regional chambers of notaries public	315
Lawyers	Regional bar associations	11,545
Auditors	Chamber of Hungarian Auditors	3,392
Tax advisers	(HFIU)	1,754 (nat.pers.)
Tax consultants	(HFIU)	3,591 (nat. pers.)
Certified tax consultants	(HFIU)	152 (nat. pers.)
Accountants & bookkeepers	(HFIU)	58,464 (nat. pers.)

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

27. There have been no major changes to the commercial laws and mechanisms, governing legal persons and arrangements as well as non-profit organisations, since the third round mutual evaluation report.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

28. The 3rd round mutual evaluation report described and analysed the AML/CFT measures in place in Hungary at the beginning of 2005, and provided recommendations on how certain aspects of the system could be strengthened. After its adoption at the 17th MONEYVAL plenary meeting, the report was presented to the Government of Hungary. On the basis of this report, the Government of Hungary adopted an Action Plan for the implementation of the recommendations. It determined legislative tasks, impact studies and training activities to be conducted by relevant agencies and authorities responsible for AML issues. Most of the elements of the action plan as set out in the 3rd round report appear to have been addressed and overall progress has continued to be made since the adoption of 3rd round mutual evaluation report.

29. After the 3rd report the overall policy objectives were to further improve the Hungarian legal and institutional AML/CFT framework. Upon the adoption of the 3rd AML/CFT Directive by the EU, Hungary considered the preparation of a new AML/CFT law so as both to harmonise its legislation with the 3rd EU Directive and to improve its existing AML/CFT legal framework.

30. Hungary has implemented the 3rd AML/CFT Directive by the Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter referred to as AML/CFT Act) which came into force on 15 December 2007. The text of the Act is set out in Annex III.

31. The FIU functions have been transferred to the Hungarian Customs and Finance Guard (hereinafter referred to as HCFG) from the National Police Headquarters (hereinafter referred to as NPHQ). The new FIU was set up simultaneously with the entering into force of the new AML/CFT Act on 15 December 2007. The Hungarian authorities explained that this transfer of responsibilities took place for efficiency and operative reasons. The new AML/CFT Act introduced an electronic reporting system. Although this new electronic reporting system has

led to a decrease in the number of STRs since its introduction, the authorities believe that since the introduction of the new system the STRs received are of a higher quality.

32. After the entering into force of the new AML/CFT Act the Hungarian authorities have initiated a broad range of training activities in order to facilitate the implementation of the new provisions of the AML/CFT Act as well as the FRM Act. Model rules have been published in order to help service providers establish their own internal AML/CFT rules.

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

33. As there have been significant changes in the institutional and legal framework since the adoption of 3rd round mutual evaluation report, it is necessary to set out the responsibilities and roles of main bodies and authorities in this report. The following are the main bodies and authorities involved in combating money laundering or financing of terrorism:

Ministry of Finance

34. The Ministry of Finance (MoF) has the primary responsibility for forming the regulatory framework concerning the fight against money laundering and terrorist financing. The Ministry of Finance is also responsible for national and international communications concerning AML/CFT related issues. The Minister of Finance chairs the Anti-Money Laundering Inter-Ministerial Committee.

Ministry of Foreign Affairs

35. The Ministry of Foreign Affairs (MFA) is responsible for the monitoring of compliance with the counter terrorism resolutions and regulations and for coordinating the implementation of the sanctions imposed by the EU and the UN Security Council.

Ministry of Justice and Law Enforcement

36. The Ministry of Justice and Law Enforcement (hereinafter referred to as MoJLE) is responsible for the preparation of criminal law related legislation and the legislation related to the judicial, legal or constitutional system of Hungary. The MoJLE is responsible for receiving foreign mutual legal assistance (MLA) requests as well as sending MLA requests from the Hungarian courts or prosecutor's offices to foreign counterparts. Furthermore, the Minister of Justice and Law Enforcement chairs the Inter-Ministerial Working Group Against Terrorism.

Hungarian Financial Supervisory Authority

37. The HFSA plays the primary role in preventing and combating ML and TF in Hungary. The HFSA is the authority responsible for licensing and prudential supervision of financial institutions. It has power to impose sanctions (fines) for violations of relevant legislation. Under the new AML/CFT Act the HFSA, as the supervisory body for financial institutions and enterprises, ensures the fulfilment of AML/CFT requirements within the financial sector.

Law enforcement agencies investigating ML and TF

38. The implementation of the new AML/CFT Act amended the relevant provisions of the Act on Criminal Proceedings. As a result the main investigative competence for money laundering now falls within the competence of the Hungarian Customs and Finance Guard. However, if money laundering is committed by persons having legal immunity based on public legal status (MP's, judges of the Constitutional Court, ombudsmen, president and the deputies of the State Audit Office, judges, prosecutors), or international legal status, or by a clerk or secretary or executive of the court or the prosecutor's office, an inspector at the prosecutor's office, an independent bailiff, a county court bailiff or their respective deputies, a notary public, or a sworn member of the police or the civil national security services, or the HCFG, or financial investigator, the investigation falls within the competence of the Prosecutorial Office for Criminal Investigation. The Police have complementary competence for investigating ML, especially in cases where investigations were originally launched on financial crimes other

than ML (e.g. embezzlement or fraud, where the Police have the investigative competence) and where during the course of investigation the facts or circumstances emerge that imply the commission of ML.

39. The HCFG has exclusive responsibility in preventing and detecting cases of money laundering involving cash movement checks at frontiers. Every amount of cash (or any equal financial means, such as cheques) exceeding €10,000 has to be declared by passengers and registered by customs. Cases of suspicious of money laundering have to be reported to the competent authority (the HFIU) which is allocated within the HCFG.

40. The investigation of acts of terrorism (Section 261 of Act IV of 1978 *on the Criminal Code*, hereinafter referred to as the Hungarian Criminal Code or the HCC) and terrorist financing falls within the competence of the Police (National Bureau of Investigation).

Specialised intelligence or security services

41. The National Security Office (NSO), as it is defined in Act CXXV of 1995 *on the National Security Services of the Republic of Hungary*, monitors the activities of persons threatening the economic and financial security of the Republic of Hungary with a view to prevention. Similarly, it seeks to monitor and prevent the activities of individuals aimed at the commission of acts of terrorism.

42. In its work, the NSO may discover information referring to money-laundering or terrorism-financing activities. Should the data gathered confirm the suspicion, the information is immediately forwarded to the competent law-enforcement authority. However, the information is not forwarded if it violates higher national security interests.

Hungarian Financial Intelligence Unit (HFIU)

43. The HFIU is the national centre for receiving, analysing and disseminating suspicious transaction reports (STRs) and other information regarding potential money laundering or terrorist financing to the competent authorities. From the entry into force of the new AML/CFT Act (15 December 2007) the HCFG has been appointed as the "*authority operating as the national financial intelligence unit"*. According to the new AML/CFT Act the HFIU has supervisory functions also over service providers engaged in providing real estate agency or brokering (and any related services) as well as service providers engaged in providing accountancy (bookkeeping), tax consulting services or tax advisory activities.

DNFBP supervisory authorities

Hungarian Trade Licensing Office

44. The Hungarian Trade Licensing Office is responsible for the supervision of precious metals dealers and for the registration and supervision of traders with goods declaring to accept cash payments exceeding 3.6 million HUF (€13,333).

Gaming Board Department of APEH (Hungarian Tax and Financial Control Administration)

45. The Gaming Board is responsible for the licensing and supervision of casinos and electronic casinos operating in Hungary.

Regional chambers of notaries public

46. The five regional chambers with seats in Budapest, Győr, Miskolc, Pécs and Szeged cover the whole territory of the country and are responsible for the supervision of notaries public and, as self-regulatory organisation (SRO), they are responsible for the forwarding of STRs to the HFIU received from notaries public.

Regional bar associations

47. The twenty regional bar associations (1 operating in the capital, 19 in the counties of Hungary) are responsible for the supervision of attorneys and law offices, as well as for the forwarding of STRs to the HFIU received from lawyers or law offices.

Chamber of Hungarian Auditors (Magyar Könyvvizsgálói Kamara, MKVK)

48. The Chamber of Hungarian Auditors has countrywide competence for the supervision of auditors.

The National Bank of Hungary (Magyar Nemzeti Bank)

49. The National Bank of Hungary (hereinafter referred to as MNB) exercises supervisory control over cash-processing companies.

Committees and other bodies to co-ordinate AML/CFT action

50. The reader is referred to the 3rd round mutual evaluation report for the details of the Anti-Money Laundering Inter-Ministerial Committee and the Inter-Ministerial Working Group Against Terrorism.

c. The approach concerning risk

51. No national (countrywide) analysis or assessment focusing on potential ML/TF risks has been carried out in Hungary. However, the authorities appeared to be aware of the threats Hungary currently faces from organised crime. They have argued that while preparing and drafting the new AML/CFT Act, which implements the so-called risk-based approach introduced by the 3rd EU AML/CFT Directive, the relevant Hungarian authorities relied on the experience of supervisory and professional representative bodies (such as the Hungarian Banking Federation) in respect of actual risks and vulnerabilities. According to the authorities, it was clearly and easily identifiable which professions, types of transactions, activities, behaviours or habits needed to be addressed by the new AML/CFT Act.

52. The new AML/CFT Act, complying with the 3rd EU AML/CFT Directive, expanded its scope to natural or legal persons trading in goods by way of business and allowing cash payments above the amount of 3.6 million HUF (€13,333) or more. Beyond this, and compared with the coverage in the former AML/CFT Act, the scope is also extended to other professions and business, e.g. postal financial intermediation services, postal money transfer, accepting and delivering domestic and international postal money orders.

53. The Hungarian authorities further argued that they have received sufficient feedback from service providers on actual problems and difficulties. Based on this feedback and on their own experiences, the Hungarian authorities have begun to review the current AML/CFT regulations. The MoF, in cooperation with the HFSA, the General Prosecutor's Office, the HFIU, the NPHQ and the National Institute of Criminology, has also begun the preparation of a comprehensive risk assessment on Hungary which is expected to be finished in 2010. It is believed by the authorities that this risk assessment, together with the revision of the current legal regulations, could then serve as the basis for laying down new legal provisions on AML/CFT.

54. The authorities deem the risk of financing of terrorism in Hungary to be very low, compared with other European jurisdictions.

d. Progress since the last mutual evaluation

Developments in the legal framework

55. The main AML/CFT legislative enhancement has been the preparation, adoption and implementation of a new AML/CFT Act that came into force on 15 December 2007. The new AML/CFT Act has replaced the previous Act on the Prevention of Money Laundering and was

intended to harmonise national law with the provisions of revised anti-money laundering legal instruments.

56. The AML/CFT Act implemented the third EU AML/CFT Directive (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) and the implementing measures (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 a 'politically exposed person' (PEP) 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). It also contains provisions for the implementation of Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.

57. The legal basis for asset/funds freezing related to terrorist financing has been created by the FRM Act. The FRM Act lays down the procedures for execution of financial and asset-related restrictive measures according to the relevant EU legislation.

58. The Hungarian Parliament adopted Act XLVIII of 2007 on the enforcement of the 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 (hereinafter: Cash Control Act).

59. The Convention of the Council of Europe No. 198 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (hereinafter Convention No. 198) was signed and ratified by Hungary on 14 April 2009 and came into force on 1 August 2009. Act LXIII of 2008 on the Promulgation of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (16 May 2005, Warsaw), entered into force on the 8 November 2008. This Act implemented Articles 14 (postponement of domestic suspicious transaction) and 47 (1) (international cooperation for the postponement of suspicious transaction) of the Convention CETS No.198 by amending the existing AML/CFT Act.

60. Act XXVII of 2007 on the Amendment of Act IV of 1978 on the Criminal Code and Other Criminal Law Related Acts introduced a new provision on financing of terrorism [Subsection (4)-(5) of Section 261 of the HCC)]. The new provision entered into force on 1 June 2007. The aim of this amendment was to bring the terrorist financing offence into line with the International Convention for the Suppression of the Financing of Terrorism from 1999 (ICSFT).

61. Act XXVII of 2007 has also amended Sections 303 and 303/A of the HCC so as to enlarge the scope of the money laundering offence and to comply with MONEYVAL's recommendations. A further amendment is that Section 303/B HCC no longer criminalises the negligent non-reporting of ML offences with respect to those who have notification obligations under the AML/CFT Act, though intentional failure to comply with reporting obligation prescribed by the AML/CFT Act has remained as an offence in the HCC (Section 303/B).

62. Empowered by the AML/CFT Act, the Minister of Finance issued Ministerial Decree 35/2007 (XII. 29) on the Compulsory Elements of Internal Rules under Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering or Terrorist Financing. The Decree forms the basis on which service providers prepare their internal AML/CFT rules and gives an exhaustive list of the elements and issues which must be incorporated and governed in the internal rules of each service provider under the AML/CFT Act.

Institutional Developments

63. The most significant change with respect to the institutional framework was that the FIU functions were transferred from the NPHQ to the HCFG. A new department named the HFIU was set up under the HCFG Central Criminal Investigation Bureau (CCIB) and has been working since 15 December 2007 in the HCFG. The HFIU is the authority for receiving, analysing and disseminating STRs.

64. At the beginning of 2006 the HFSA established a new department specialising in the prevention and combating of money laundering and financial crime. This department is responsible for the coordination of supervisory tasks and duties against money laundering and terrorist financing and cooperation with the other departments of the HFSA competent in on-site and off-site inspections including the evaluation of internal regulations according to the requirements of AML/CFT.

65. On 11 February, 2008, the HFSA established a Standing Sub-Committee on the Prevention of Financial Abuses replacing the ad-hoc AML/CFT Working Group (established on 14 March 2007). The members of the Standing Sub-Committee are the representatives of:

- the departments of the HFSA (Financial Forensic, EU and International Affairs, Prudential Supervision, Legal, IT and Regulatory Departments);
- the Hungarian Banking Association;
- the Hungarian Insurance Association;
- the Associations of Saving Cooperatives;
- Compliance officers of systemically important banks and insurance companies.

66. The Standing Sub-Committee on the Prevention of Financial Abuses has continued its work with discussions on the practical issues arising from the application of the new AML/CFT Act and Model Rules. The Working Group has carried on its work: studied the options of the Directive and, after thorough consultation with the market participants, elaborated the position of HFSA towards the new requirements of the AML/CFT Act.

67. As of 1 July 2009, a new department responsible for asset recovery has been set up within NPHQ. The Asset Recovery Office is subordinated to the National Bureau of Investigation within the NPHQ and its main task is to detect, by covert investigations, assets originating from criminal acts and those possessed by organised criminal groups and to freeze such assets.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1)

2.1.1 Description and analysis

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

68. Hungary has signed and ratified the 1988 United Nations (UN) Convention on Illicit Drugs and Psychotropic Substances (Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention). The offence of money laundering has been criminalised in the Hungarian Criminal Code (HCC) since 1994. Since that time several modifications have been introduced resulting in the present legislation, that is now largely in compliance with international standards. The last substantial and structural amendment was made on 1 June 2007 by the Act XXVII of 2007 with the intention of bringing the money laundering offence fully into line with the Vienna Convention and the Palermo Convention. The new text has enlarged the scope of the offence so as to cover the transfer of proceeds to a third party even if it is carried out through a non-banking or non-financial transaction, and covers the disguise or concealment of the origin.

69. The money laundering offence is defined in Sections 303 and 303/A of the HCC as:

Section 303

(1) Any person who, in order to conceal the origin of a thing obtained from criminal activities committed by others, that is punishable by imprisonment:
a) converts or transfers the thing in question, or uses in his economic activities;
b) conceals or suppresses any right attached to the thing or any changes in this right, or conceals or suppresses the place where thing can be found;
c) performs any financial transaction or receives any financial service in connection with the thing
is guilty of felony punishable by imprisonment of up to five years.
(2) The punishment in accordance with Subsection (1) shall also be imposed upon any person who, in connection with a thing obtained from criminal activities, that is punishable by imprisonment, committed by others:
a) obtains the thing for himself or for a third person;
b) safeguards, handles, uses or consumes the thing, or obtains other financial assets by way of or in exchange of the thing, or by using the consideration received for the thing
if being aware of the true origin of the thing at the time of commission.
(3) The punishment in accordance with Subsection (1) shall also be imposed upon any person who, in order to conceal the origin of a thing that was obtained from his/her criminal activities that is punishable by imprisonment:
a) uses the thing in his economic activities;
b) performs any financial transaction or receives any financial service in connection with the thing.
(4) The punishment shall be imprisonment between two to eight years if the money laundering specified under Subsections (1)-(3):
a) is committed in businesslike manner;
b) involves a substantial or greater amount of money;
c) is committed by an officer or employee of a financial institution, investment firm, commodities broker, investment fund manager, venture capital fund manager, exchange market, clearing house, central depository, body acting as a central counterparty, insurance company, reinsurance company, voluntary mutual insurance fund, private pension fund or an institution for occupational retirement provision, or an organisation engaged in the operation of gambling activities;
d) is committed by a public official in an official capacity;
e) is committed by an attorney-at-law.

(5) Any person who agrees on perpetration of money laundering as specified under Subsections (1)-(4) is guilty of misdemeanour punishable by imprisonment of up to two years.
(6) The person who voluntarily reports to the authorities or initiates such a report shall not be liable for prosecution for money laundering as specified under Subsections (1)-(5), provided that the act has not yet been revealed, or it has been revealed only partially

Section 303/A

(1) Any person who, in connection with a thing obtained from criminal activities, that is punishable by imprisonment, committed by others:
a) uses the thing in his economic activities;
b) performs any financial transaction or receives any financial service in connection with the thing,
and is negligently unaware of the this origin of the thing is guilty of misdemeanour punishable by imprisonment of up to two years, community service work, or a fine.
(2) The punishment shall be imprisonment for misdemeanour for up to three years if the act defined in Subsection (1):
a) involves a substantial or greater amount of money;
b) is committed by an officer or employee of a financial institution, investment firm, commodities broker, investment fund manager, venture capital fund manager, exchange market, clearing house, central depository, body acting as a central counterparty, insurance company, reinsurance company, voluntary mutual insurance fund, private pension fund or an institution for occupational retirement provision, or an organisation engaged in the operation of gambling activities;
c) is committed by a public official in an official capacity.
(3) The person who voluntarily reports to the authorities or initiates such a report shall not be liable for prosecution for money laundering as specified under Subsections (1) and (2), provided that the act has not yet been revealed, or it has been revealed only partially.

70. These Sections criminalise laundering of proceeds from crimes committed by others, self laundering, the aggravated form of money laundering offence and negligent money laundering. Although the physical and material elements of these money laundering offences do not strictly follow the definitions of Vienna and Palermo Conventions, they are largely in line with the elements listed in Article 3(1)(b) & (c) and Article 6(1) of these Conventions respectively. However, some uncertainties and shortcomings still appear to remain.

71. Article 1 (a) (i) of the Palermo Convention and Article 1 (b) (i) of the Vienna Convention require the incrimination of conversion or transfer of property for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions. "Conversion or transfer" is regulated in subsection (1) of Section 303 of the HCC. This Section incriminates "conversion or transfer" of property only for the purpose of concealing the origin of a thing obtained from criminal activities, but it does not cover the physical element of conversion or transfer of property for the purpose of **disguising the illicit origin of the property**. The Hungarian authorities have indicated that the word "leplez" means both "disguise" and "conceal" in the Hungarian language. "The purpose of concealing or disguising" may be broadly covered. There are obviously subtle differences between terms "concealing" and "disguising". Nevertheless, since no case law was been provided, the evaluators were unable to interpret with certainty the extent of the term as indicated by the authorities. Furthermore, the evaluators have noticed that this term *(leplez)* was translated into English as "conceal" in the 3rd round MER and other international reports.[4] In addition, the Hungarian legislator used the terms "conceals and suppress" in paragraph (b) of subsection (1) that appear to correspond to the terms "conceal and disguise" used in the Palermo and Vienna

[4] See "Hungary: Phase 2 Report on the Application of the Convention on Combating Bribery Of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions, approved and adopted by the Working Group on Bribery in International Business Transactions on 6 May 2005, page 52.

Conventions. This option indicates that the legislator accepted the subtle difference between conceal and disguise in this paragraph.

72. Section 303 of the HCC does not cover the element of conversion or transfer of property for the purpose of helping any person who is involved in committing the predicate offence to evade the legal consequences of his or her action. Conversely, the authorities argue that 'helping' could be covered by Section 244 of the HCC "Harbouring a criminal" (misdemeanour punishable by imprisonment for up to one year), which provides that any person who cooperates in securing the advantage resulting from the crime is punishable by imprisonment. In the view of the evaluators this is not sufficient and should constitute a ML offence.

73. Subsection (1) (b) of Section 303 of the HCC provides that any person who. .. conceals or suppresses any right attached to the thing or any changes in this right, or conceals the place where the thing can be found is guilty of felony punishable by imprisonment. However, Article 1(b)(ii) of the Vienna Convention and Article 6 1(a)(ii) of the Palermo Convention require the incrimination of the concealment or disguise of the true origin, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime. It seems unclear whether the wording of subsection (1) (b) of Section 303 of the HCC covers the concealment or disguise of **true nature**, **source** or **movement**. The authorities stated that the broad expression "eredet" used in the said article covers "nature" and "source", moreover, "movement" is covered by the words "conceals the place where the thing can be found"; however, the evaluators were not convinced by this interpretation.

74. Moreover, subsection (1)(a) of Section 303 of the HCC requires that, to constitute a ML offence, "purpose of concealing the origin of the thing" for the acts of concealment and suppression (disguise) of location, disposition or ownership of or rights with respect to property. Whereas Article 1(b)(ii) of the Vienna Convention and Article 6 1(a)(ii) of the Palermo Convention allows and requires such a purpose element only for the acts of conversion and transfer of property. In addition, while subsection (2)(b) does not rightly require any purpose element for general use of a property, such an element is sought under subsection (1)(a) of Section 303 for the act of "use in his economic activities".

75. The Vienna and Palermo Conventions require the incrimination of committing the acts of "conversion or transfer" and "concealment or disguise" with special knowledge of the fact that such property is the proceeds of crime. Article 303 does not make any reference to the knowledge of the defendant. However, the explicit non-referral to "knowledge" was not regarded as an obstacle to the "knowledge" element by the evaluators.

76. Subsection 2 of Section 303 provides that "*the punishment … shall also be imposed upon any person who, … a) obtains the thing for himself or for a third person; b) safeguards, handles, uses or consumes the thing, or obtains other financial assets by way of or in exchange of the thing, or by using the consideration received for the thing.*" Whilst "acquisition or use of property" appears to be covered more clearly in this provision, "possession" does not appear to be clearly covered. However, the valuators have been convinced that the terms "safeguards, handles, uses or consumes" does cover elements *(usus, fructus and abusus)* of possession

77. As the evaluators were not provided with any jurisprudence, they have had doubts as to whether the Hungarian money laundering offence has been criminalised fully in line with Article 3(1)(b) of the Vienna Convention and Article 6(1)(ii) of the Palermo Convention.

78. The HCC provides several instances for freeing a person from criminal liability. Subsection 6 of Section 303 and subsection 3 of Section 303A provide that the person who voluntarily reports to the authorities or initiates such a report is not liable for prosecution for money laundering, provided that the act has not yet been revealed, or it has been revealed only partially. The authorities are of the opinion that the public interest pursued through these

provisions is to recover money laundered, which takes priority over the interest to punish the offender. Recovering the money laundered (which usually has not been recovered) may help to trace and to investigate the predicate offence. However, the authorities were not able to provide information on any concrete cases where these provisions were used.

79. Section 303 and 303A refers to the term "thing" instead of property. This term has not been defined in Hungarian law. However, there appears to be no limitations in the law as to the nature and the value of the property constituting the proceeds of crime. Moreover, there is an interpretative provision (Section 303C) in the HCC that is applicable to Section 303 and 303A. This change was made by the Act XCI of 2005 on the amendment of the HCC on 1 September 2005 to eliminate the imprecision of references, which was pointed out in the 3rd round MER. This provision now states "…*the term 'thing' shall also cover instruments embodying rights to some financial means and dematerialised securities, that allows access to the value stored in such instrument in itself to the bearer, or to the holder of the securities account in respect of dematerialised securities."* Furthermore, it should be noted that under Section 77B of the HCC, forfeiture is possible in Hungary for any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act. Thus it appears that according to current provisions, the money laundering offence extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.

80. The term "criminal activities that is punishable by imprisonment" used in Section 303 of the HCC makes it clear that the conviction of the offender of the predicate offence is not required as a pre-condition when proving that property is the proceeds of crime. This provision enables the authorities to prosecute someone for money laundering even if the person charged with the predicate offence is actually not punishable for reasons which exclude his/her culpability, i.e. when the perpetrator absconded, passed away, or is found mentally unfit to stand trial. The evaluation team were assured that this applies at any stage of the proceedings, including when a decision is being made whether to initiate proceedings. At the same time the authorities noted that it is easier to prosecute and convict a person for money laundering when there is a prior conviction for the predicate offence. As a result it will have to be proven that the conduct amounted to a predicate offence and the types of assets that originated from the predicate offence, which is a rather high standard of proof. At the time of the on-site visit the evaluators were not aware of the court jurisprudence on prosecution of the persons solely for money laundering. Thus, in practice, the evaluators could not establish the level of proof required for the link between property and predicate offence.

81. According to the HCC the predicate offence of money laundering could be any criminal activity which is punishable by imprisonment. All serious offences covered by the HCC are punishable by imprisonment.

82. Hungary does not apply any other condition for the predicate offence of money laundering than the criteria of "criminal activities that is punishable by imprisonment". The range of predicate offences set out in Hungarian Law include all required categories of offence in the Glossary to the FATF Recommendations except financing of terrorism (in all forms as required under the FATF Recommendations). (See Annex II)

83. ML offences are punishable under Hungarian law irrespective of the place where the predicate offence was committed. The HCC does not require that the latter offence be committed domestically, provided it would constitute a criminal offence under the HCC, punishable by imprisonment. That means by the term "activities punishable by imprisonment" extraterritorial crimes are also covered to the extent dual criminality exists.

84. Self-laundering is criminalised in Hungary as provided by subsection 3 of Section 303 of the HCC, but in limited scope, i.e. the liability is restricted to any persons "*who, in order to conceal the true origin of a thing that was obtained from criminal activities that is punishable*

by imprisonment, who uses the thing in his economic activities or performs any financial transaction or receives any financial service in connection with the thing". In other words, the acts of conversion or transfer of proceeds, the concealment or disguise of the illicit origin of the proceeds and the acquisition or use of property, in the meaning of subsection 1 and 2 of Section 303, are not punishable for self-launderers. The authorities explained this limitation by referring to a fundamental principle of Hungarian domestic law which is the prohibition of double assessment. They argued that simple use or transfer of a thing obtained from criminal activities would be assessed as post-offence behaviour and a person cannot be held liable twice for the post-offence behaviour that relates to the proceeds of his/her crime if he/she has been convicted of the predicate offence. At the same time the authorities argued that the elements for incrimination for self-launderers are different because there are different endangered objects of the crime.

85. Section 315, interpretative provision, clarifies the term economic activities used in Section 303. According to that Section, *"for the purpose of Chapter VII (comprises of Section 287 to 315) the term "economic activities' shall mean activities in the fields of manufacture, trade or service performed at one's own risk, on a regular basis in order to originate income, or in a way which originates income"*. However, the Hungarian authorities stated that this term has not yet been tested or interpreted by the courts.

86. After the on-site visit, the Hungarian authorities provided the evaluation team with the translation of the official Ministerial Interpretative Note that was issued together with the 2001 amending law in which the legislator grounded exclusion of some acts, such as using, acquiring and selling, committed by the perpetrator of the predicate offence, on the principle of prohibition of double assessment, by explaining that the same act or conduct cannot be prescribed as constituting an alternative, different criminal offence at the same time. Moreover, the Hungarian authorities provided decisions of the Supreme Court. One of the decisions (decision for unity for the law) notes "*The perpetrator of fraud who alienated real estate unlawfully does not commit another offence (namely another fraud) if he sells the real estate to a bona fide person without the purpose of obtaining additional unlawful financial gain because this act (selling the alienated real estate) is an unpunishable post-activity so as to secure the profit resulting from fraud. However, if the perpetrator sells the real estate for additional financial gain (he/she sells the property to more than one bona fide third parties), he can be prosecuted for both for fraud (as the predicate offence whereby he obtained the real estate) and also for fraud committed to the injury of the bona fide person who bought the real estate first.*[5]

87. The evaluators are aware of the fact that "double sentencing" is one of the fundamental principles of a civil-law system. Thus, this principle as such might impede the incrimination of mere act of acquisition of proceeds by self-launderers. However, it is the view of the evaluators in any event, that criminalising self-laundering only when "things" are used in economic activities or by performing financial transactions, but excluding conversion or transfer of things by other means or using such things, should not be justifiable by fundamental principles of law, because these acts constitute an offence that is distinct from and goes beyond the underlying predicate offence.

88. Since the 3rd round report no changes in the HCC have been made with relation to ancillary offences, including attempt, preparation, aiding and abetting, facilitating, and counselling the commission. However, the evaluators of this round consider that further analysis is needed in this report.

89. Ancillary offences are defined in the General Part of the HCC (Chapter II) and, in principle, apply to all offences, including money laundering.

[5] 1/2005.BPJE.szam (28 November 2005)

90. Section 16 of the HCC makes attempt punishable. According to this Section, any person who commences the perpetration of a premeditated crime, but does not finish it, shall be punishable for attempt. The general rule is that the sentence for the attempt is the same as for the consummated offence, but in particular circumstances laid down in Section 17.

91. Abetting is defined in Section 21 as a person who intentionally persuades another person to commit a crime. According to the same Section, accomplice is a person who knowingly and voluntarily helps another person to commit a crime. Therefore, there is no doubt that aiding and abetting is applicable for money laundering offences. Facilitating and counselling of the commission of money laundering offence in the sense of Vienna and Palermo Conventions are also criminalised as parts of aiding.

92. The Vienna and Palermo Conventions (Article 3(1)(c)(iv) and Article 6(1)(b)(ii), respectively, as well as FATF Methodology require the establishment of an offence either for conspiracy or association, subject to the constitutional/basic concepts of the jurisdiction's legal system.

93. Although Hungary has a civil-law based criminal system, it has adopted "conspiracy" in its criminal law in the sense generally known in common law systems. Section 137 states that *"criminal conspiracy shall mean when two or more persons are engaged in criminal activities under arrangement, or they conspire to do so and attempt to commit a criminal act at least once, however, it is not considered a criminal organisation."* Economic crimes are regulated under Chapter VII (comprising Sections 287 to 315) of the HCC. For many of those crimes, such as profiteering (Section 301), counterfeiting of money (Section 304), counterfeiting of stamps (Section 307), illegal importation (Section 312), cash-substitute payment instrument fraud (Section 313C), regulated under this Chapter which includes the money laundering offence, punishment is increased when the offence is committed as part of a criminal conspiracy. Application of conspiracy as an aggravating factor is not only limited to Chapter VII, it is also applicable for most of the designated serious offences, *inter alia*, theft (Section 316), embezzlement (Section 317), fraud (Section 318), robbery (Section 321), extortion (Section 323). As there has been no explicit provision in Sections 303 and 303A, evaluators have concluded that the penalty is not increased when the ML offence is committed as part of a criminal conspiracy. However, a special form of conspiracy is regulated in Article 303 of the HCC. Subsection (5) of Section 303 of the HCC provides that any person who agrees on perpetration of money laundering is guilty of misdemeanour punishable by imprisonment of up to two years. Hence, in the Hungarian legal system, even if a ML offence is not committed as part of a criminal conspiracy, mere agreement on committing a ML offence is punishable.

94. According to the general practice of the Hungarian courts the knowledge standard for any crime includes the concept that knowledge may be inferred from objective factual circumstances. However, interviewed law enforcement authorities and prosecutors indicated that the required standard of proof for the intent of a person to "conceal the origin of a thing obtained from criminal activities" constitutes one of the most difficult elements to prove. In the view of the evaluators, the unclear coverage of the physical elements of conversion or transfer of property for the purpose of **disguising** the illicit origin of the property and non-coverage for the purpose of **helping** any person who is involved in committing the predicate offence to evade the legal consequences of his or her action constitutes an important limitation in the law in this regard. In addition, unnecessary requirement of the purpose element of concealing the origin of the thing for the acts of concealment and suppression (disguise) of location, disposition or ownership of or rights with respect to property as well as for the act of "use in his economic activities" constitute another limitation on the enforcement of ML cases. These limitations appear to create an additional burden on practitioners by requiring the proof of the intent of "concealing".

95. There were no changes made in relation to money laundering offence in cases when the predicate offence was committed in another country where this act is not an offence, but it is

an offence and punishable by imprisonment under the HCC. In accordance with Section 3(1) of the HCC the money laundering offence can be established.

Recommendation 32 (money laundering investigation/prosecution data)

96. Section 29 of the AML/CFT Act requires the HFIU to maintain statistics by virtue of which the effectiveness of the system for combating the money laundering can be controlled. The statistics kept by the HFIU cover, *inter alia*, the number of cases investigated and prosecuted, the number of suspects and the number of persons prosecuted, the number of court verdicts and the number of persons convicted. In addition, this section requires the General Prosecutor's Office to supply information to the HFIU relating to those statistics kept by the FIU as regards to the investigations and prosecutions by 1 July of each calendar year as pertaining to the previous calendar year. Besides the legal obligation of the HFIU to maintain statistics on prosecutions and investigations, the General Prosecutor's Office also keeps statistics on investigations and prosecutions as well as number of prosecuted and convicted persons for money laundering offences.

Table 8: Number of ML cases in 2005-2009

ML cases – total	**ML investigations** ***(initiated)****		**ML prosecutions** ***(indictments)***		**ML Convictions** ***(final)***	
	Cases	Persons	Cases	Persons	Cases	Persons
2005	32	39	3	10	1	1
2006	79	32	2	2	N/A	N/A
2007	89	131	10	9	10	19
2008	27	48	2	2	6	7
2009	4	15	10	5	4	2

*For 2008 & 2009, the statistics only includes investigations initiated by HCFG; no data was available from the National Police.

97. As seen above, for the period 2005-2009 there were 19 new money laundering prosecutions initiated and they were at various stages in the prosecutorial process.

- In 2005, there were 3 new indictments for money laundering;
- In 2006, there were 2 new indictments for money laundering;
- In 2007, there were 10 new indictments for money laundering;
- In 2008, there were 2 new indictments for money laundering.
- In 2009, there were 10 new indictments for money laundering.

98. In the period 2006-2009, there were 20 convictions. The evaluators were not provided with the information on how many of those convictions in 2005-2009 were related to self laundering and how many of them were related to third party laundering offences. However, as Hungary has started to keep more detailed statistics in this regard from January 2009, the evaluators were advised after the on-site visit that while 9 out of 10 cases prosecuted in 2009 were related to self laundering offence, remaining 1 case was related to third party laundering offence.

99. The authorities were not able to specify the range of criminal sanctions applied in and the underlying predicate offences of the above mentioned 20 convictions.

100. Notwithstanding the legal requirement of the HFIU to keep statistics the evaluation team received diverse data at different times on ML investigations and the amounts of value secured by coercive measures in accordance with the ACP. The evaluation team is of the opinion that coordination on gathering of statistics is lacking.

Effectiveness and efficiency

101. Although minor legislative improvements have taken place since the publication of the 3rd Round MER, the evaluators consider that the Hungarian Criminal Code is not in full

compliance with the Vienna and Palermo Conventions and legal uncertainties within the HCC still exist. At the same time it can be concluded that the ML criminal provisions are largely in line with the material elements of the Vienna and Palermo Conventions.

102. As seen above the shortcomings with regard to the Vienna and Palermo Conventions, such as lack of physical element of conversion or transfer of property for the purpose of disguising the illicit origin of the property (unclear) and for the purpose of helping any person who is involved in committing the predicate offence to evade the legal consequences of his or her action and unnecessary requirement of purpose element for some above mentioned acts, partial criminalisation of self-laundering and practical problems of proving the intent of concealing, in the view of the evaluators might have negative impact on the effective fight against money laundering by precluding the practitioners from using the full range of the norms of Vienna and Palermo Conventions.

103. Moreover, the abovementioned legal inconsistencies within the Hungarian Criminal Code may preclude the authorities from further development of the Hungarian system against money laundering. The evaluators are of the view that statistics could be possible signal of necessity of further improving the system. The authorities provided that while there were 10 convictions in 2007, there were only 6 in 2008 and 1 in 2005. Although the progress from the 3rd round evaluation is considerable (in the period of the 3rd round evaluation there were only 2 convictions), given the high number of convictions for proceed generating offences, the number of ML convictions cannot be considered as sufficient. The total number of convictions on proceed generating offences was 79,306 in 2007, 76,398 in 2008 and 76,269 in 2009. Moreover, in 2009, the number of convictions: for theft was 22,294; for fraud was 7,492; and for drug trafficking was 2,335. (For further details see Table 3 above) Moreover, the evaluators have considered not just the number of ML convictions but the type and quality of ML cases being brought forward after 16 years of criminalisation of ML in Hungary, against the background of proceeds generating crimes in the country and the comparative importance of the financial sector. The authorities did not provide the evaluators with detailed statistics or data as to the type of the convictions since 2005 (self-laundering or third-party laundering); such information was only provided regarding the investigations conducted by the police in 2009. Almost all of the prosecutions (9 out of 10) were related to self-laundering, which indicates that only the simplest cases are being taken forward. From this the evaluators consider that there is still a real need to step up the effectiveness of ML incrimination in practice through more emphasis on investigations and prosecutions of autonomous or third party money laundering offences.

104. Even if this situation is not the result of a deficient legislative framework, but rather of the hesitant attitude of the practitioners in respect of the proof of the predicate offence, it negatively affects the effectiveness of the system.

105. In accordance with the ACP, the Metropolitan court, which is a second instance court, has jurisdiction to adjudicate cases of money laundering as a first instance, which provides a good basis for adjudicating the ML/TF cases. It is, however, apparent that ML cases are generally pursued only in circumstances where there is overwhelming evidence of the money laundering offence. The members of the judiciary interviewed during the on-site visit indicated that in cases brought before the court only a small number contained accusations for the money laundering offence, notwithstanding the fact that there were constituent elements of the money laundering seen by the judiciary. Moreover, the interviewed prosecutors indicated that 96.4% of cases brought before the court resulted in a conviction. The evaluators are of the opinion that this constitutes an obstacle for developing court jurisprudence especially of ML cases.

106. The court judges interviewed stated that there is extensive training provided for judges on money laundering in Hungary, as well judges participate in seminars and conferences abroad. However, there is a clear need for more training for law enforcement authorities, particularly

for police and prosecutors on the way in which money laundering cases should be efficiently investigated and prosecuted.

2.1.2 Recommendations and comments

107. Hungary should criminalise self-laundering fully in line with the Vienna and Palermo Conventions.

108. The Hungarian authorities should make legislative changes to the money laundering offence to bring legislation into full compliance with the Vienna and Palermo Conventions.

109. The offence of financing terrorism should be widened to cover all relevant issues as predicate offences to money laundering by incriminating the financing of an individual terrorist for any purpose and making the incrimination of the provision or collection of funds for a terrorist organisation's day-to-day activities clearer.

110. The Hungarian Authorities should consider more training for law enforcement authorities, particularly for police and prosecutors on the way in which money laundering cases should be efficiently investigated and prosecuted.

111. Case law should be established on autonomous ML cases in order to clarify the level of proof required where there has been no conviction for the predicate offence.

112. The Hungarian authorities should pursue more investigations and prosecutions of third party laundering.

2.1.3 Compliance with Recommendation 1 and 2

	Rating	Summary of factors underlying rating

R.1	**PC**	• The physical elements of money laundering offence do not fully correspond to the Vienna and Palermo Conventions:
		  • Conversion or transfer for the purpose of helping person who is involved in the commission of money laundering to evade consequences is not covered by Hungarian legislation;
		  • Conversion or transfer for the purpose of disguising the illicit origin of property is unclear;
		  • Unnecessary requirement of purpose element of concealing the true origin of the thing for the acts of concealment and suppress (disguise) of location, disposition or ownership of or rights with respect to property as well as for the act of "use in his economic activities".
		  • Concealment or disguise of the true nature, source and movement is not covered (Palermo A.6(1)(a)(ii)).
		  • Self laundering is only partly covered.
		• Not all designated categories of offences are fully covered as predicates, as incrimination of the financing of an individual terrorist for any purpose is not covered and the collection of funds for a terrorist organisation' day-to-day activities is not clear.
		• Autonomous investigation and prosecution of the money laundering offence still constitute a challenge for the police and prosecutors. Given the level of proceeds generating offences in Hungary and the type and quality of the cases being brought (mainly self-laundering) the overall effectiveness of money laundering incrimination still needs to be enhanced.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

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

113. No changes were made since the 3rd round Mutual Evaluation with regard to the act of terrorism provided by subsections (1) and (9) of Section 261 of the HCC. The reader is, therefore, referred to the 3rd round report for a detailed analysis of what comprises a terrorist and terrorist act.

114. The evaluation team welcomed the amendments made by Act XXVII of 2007 on the amendment of the Criminal Code with regards to financing of terrorism, making it possible to punish an attempt to provide or collect funds for an individual terrorist to commit a terrorist act. The new provision entered into force on the 1st June 2007. However, a number of shortcomings still prevent it from being fully in line with the requirements of SR II. The terrorist financing offence of Hungary does not strictly follow the wording of Article 1 of the UN International Convention for the Suppression of the Financing of Terrorism.

115. Terrorist financing is criminalised separately in subsection 4 of Section 261 of the HCC, which was provided at the time of the on-site visit, which reads as follows: "*any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined under Subsections (1) and (2) or any person who is involved in aiding and abetting such criminal conduct by providing any of the means intended for use in such activities or by providing or raising funds to finance the activities is guilty of felony punishable by imprisonment between two to eight years*." A further translation of this text was provided at the pre-meeting, which the Hungarian authorities consider to be a more accurate translation. It reads "*any person who instigates, suggests, offers, undertakes to participate in the commission, or agrees on joint perpetration of any of the criminal acts defined under Subsection (1) or (2), or in order to promote the commission of the offence ensures the conditions required therefore or facilitating that, or provides or collects funds to promote the commission of the offence is guilty of felony punishable by imprisonment from two to eight years."* In the view of evaluators, this provision only incriminates the financing of terrorist acts. This interpretation was supported by the practitioners interviewed during the on-site visit.

116. Subsection (5) as submitted in the MEQ reads as follows: *"Any person who is engaged in the conduct referred to in subsection (4) or in the commission of any of the criminal acts defined under subsections (1) and (2) in* ***a terrorist group****, or* ***supports the terrorist group in any other form*** *is guilty of felony punishable by imprisonment between five to ten years."* However, the following translation of subsection (5) was provided by the authorities during the pre-meeting: *"He/she who commits the acts described under (4) in the interest of the crimes described under (1) or (2) in a terrorist group and/or* ***supports the activity of the terrorist group in other ways****, commits a crime and is punishable with loss of liberty between 5 to 10 years."*

117. "Terrorist group" is defined in subsection (9) of Section 261 as "*a group consisting of three or more persons operating in accord for an extended period of time whose aim is to commit the crimes defined in subsections (1)-(2)*".

118. There was no unanimity among the practitioners interviewed during the on-site visit as to whether financing of terrorist organisations e.g. funding of terrorist organisations' day-to-day activities such as recruitment or training activities is penalised in Hungarian law or not. The authorities argue that *"the support of a terrorist group in any other form"* comprises any objectively useful, supportive act, and therefore also all types of provision of funds referred to under the TF Convention. However, the evaluators have not been persuaded by this interpretation.

119. Subsection (5) does not define the meaning of the term "support". From the wording of this subsection, it is clear that the HCC regulates the aggravated form of terrorism in general i.e. the subsection imposes a heavier penalty on those who engage in specific terrorist acts mentioned Subsection (1) and (2) and terrorist offences including financing of terrorist acts mentioned in subsection (4) **in a terrorist group.** It may be interpreted that, if somebody commits the acts mentioned in subsection (5) by being somewhere in the structure of a terrorist group he/she can be penalised with imprisonment of between five to ten years. On the other hand, if somebody commits the same acts mentioned in Subsection (5) while not in the structure of a terrorist group he/she will be penalised, according to Subsection (4), by imprisonment between two to eight years. Given the sequence of Subsection (5) made by the legislator and the severity of penalty determined, the evaluators have drawn the conclusion that "*the support of the terrorist group in any other form"* means or could mean the support of the terrorist group in any other form rather than the activities mentioned in subsection (4) by being somewhere in the structure of the terrorist group. In addition, even if provision of funds might be regarded as support of a terrorist group in any other form, mere act of collection of funds that is required to be incriminated under SR II cannot be regarded as support of a terrorist organisation.

120. Therefore, the evaluators conclude that the criminalisation of the financing of terrorist organisations' day-to-day activities is not made clear enough within the meaning of FATF Methodology. As there have not been any prosecutions or convictions for the offence of financing of a terrorist group in Hungary, the interpretation of subsection (5) has not yet been tested. The Hungarian authorities provided the evaluators with the legislative reasoning of Section 261 of the HCC. The reasoning provides that the Act (HCC) does not amend the content of Subsection 5 of Article 261, the next text - for the better understanding and clear structure - does not repeat the behaviours in Subsection 4 only makes references to these provisions and maintains the criminalisation of any form of support to activities of a terrorist group. However, in the view of evaluators, the reasoning does not clearly show the intention of legislative authority to criminalise the funding of terrorist organisations' day-to-day activities.

121. Moreover, Hungary does not fully criminalise the financing of individual terrorists (except for committing the acts covered in subsections (1) and (2)) in accordance with the Essential Criterion II.1.

122. The HCC does not provide a definition of "funds" and the interviewed authorities acknowledged that such a definition is left for the courts to interpret. At the same time the authorities referred to Section 261A of the HCC as providing for the criminalisation of violation of international economic restrictions. Part 6 of Section 261A provides definition of "funds, other financial assets and economic resources" by referring it to point 2 of Article 1 of Council Regulation (EC) No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. However, this Regulation is clearly insufficient for two reasons. Firstly, Section 261A explicitly states that the definitions made in the Section are applicable only for the purposes of this Section, unless otherwise prescribed by legal regulation promulgating an obligation or restriction under international law. Secondly, the reference made to the Regulation is not only the term "funds" but it is for the terms "funds, other financial assets and economic resources". Therefore it is difficult for the evaluators to determine whether the courts in Hungary would consider that the financing of terrorism offence applies to the wide definition of "funds" in the UN Financing of Terrorism Convention.

123. Essential criterion II.1(c) requires that terrorist financing offences should not require that the funds: i) were actually used to carry out or attempt a terrorist act(s); or (ii) be linked to a specific terrorist act(s). The wording and sequence of subsection (4) and reference made to subsections (1) and (2) makes clear that providing or raising (*collecting*-"gyűjt" in Hungarian)

of funds should be linked with specific terrorist acts. The interviewed authorities supported such an interpretation.

124. Subsection (3) of Section 261 of the HCC ensures the possibility of commutation of the punishment if a person abandons the commission of the acts mentioned in subsections (4) and (5) before serious consequences of it could occur and co-operates with the investigative authorities in order to mitigate the consequences of the offence, or to find other co-perpetrators of it. Under subsection (6) of Section 261 of the HCC the person who confesses the act to the authorities before they become aware of it and reveals the circumstances of the criminal act shall not be liable for prosecution. According to this provision the interest to disclose and prevent terrorist acts takes priority over the interest of punishing the offender.

125. Attempt is criminalised for all offences including terrorist financing according to general criminal law principles in Hungary as set forth in Sections 16-17 of the HCC. The common ancillary offences (see above for money laundering) are also applicable in the terrorism financing context.

126. According to the provisions of the HCC, the predicate offence of money laundering can be any crime which is punishable by imprisonment. Since funding of terrorist organisations and individual terrorists is not criminalised under Hungarian law in line with international standards, only the offence of funding of terrorist activities is a predicate offence for money laundering.

127. Terrorist financing offences are applicable regardless of the location of the terrorist group or irrespective of the place where the terrorist act is, or is planned to be committed.

128. Criminal legislation does not contain any explicit provision covering whether the intentional element of a criminal offence, including financing of terrorism, may be inferred from objective factual circumstances. The interviewed authorities indicated that according to the general principles of Hungarian criminal law the intentional and other subjective elements of the offence may be inferred from objective factual circumstances. In order to support their approach authorities only made following quotation from literature:*" Drawing the conclusions concerning the subjective elements of the crime is possible only from the objective factual circumstances, therefore the statement in connection with the culpability is always based on conclusion"* (*"Criminal law – general part"* by Bárd, Gellér, Ligeti, Margitán, Wiener; page 72). The 3rd round, report referring to the money laundering offence, noted that according to the general practice of the Hungarian courts, the *mens rea* for any crime is as such that knowledge may be inferred from objective factual circumstances. Moreover, authorities provided the evaluators with case law that shows such possibility in practice.

129. Hungarian law applies criminal liability for legal persons. Act CIV of 2001 *on the criminal measures applicable against legal persons* lays down the conditions for application of the measures to legal persons, procedure to be followed etc. Since terrorist financing offence is an intentional criminal offence, if all the statutory conditions set out in Section 2 of the mentioned act are met, the relevant measures can be applied to legal persons for terrorist financing offence. While legal persons in Hungarian criminal law can formally be held responsible, the prosecutors interviewed during the on-site visit admitted that the Act is difficult to implement in practice, thus measures are rarely applied to legal entities. Moreover, authorities argued that one of the obstacles to application of the corporate liability law is the requirement to punish the natural person as the natural person responsible cannot always be identified. At the same time the authorities pointed out that the Section 7 of Act CIV of 2001 provides that, if no criminal proceedings have been instituted or the criminal proceedings have been terminated because of the perpetrator's death or immunity due to mental illness or if the criminal proceedings have been suspended as the perpetrator's mental illness occurred after the commission of the act, the proceedings shall be continued against the legal entity in accordance with the provisions of this Act.

130. Moreover, according to the Section 2 of Act CIV of 2001, the measures can be applied to a legal person, if the perpetration of an intentional offence including a terrorist financing offence was aimed at or has resulted in the legal entity gaining benefit and was committed by the persons determined in the same Section. Subsection 2 of Section 2 sets out the responsibility of legal persons, even in the event that the offence was committed by other persons listed in the first subsection, in so far as the commission of the act resulted in the legal entity gaining benefit. In any case, in order to apply measures laid down in Act CIV of 2001to a legal person for an intentional offence, the offence should be committed for the benefit of the legal person. Contrary to the corruption offences including money laundering offences, terrorist financing offences are not in general committed for gaining material benefit. Therefore, taking into account the general problems practitioners face in applying the Act, the requirement of "benefit" would, in the view of evaluators, make the implementation of the measures to legal persons impossible for terrorist financing offences.

131. In relation to sanctions, subsection (1) of Section 261 of the HCC provides punishment of imprisonment between ten to twenty years or life imprisonment for persons who commit terrorism. Subsection (4) of Section 261 provides punishment of imprisonment between two to eight years for funding terrorist activities. Considering the sanctions for similar acts (seizure of aircraft, means of railway, water or road transport or any means of freight transport - imprisonment between five to ten years; violation of international economic restrictions imprisonment up to five years), the sanctions for terrorism and financing of terrorism seem to be effective, proportionate and dissuasive.

132. The measures applied to legal persons for intentional offences, including terrorist financing offences, are the winding up of the legal entity, limiting the activity of the legal entity or imposing a fine (Section 3 of the Act CIV of 2001). The sanctions are considered effective, proportionate and dissuasive.

133. The offence as set out in subsection (9) Section 261 of the HCC does not fully comply with international requirements; in particular, offences provided in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, especially Section 1(c), which requires Parties to criminalise the intentional act of placing or causing to be placed on an aircraft in service, […] a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight. In the view of the evaluators the only relevant offence in the HCC is that coming from Section 263 of HCC making reference to illegal possession of explosives or other destructive devices and not the usage of explosives. The Hungarian authorities argue that relevant act is punishable in accordance with the Section 184 of the HCC "Crimes against transportation safety", which provides that any person who endangers the safety of railway, air, water or public road traffic by damaging or destroying a traffic route or corridor, a vehicle, traffic control equipment or the appurtenances thereof, by creating an obstacle, removing or changing a traffic sign, installing a misleading sign, using violence or threats against the driver of a vehicle in traffic, or by any other similar manner is guilty of a felony punishable by imprisonment for up to three years. In the evaluator's view, however, the act of placing a device or substance on an aircraft which is likely to destroy that aircraft is not covered by the Section 184 and should be made explicit.

Recommendation 32 (terrorist financing investigation/prosecution data)

134. The HFIU and the General Prosecutor's Office maintain statistics on the number of cases and the number of persons prosecuted, the number of court verdicts and the number of persons convicted. (See above for money laundering)

135. At the time of the on-site visit, there were no investigations, prosecutions and convictions for terrorist financing offence in Hungary. For this reason, the existing legislative framework

has not yet been tested before the judiciary. However, if the situation occurs, there is no reason for doubt that an effective system of statistics would be created.

Effectiveness and efficiency

136. The evaluators are aware that there has been a Hungarian domestic terrorist organisation and that since 2005 there have been 18 convictions for terrorist offences. As the authorities could not provide information on those convictions, evaluators were not able to assess the possible financial dimension of these terrorist offences. Moreover, absence of any investigation, prosecution or conviction for terrorist financing raises concerns regarding the effectiveness and efficiency of the implementation of SR II. The authorities provided that due to specific nature of the "terrorist cases" under investigation in Hungary, for example, taking hostage in supermarket asking for the government to release a person from prison, could not be linked with terrorist financing.

137. Although the offence of financing of terrorism is regulated in the Criminal Code, it does not fully reflect the SR.II requirements since financing of an individual terrorist is not covered and there is ambiguity with regard to the criminalisation of providing funds to terrorist organisations' day-to-day activities. Furthermore, the definition of "funds" is lacking and is open for court interpretation. The lack of full compliance of the HCC to the international standards might have impact on effectiveness.

138. The abovementioned deficiencies and imperfections in the law may limit or adversely affect the capacity to investigate, prosecute and convict terrorist financing offenders in Hungary. They might also prevent Hungary from providing certain forms of international cooperation where dual criminality is required as well as having a consequential impact on the reporting of suspicious transactions related to terrorism.

2.2.2 Recommendations and comments

139. The financing of individual terrorists' day-to-day activities should be criminalised as required by Essential Criterion II.1

140. The incrimination of the financing of terrorist organisations' day-to-day activities should be clarified by further legislative change and by issuing appropriate guidance to law enforcement agencies and the collection of funds for terrorist organisations' day to day activities should be criminalised.

141. "Funds" should be defined.

142. Act CIV of 2001 needs to be revised to clarify that legal persons are liable in practice for terrorist financing offences.

143. The HCC should be revised to ensure proper criminalisation of financing of the acts arising from the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation for placing or causing to place on an aircraft in service a device or substance which is likely to destroy that aircraft.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	• The Criminal Code does not provide for an offence of terrorist financing in the form of provision or collection of funds with the unlawful intention that they should be used or in the knowledge that they are to be used by an individual terrorist for any purpose. • It is unclear whether the financing of terrorist organisations' day to day activities are incriminated, and collection of funds for terrorist

		organisations' day-to-day activities is not covered. • No definition of "funds" as defined in the UN Terrorist Financing Convention. • No explicit coverage of direct or indirect collection of funds/usage in full or in part, without the funds being used or linked to a specific terrorist act. • The financing of certain aspects of the Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation have not been criminalised.

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

2.3.1 Description and analysis

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

144. Act XIX of 1998 on Criminal Proceedings provides for seizure, sequestration and precautionary measures. The legislation has not been amended since the 3rd round mutual evaluation. Provisional measures are laid down in Sections 151,152, 159 and 160 of the ACP (See Annex V). Sections 77, 77A, 77B and 77C of the HCC regulate confiscation (See Annex IV). There has been an amendment to the HCC on 1 June 2007 which included under confiscation objects which were used for the transportation of the object in connection with the criminal act after the fact. [6]

145. The comments given in the 3rd round MER as to the confiscation regime of Hungary remain apt. Essential criterion 3.1, 3.1.1, 3.2, 3.3, 3.5 and 3.6 are met. In connection with assessing the effectiveness of the confiscation regime and following up the recommendations of 3rd round MER the evaluators further analyse here essential criterion 3.4 (adequate powers for the authorities to identify and trace property).

146. Hungary was rated largely compliant for R.3 in the 3rd round mutual evaluation on the basis that a very limited number and amount of seizures and confiscations took place. The following actions were recommended:

1) Consideration should be given to providing the HFIU with statutory authorisation to freeze assets and suspend transactions;

2) Consideration should be given to creating a system of administrative freezing, granting the FIU/police/prosecutor a reasonable period of time to check the facts of the case in detail, without immediately having to open a criminal investigation;

3) Much more consideration should be given to taking away the proceeds of crime. The number and amounts of seizures and confiscations should increase noticeably having regard to the high number of prosecutions for economic crime. Operational practice should more consistently and systematically link seizure/confiscation with investigations.

147. Hungarian criminal procedural law is based on the principle of legality, which makes law enforcement authorities and courts responsible for initiating a criminal proceeding if the statutory conditions set out in the ACP are met. According to Section 6 of the ACP, criminal proceedings may only be initiated by the law enforcement authorities upon the suspicion of a

[6] Act CLXIII of 2009 on the Amendment of Act IV of 1978 on the Criminal Code introduced a new provision on forfeiture of property [Subsection (1)(e) of Section 77/B of the HCC] The new provision entered into force on 1 April 2010. According to this amendment forfeiture extends to not only the property embodying the subject of given financial gain but to the property embodying the subject of **promised** financial gain.

criminal offence and only against the person reasonably suspected of having committed a criminal offence. This principle also applies to the identification and tracing of property that is subject to confiscation or suspected of being the proceeds of crime. In such cases, the police may take the necessary provisional measures (seizure) in order to secure the property, and prosecutors may make applications to the court for sequestration orders. Furthermore, the criminal investigative authorities have a comprehensive range of investigative techniques at their disposal for ascertaining the origin and ownership of property that could be subject to confiscation or forfeiture which are ordered in ex-parte proceedings. The reader is referred to pages 45-50 of the 3rd round MER for more detailed information on those investigative tools available to law enforcement authorities. In addition, special provisions exist to empower the investigating authorities and the HFIU to access information on bank accounts and bank operations in the Act of 1996 on Credit Institutions and Financial Enterprises (Sections 49 and 51).

148. Section 24 of the AML/CFT Act obliges service providers to suspend the execution of a transaction order if any information, fact or circumstance indicating money laundering or terrorist financing in connection with the transaction order is found, and if the HFIU notifies the service provider of such information, fact or circumstance in connection with a transaction order. In these cases service providers should submit a report without delay to the HFIU in order to investigate the circumstances of the report. The transaction may be suspended in Hungary for only **one working day** after the report is submitted in the case of domestic transaction orders and **two working days** after the report is submitted in the case of foreign transaction orders. The Hungarian authorities pointed out in the questionnaire that there is no legal limitation preventing the suspension of the transaction more than once in accordance with the Section 24/2 of the AML/CFT Act. If the HFIU notifies the service provider of the fact that no action was taken pursuant to the ACP or, after the expiry of those specified time limits in the absence of any notification by the HFIU, the service provider is entitled to execute the suspended transaction order. The only means for the extension of this period is the action which can be taken sequestration (Section 159), seizure (151-158) or precautionary measures (Section 160) in accordance with the ACP. However, for sequestration a court order is necessary, while the seizure can be undertaken by the court, prosecutor, investigating authority, the precautionary measure can be undertaken by the prosecutor or the investigating authority.

149. The authorities interviewed during the on-site visit informed the evaluation team that such time limits are adequate to enable them to make the necessary checks. However, the evaluation team consider that, although under the AML/CFT Act the HFIU is able to make necessary checks, the time limits could be an obstacle to the ultimate confiscation of the proceeds of crime, as the authorities may not have sufficient time to check the facts of the case in detail, without immediately having to open a criminal investigation.

150. The evaluators welcome the establishment of asset recovery office, as of 1 July 2009, within the National Bureau of Investigations, Economic Crime Division to deal with the cases concerning identification of assets.

151. Hungarian law does not provide for the forfeiture or confiscation of the whole assets of a criminal organisation whose principal function is to perform or to assist in the performance of illegal activities; forfeiture of property is ordered only for the property which originates from a criminal offence and which is hidden by the organisation (see Section 77/B HCC).

152. With regards to non-conviction based confiscation, the ACP (Subsection (1) of Section 569) provides that the court decides on confiscation, forfeiture of property or the transfer of any seized items into the ownership of the state, upon the motion of the prosecutor, if no criminal proceedings have been instituted against anyone or the criminal proceedings have been terminated or suspended due to the unknown location or mental disease of the defendant.

153. Under Section 77/B (4) of the HCC, forfeiture extends to all property obtained by the perpetrator during his/her participation in a criminal organisation until proven otherwise. Moreover, Section 77/B (5) provides that forfeiture of property shall not be ordered for the property which was obtained by bona fide third party and against consideration. In this case the forfeiture of property shall be ordered against the perpetrator by indicating a certain amount of money.

Recommendation 32 (provisional measures and confiscation)

154. Notwithstanding that Section 29 of the AML/CFT Act obliges the HFIU to keep statistics on the number of cases and the amounts/value of property frozen, seized and confiscated relating to ML/TF offences based on information provided by General Prosecutor's Office, the coordination of accurate statistics is lacking. The data on proceeds confiscated for 2008 and 2009 is not available, which prevents the authorities from making a comprehensive review of the effectiveness of the system on combating money laundering and terrorist financing.

155. The following statistics were provided to the evaluators:

Table 9: Provisional measures and confiscations *(only for money laundering cases)*

Year	Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	amount €	cases	amount €	cases	amount €
2005	1	13,181,000 + 1 vehicle	3	234,934	0	0
2006	79	1,400,000	0	0	79	1,400,000
2007	89	4,226,803	89	1,626,082	89	6,000,000
2008	8	8,390,572	8	1,718,578	N/A	N/A
2009	1	2,287,773	1	1,118,178	N/A	N/A

156. A number of discrepancies in these statistics were noticed by the evaluation team. In 2006, there were 79 cases where proceeds were frozen but only 2 prosecutions without any available conviction in 2006 (see under 2.1 above), 89 investigations but 10 prosecutions with 10 convictions in 2007 according to the table 8. But in this table there are 79 cases where proceeds frozen in 2006, but at the same time 79 cases where proceeds confiscated. The authorities explained that the data on the cases of investigations is in constant movement, the data gathering between the police and the prosecution have been combined in 2008, as well as the fact that the court does not keep separate statistics. Moreover, the authorities acknowledged that there are loopholes on the data gathering, which need to be closed.

157. The authorities advised that with regard to all money laundering related investigations conducted by the criminal service of the HCFG (30) (from 1 January 2008):

a) the total amount of value secured by relevant coercive measures of the ACP (seizures, precautionary measures, initiated sequestrations) enforced by investigating authorities was 3,545,107,240 HUF (€13,130,026);

b) With regard to the 12 investigations which were directly for money laundering the total amount of value secured by relevant coercive measures of the ACP (seizures, precautionary measures, initiated sequestrations) enforced by investigating authorities: 1,099,704,700 HUF (€4,072,980);

c) In the 18 cases where the legal ground to order an investigation was based on a predicate offence, the total amount of value secured by relevant coercive measures of the ACP (seizures, precautionary measures, initiated

sequestrations) enforced by investigating authorities: 2,445,402,540 HUF (€9,057,046).

158. The following tables set out the aggregate confiscation and provisional measures applied for all crimes for the period 2006-2009.

Table 10: The number of seizures and sequestrations ordered during the investigative phase of the criminal procedure (with regard to all cash-generating crimes)

Year	Total	Seizure	Sequestration	Seizure & Sequestration	Amount Recovered (HUF 'Ms)	Amount Recovered (€'Ms)
2006	18,172	17,824	241	107	8,278	30
2007	17,181	16,862	16	303	25,004	92
2008	15,832	15,609	49	174	13,621	50
2009	12,859	12,667	77	115	9,107	34

Table 11: Number of confiscations and forfeitures in 2008-2009

Number of confiscation and forfeiture in 2008-2009			
		2008	**2009**
Confiscation	Ancillary punishments applied independently	14	20
	Ancillary punishments in addition to a punishment	932	816
	total	**946**	**836**
Forfeiture*	Ancillary punishments applied independently	8	5
	Ancillary punishments in addition to a punishment	604	1,026
	total	**612**	**1,031**

*There was no civil forfeiture regime at the time of the 3rd round evaluation.

159. As noted above there are inconsistencies in the data provided to the evaluation team. It is the opinion of the evaluation team that such inconsistency is based on the fact that the National Police and the HCFG keep separate statistics.

Effectiveness and efficiency

160. While the legal framework for the confiscation regime is convincing in that it provides for a wide range of confiscation, seizure and provisional measures with regard to property laundered, proceedings from and instrumentalities used in and intended for use in ML and TF or other predicate offences, issues can be raised about its effectiveness.

161. The evaluators were encouraged to learn that the Asset Recovery Office has been established. Based on the available statistics, since 1 July 2009, the Asset Recovery Office has been active on processing national and foreign requests on identification of assets, which is very positive. In less than a year the Asset Recovery Office has processed 91 foreign requests and 27 national requests.

162. Law enforcement agencies are provided with sufficient legal means on application of provisional measures and seizure. The authorities explained that with regard to the identification of assets arising from money laundering and terrorism financing offences the HFIU could be consulted; for other offences the Asset Recovery Office could be involved. However, law enforcement agencies are not provided with specialised and continuing training on the topic of the identification of assets.

163. Authorities provided for statistics on the number of confiscation and forfeiture for 2008 and 2009 (see table 11 above). While the number of cases where assets were confiscated in 2008 was 946, it was 836 in 2009. The number of cases where forfeiture applied was 612 in 2008 and 1,031 in 2009. Compared with the number of cases where coercive measures

(seizure and sequestration) were applied (12,987 in 2008, 11,390 in 2009), the levels of confiscation appear to be very low. However, it is still not clear whether these statistics are related to the cases of property confiscated relating to ML or criminal proceeds. Therefore, in the absence of detailed and consistent statistics, it is not possible to assess the effectiveness of the overall confiscation regime in Hungary. Furthermore, the authorities were unable to demonstrate whether the provisions related to third party confiscation, value confiscation and confiscation of indirect proceeds of crime have been applied effectively or ever been applied.

164. There is an overall lack of coordination on the gathering of statistics on amounts frozen, seized and confiscated. It was noted by evaluation team that the MoJLE, Prosecutor's Office and the HFIU are involved in gathering of statistics; however the coordination seems to be lacking.

165. Overall, the authorities could not demonstrate whether other law enforcement bodies follow the proceeds effectively.

2.3.2 Recommendations and comments

166. Precise statistics on amounts restrained and confiscated in each instance should be maintained so as to be able to establish an overview of the efficiency of the system.

167. Consideration should be given to administrative suspension of transactions, granting the FIU a reasonable period of time to check the facts of the case in details, without immediately having to open a criminal investigation.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	LC	• Lack of detailed and meaningful statistics on all aspects of confiscation negatively affects the assessment of effectiveness of the system.

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

2.4.1 Description and analysis

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

168. As a member of the EU, Hungary freezes funds and assets of terrorists on the basis of EC Regulations and complementary domestic legislation. UNSCRs 1267 (1999), 1390 (2002), and 1455 (2003) are implemented by Council Regulation No. 881/2002[7] of 27 May 2002, whereas, the most important part of S/RES 1373/2001, is implemented by Council Regulation No. 2580/2001 of 27 December 2001. The Council Regulations are directly applicable in Hungary.

169. Separate sanctions regimes are applicable for non-EU-based entities or non-EU residents or citizens listed as terrorists (EU externals) and for so called EU-internals. EU internals are not covered by Council Regulation No. 2580/2001 due to the scope of the EU Common Foreign and Security Policy. Thus the EU adopted two Council Common Positions, No. 2001/930/CFSP and No. 2001/931/CFSP on the fight against terrorism, which are also applicable to persons, groups and entities based or resident within the EU (EU-internals), but their implementation, required subsequent enactment of national legislation. Hungary does not independently list EU terrorists to supplement the EU Regulations.

[7] The last amendments to EC Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban were made on 27 September 2010 by the EC Regulation No 851/2010.

170. The evaluation team welcomed the introduction of the FRM Act which came into force on 1 February 2008. The act provides an obligation for persons and organisations being subject to the AML/CFT Act and authorities operating asset registrations to report to the HFIU if there are funds or economic resources in the territory of the Republic of Hungary covered by the financial and asset-related restrictive measures. Furthermore, the FRM Act provides a procedure for the HFIU to examine and monitor constantly whether the individual or organisation subject to restrictive measures has funds or economic resources covered by the measures within the territory of the Republic of Hungary as well as providing for the necessary actions to be taken by the HFIU and the procedure for the competent court to decide upon execution of freezing.

171. Moreover, Section 261/A of the HCC establishes the act of violation of international economic restrictions as a criminal offence. Subsection 1 of this section provides that any person who violates:

> a) the obligation for freezing liquid assets, other financial interests and economic resources;
> b) an economic, commercial or financial restriction;
> c) import or export prohibitions imposed on the basis of an obligation to which the Republic of Hungary is committed under international law, or ordered in regulations adopted under Article 60 of the Treaty establishing the European Community, or in regulations and decisions adopted by authorisation of these regulations, or ordered in the Council's common position adopted under Article 15 of the Treaty on the European Union,

is guilty of a felony punishable by imprisonment for up to five years. It should be noted that the authority after adoption of the Lisbon Treaty would need to change the reference to Community law.

172. According to the FRM Act (Section 3), within 30 days after entering into force of the Community legal act on ordering financial and asset-related restrictive measures, the HFIU examines whether the persons and entities subject to economic and financial restrictive measures have funds or economic resources in Hungary. After this examination, within the period of financial and asset-related restrictive measures in force, the HFIU constantly monitors whether they have funds or economic resources within the territory of Hungary. The authorities explained that when the Regulation is adopted, after receiving the lists from the Ministry of Foreign Affairs, the HFIU makes necessary checks whether there are funds or economic resources within the territory of Hungary. Moreover, interviews with HFIU officials revealed that after the initial checks rather than the *ex officio* examination and monitoring stipulated in Section 3 of the FRM Act; the practice is based on the performance of reporting obligation by the service providers and authorities operating asset registrations.

173. Under Section 10 of the FRM Act the persons and organisations subject to the AML/CFT Act and authorities operating asset registrations are obliged to report to the HFIU, without delay, any data, fact or circumstance indicating that the individual or organisation subject to financial and asset-related restrictive measures has funds or economic resources covered by the financial and asset-related restrictive measures in the territory of Hungary.

174. If the HFIU decides that the individual or entity, listed on the electronic list of persons and entities subject to financial sanctions imposed by the EU, has funds or economic resources covered by the restrictive measures within the territory of Hungary or gains advantage from a transaction, it has to inform the competent authorities such as the county court, registry court and minister responsible for tax policy (i.e. the Minister of Finance, the governmental organisation keeping the wealth registry). The competent county court is authorised to issue a freezing order. The FRM Act does not allow the prior notification of the designated persons involved before freezing.

175. At the time of the visit there were no funds frozen in Hungary pursuant to UNSCRs 1267 and 1373 or transactions prohibited pursuant to the FRM Act. Furthermore, so far, no proposal for EU- or UN-listing has been put forward by Hungary. The authorities reported only one case where procedures under the provisions of the FRM Act were conducted, however, due to the circumstances of the case, no freezing obligations were ordered by the competent court; however a prohibition order was issued.

176. The AML/CFT Act and the FRM Act provide that, in the case of a suspicion of terrorist financing, the persons and organisation being subject to AML/CFT Act and authorities operating asset registrations should suspend the performance of the transfers and immediately report the transaction to the HFIU.

177. In the case of a domestic transaction, the funds ordered to be transferred are blocked for one day, in the case of an international money transfer the funds are blocked for two days. The one working day or two working days period does not include the day of receipt of the report. As provided by the authorities the HFIU has to conduct serious checks within the afore-mentioned period, however it could be questionable whether such time limits are effective especially in cases when there is a need to receive information from foreign counterparts. Hungarian authorities pointed out in the questionnaire that there is no legal limitation preventing the suspension of the transaction more than once in accordance with the Section 24/2 of the AML/CFT Act.

178. With regards to the implementation of UNSCR 1373 concerning persons, groups and entities based or residents within the European Union (EU-internals) which meet the criteria set by Article 1 (c) of the Resolution, these are excluded from the directly applicable requirements for the freezing of assets envisaged by the EC Regulation 2580. These persons are listed in an Annex to the Common Position 2001/931/CFSP. As a result with regards to applicable requirements the relevant freezing measure for funds and other financial assets or economic resources related to EU internals are missing.

179. With regard to listed persons and entities designated for freezing purposes through the EU Regulations, Hungary has a full legal capacity to freeze funds in accordance with UNSCRs 1267 and 1373 directly through the EU regulation mechanisms. However, for persons and entities that do not appear on any EU list, but for which Hungary receives a direct freezing request from other jurisdictions, Hungary has a judicial-based mechanism for seizure and confiscation of terrorist funds, which has not yet been tested in practice. In such cases seizure and confiscation of terrorist funds can be applied according to the criminal procedures as mentioned by Recommendation 3 in case national proceedings would be initiated under the HCC or mutual legal assistance mentioned by Recommendation 36. It is unclear, however, whether under this judicial-based mechanism Hungary would be able to freeze at the request of other jurisdictions "without delay", particularly taking into account that such mechanism would require the prosecutor to collect some degree of evidence to substantiate the suspicion for a court order to be issued.

180. The assets subject to freezing are defined by the EU Regulations in line with c.III.4.

181. The Council and the European Commission make Regulations and Decisions public through the Official Journal of the European Union, which can be accessed by anyone on the website of the European Union. Information for financial institutions on restrictive measures is also available on the websites of the HFSA and the HFIU. The authorities consider that publications on the EU's official journal and on the websites of the HFSA and HFIU are sufficient notifications to all for whom the legislation creates obligations and rights.

182. Notwithstanding the fact that EC Regulations are directly applicable, it seems that there is a general lack of appropriate coordination on the dissemination of the lists, which stem from the UNSCR and EC Regulations. While the representatives of banks and notaries interviewed during the on-site visit were aware of the lists, some sectors such as real estate agents, customs

officials and lawyers interviewed were not aware of those lists at all. Taking into account the fact that major banks in Hungary are subsidiaries from big European banks, the lists are sometimes received from parent companies rather than from the Hungarian authorities. With regard to notaries, lawyers and auditors, the guidance and model rules have reference to the relevant EU website, which should be checked, as explained above. The authorities explained that the HFIU, the HFSA and the Ministry of Foreign Affairs provide an up-to-date list of the Regulations on each website, as well as explanations of the necessary measures to be taken by the relevant authorities. Moreover, the Ministry of Foreign Affairs plays the main role on disseminating the lists to the HFIU and the HFSA. At the same time the interviewed authorities indicated that there is a plan to examine the system of coordination and dissemination in the near future.

183. The HFIU operates a public internet website[8]. On this website the Consolidated EU List and its recent changes are available[9]. The authorities argued that since the EU regulations have direct applicability to service providers, the guidance and publications of the EU are the primary source of the information but national authorities (such as the MoF, the HFIU and the HFSA) also provide detailed sanctions related information on their websites and on individual request.

184. The HFIU reported that when the FRM Act entered into force (February 1, 2008) the HFIU informed authorities, such as National Bank of Hungary, Supreme Court of Republic of Hungary, Hungarian Bar Association about the fact, moreover, the HFIU and HFSA provide continuing training to the authorities, including the freezing mechanism. At the same time authorities indicated that due to the fact that the lists do not include the persons with Hungarian nationality, less attention is brought to the service providers.

185. Relevant EU regulations do not provide for a national autonomous decision for considering de-listing requests and unfreezing as a whole. As such any freezing remains in effect until otherwise decided by the EU. Common Position 2001/931/CFSP of the European Union implements S/RES 1373 (2001) and provides for a regular review of the sanctions list which it has established. Moreover, listed individuals and entities are informed about the listing, its reasons and legal consequences. If the EU maintains the person or entity on its list, the latter can lodge an appeal before the European Court of First Instance on order to contest the listing decision. Delisting from the EC regulations may only be pursued before the EU courts.

186. As at the time of the on-site visit, there had not been any cases in Hungary requesting de-listing. If a petitioner should opt to submit its request for de-listing through the State, he/she would have to address the MFA. The MFA and the petitioner through the International Organisations and Human Rights Department notifies the Representative in the relevant UN/EU body and sends the request for de-listing to the UN Sanctions Committee or the European Commission whichever is concerned. However, this practice is not set out in legislation.

187. According to Section 4 of the FRM Act, the competent court shall order the freezing in a non-trial legal procedure on the basis of the notice from the HFIU. This 'non-trial procedure' provided for freezing cases might allow a fast decision by the court, however it does not provide any effective and publicly-known procedure for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. However, the Hungarian authorities argue that, on the national level, the competent court responsible for freezing according to the FRM Act shall also decide on unfreezing upon a request in a non-trial procedure. According to subsection 4 of Section 204/A of this Act the court shall

[8] www.vam.gov.hu/pio
[9] http://www.vam.gov.hu/pio/pages/hun/pio_hun_6_3.html

terminate the enforcement order if the conditions for ordering the freezing of assets no longer apply under Community law,

188. Notwithstanding the abovementioned, the authorities indicated that special regulations on freezing by the court were inserted into Act LIII of 1994 on Judicial Enforcement. Section 10 of this Act provides that the enforcement order is the order for the freezing of assets in connection with the implementation of restrictive measures imposed by the European Union in relation to liquid assets and other financial interests. This enforcement order could be appealed based on the general rules, namely Section 213 of the Act. However, it is explicitly mentioned in the second subsection that an appeal filed against the ruling defined in subsection (1) shall have no suspensory effect concerning the enforcement procedure. The evaluators are therefore of the opinion that the ordinary appeal process is not an appropriate mechanism to remedy, **in a timely manner,** the situation of such persons or entities affected by a freezing mechanism upon verification that the person or entity is not a designated person. Moreover, any other speedy appeal process and average time for regular appeal process were not made known to the evaluation team.

189. UNSCR 1267, as amended by UNSCR 1452, is implemented in the EU through a new Article 2a in EC Regulation 881/2002. This provision authorises the use of funds that are frozen for basic expenses, certain fees, or for extraordinary expenses. The HFIU is the designated authority to receive requests from affected persons for exemptions.

190. Section 6 of the FRM Act contains provisions for the exemption procedure. If the Community act imposing financial restrictions allows exemption from the financial restrictive measure, the exemption procedure is conducted according to that section. The application for exemption addressed to the court is submitted to the HFIU. The HFIU informs the Minister responsible for tax policy on the submitted application. Section 6 of the FRM Act provides that if the financial restriction imposed by the EU is based on an UNSCR, the HFIU initiates and conducts the required consultation procedure with the UNSC's Sanctions Committee pursuant to the given UNSCR. The HFIU shall also inform the competent Hungarian court on the result of the consultation procedure and transmit the submitted petition for exempting. In a 'non-trial procedure', the competent court shall deliver its decision on the exemption, with regard to its decision on ordering sequestration, within the period of 60 days after receiving the petition. The competent court shall deliver its decision to the HFIU and the Minister responsible for tax policy. Based on the court's decision, the Minister responsible for tax policy shall notify the EU institutions and member states on granting specific authorisation according to the Community acts.

191. Freezing mechanisms envisaged by the relevant EC regulations can be challenged at the Courts of the European Community. Any natural or legal person directly and individually affected by a restrictive regulation/decision can challenge it under the general principle established by Article 263 of the Treaty on the functioning of the European Union. The legality of freezing measure can also be challenged by bona fide third parties before the Courts of the European Community.

192. In addition, the freezing decision taken under the FRM Act can be challenged at the competent national court on grounds that the decision was taken on false information and in breach of the respective EC regulation. Access to the courts in Hungary to challenge aspects of a freezing measure that adversely affects a person or entity is guaranteed under general principles of Hungarian administrative law.

193. Hungary's legislation on confiscation, seizure and freezing is of general application, and therefore it could apply to assets involved in the commission of TF offences through ordinary judicial means (as contemplated under R.3) beyond those targeted by UNSCRs 1267 and 1373. However this is somewhat limited in scope due to the limited scope of the TF offence itself as elaborated above.

194. The Hungarian authorities argued during the on-site visit that the assessment of compliance with freezing obligations is an integrated part of the supervision procedure of the authorities. For the financial sector, supervisions carried out by the HFSA include procedures to verify if the bank is in compliance with all provisions with respect to TF. They further argued that the supervisory authorities have the possibility to impose fines for failure to comply with the freezing obligations or any other non compliance with AML/CFT obligations. The authorities explained that in accordance with the HFSA Act (Section 41 and 47) there is general obligation for the HFSA to assess the compliance, including the reporting obligation based on the FRM Act and by imposing sanctions. Although general provisions exist for monitoring compliance with general professional obligations, including compliance with applicable laws, there are no specific measures designed to monitor compliance of other reporting entities under the supervision of other supervisory authorities with SR III. Therefore, the evaluators are concerned that the MNB, the State Tax Authority, the Chamber of Hungarian Auditors, regional bar associations, regional notary chambers, trade licensing authority and the HFIU have no statutory powers to monitor effectively the compliance of relevant reporting entities with relevant legislation governing SR III and to impose civil, administrative or criminal sanctions for their failure to comply with such legislation. Authorities further argued that Subsection (2)-(3) of Section 32 of the AML/CFT Act provides for the appropriate legal basis of supervisory competence concerning obligations regarding freezing orders in stating that: "Service providers are required to ensure that their employees are aware of the provisions of the Act on the Enforcement of the Economic and Financial Restrictive Measures Adopted by the European Union (the FRM Act), so that they are able to proceed in accordance with the provisions contained therein. It is obvious that in order to discharge this obligation service providers are required to ensure the participation of their relevant employees in special training programs. According to the Hungarian authorities this link between the AML/CFT Act and the FRM Act makes it possible for all supervisory authorities to assess compliance the service providers with the FRM Act as it is in the supervisory practice. However, the obligation of the AML/CFT Act for the service providers to ensure that the employees are aware of the provision of the FRM Act considered to be insufficient in this respect. It is, however, noted that under Section 261/A of the HCC the violation of international economic restrictions is an offence punishable with a term of imprisonment of up to five years. No sanctions have been imposed so far for non-compliance to this provision.

195. In addition, several inconsistencies were identified by the evaluation team in the sample rules. Sample rules for service providers performing commodity trading activities and entitled to accept cash payments in an amount reaching or exceeding three million six hundred thousand forints makes reference to the Official Journal of the European Union website and the sanction lists of the Office of Foreign Assets Control – OFAC. Sample rules for insurance companies, insurance intermediaries and employment pension service providers for the drafting of Rules on the prevention of money laundering and terrorist financing only refer to the general obligation of the insurance sector to report based on the Regulation 881/2002/EC and Regulation 2580/2001/EC, furthermore, some sample rules only refer to the website of the HCFG. Additionally, some sample rules refer to out of date legislation. For example, the Sample Rules for service providers performing commodity trading activities and entitled to accept cash payments in an amount reaching or exceeding three million six hundred thousand forints refers to outdate provision of the HCC on terrorist financing.

Recommendation 32 (terrorist financing freezing data)

196. The HFIU received 12 reports on the basis of Section 10 of the FRM Act in 2008 and 4 reports were received in 2009 to 30 June 2009. None of them were reports on the basis of 2580/2001 and 881/2002 EC Regulations.

197. Section 29 of the AML/CFT Act is also applicable with regard to collecting terrorist financing freezing data.

198. The Hungarian authorities indicated that they have implemented all of the measures set out in the Best Practices Paper for SR III by way of the EU and domestic legislation described earlier in this section and that they fully cooperate with foreign jurisdictions. Communication and co-operation with foreign governments and international institutions is realised at the EU-level. Communication with the private sector is realised by the EU (e.g. database with designated persons and entities, EU Best Practices) and by the national authorities (e.g. websites, telephone hotlines, case-by-case counselling, information leaflets, circulars)

199. For the procedures to authorise access to funds or other assets that were frozen pursuant to S/RES/1373(2001), please see comments above.

Effectiveness and efficiency

200. The Hungarian legal background for asset/funds freezing related to terrorist financing has been created by the FRM Act. The implementation of SR.III relies upon the application of binding EU legislation and overall coordination on dissemination of the lists is unclear. The authorities indicated that the MFA is responsible for overall coordination on the implementation of the asset-related restrictive measures ordered by the EU and the UNSC; however, in practice, the evaluation team was of the opinion that several authorities are involved, such as Ministry of Justice, the HFIU and the HFSA. Therefore, efficient coordination seems to be lacking.

201. The adoption of the FRM Act is welcomed. Although the FRM Act provides for the HFIU to constantly examine and monitor, on its own initiative, whether the designated persons have funds or economic resources which are subject to sanctions of the EU and the UNSC in Hungary, the scope of such powers and how they are used in practice is not clear. The practice is based on examination carried out upon receipt of a report from service providers or the authorities operating asset registrations.

202. In the view of evaluators, the deadline for suspending transactions (assets) by the persons and organisation being subject to AML/CFT is relatively short and should be extended (especially in the case of international transactions) in order to enable the HFIU to perform comprehensive checks and for the court to issue freezing orders, so as to comply with the FATF criteria. Therefore, it appears that this is a significant gap in the system in terms of having effective procedures to freeze terrorist funds without delay (c. III.1).

203. Some of the model rules or guidance addressing service providers are vague or lacking key elements and could be improved.

204. Some of the interviewed financial institutions and DNFBPs were aware of the existence of such freezing obligations. However, some indicated that more awareness raising activities are necessary to understand the necessity of identifying possible connection to the EU or the UNSC lists. Taking into account the general prevailing view of the interviewed authorities that terrorist financing is quite unlikely to occur in Hungary, additional steps should be taken to raise the awareness.

2.4.2 Recommendations and comments

205. The Hungarian authorities should provide more guidance to the private sector, especially the non banking financial industry and DNFBPs, on the freezing obligations stemming from the international standards. The mechanism on dissemination of the lists should also be improved. In particular, the proposed plan to examine the system of coordination and dissemination of lists should be implemented as soon as possible.

206. The sample rules should be reviewed and brought up to-date on a regular basis.

207. The competence of all supervisory authorities on monitoring effectively the compliance of reporting entities with the FRM Act and imposing civil, administrative or criminal sanctions for failure to comply with the Act should be made clear in the AML/CFT Act.

208. The Hungarian authorities should provide a procedure for making possible freezing of funds and assets held by EU-internals in all instances set forth by SR.III.

209. The Hungarian authorities should provide an effective and publicly known national procedure for the purpose of delisting.

210. The effective national procedure for the purpose of unfreezing requests in a timely manner upon verification that the person or entity is not a designated person should be established.

211. The deadline for freezing transactions (assets) by the service providers is relatively short and should be extended (especially in the case of international transactions) in order to be able to perform necessary checks.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	PC	• Lack of awareness in the non-banking sector of the UN and EU lists gives rise to concerns of effectiveness of implementation. • Within the context of UNSCR 1373, there is no national mechanism for evaluation of requests to freeze the funds of EU internals (citizens or residents). • Hungary does not have an effective and publicly known national procedure for the purpose of delisting. • Hungary does not have effective national procedure for unfreezing, in a timely manner, requests upon verification that the person or entity is not designated person. • The scheme for communication of actions taken under freezing mechanisms appears to be fragmented and may not operate effectively. • Apart from the HFSA, there is no clear supervision by other regulators of compliance with SR III and no clear capacity by them to sanction in the event of non-compliance. • The deadline for freezing transactions (assets) by the service providers is relatively short and that this is a significant gap in the system in terms of having effective procedures to freeze terrorist funds without delay.

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

2.5.1 Description and analysis

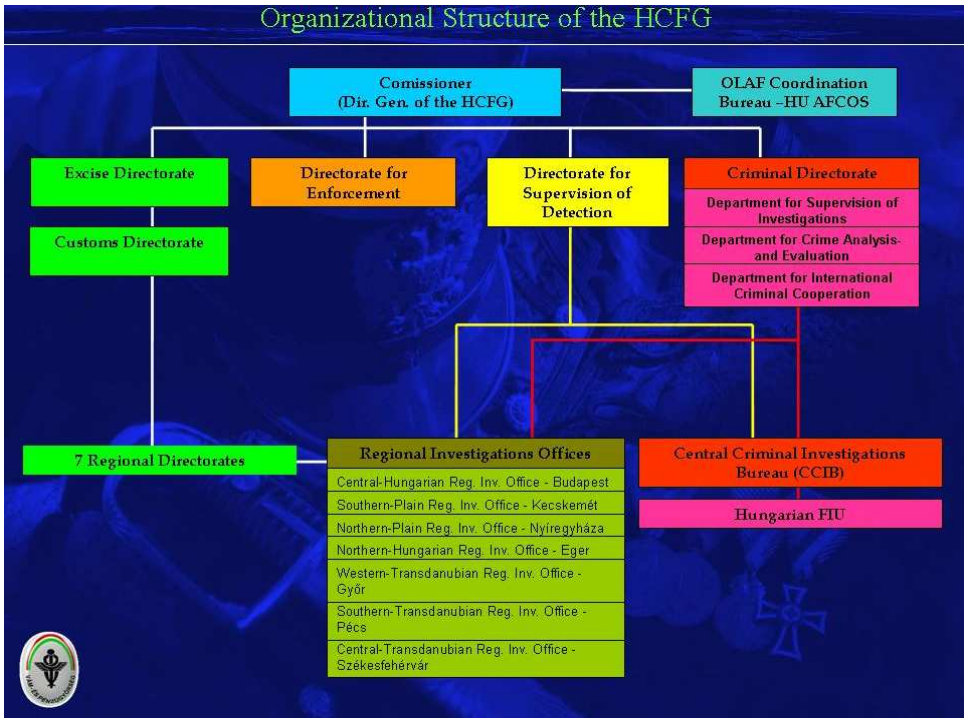
Recommendation 26 (rated LC in the 3rd round report)

212. The most significant change since the 3rd round report was that, in 2007, the FIU functions were transferred from the National Police Headquarters to the HCFG. Due to the promulgation of the new AML/CFT Act and with the Government Decree on the organisation of the HCFG (Government Decree No. 314/2006), the FIU's activities were transferred to the HCFG Central Criminal Investigation Bureau (hereinafter: CCIB). The legal status, duties and functions of the HCFG have been stipulated in the Act XIX of 2004 on the HCFG (hereinafter referred to as: Act on the HCFG. (See Annex XIX). The HCFG is armed law enforcement and public administration body supervised by the Minister in charge of tax policy, and is an agency of the central body that has nationwide jurisdiction and operates and manages its finances independently. The HCFG has customs administration powers, administrative powers, crime detection and investigative authority powers, enforcement and administration powers, powers on international cooperation issues and other powers laid down in subsection 6 of Section 2 of the Act on the HCFG. In addition, Section 36 (1) of the ACP provides that the Police (NPHQ) shall be the general investigation authority, but subsection (2) thereof defines the scope of crimes, including ML, where the HCFG has authority. The higher-level unit of the HCFG is the Directorate General of the HCFG (hereinafter: the Directorate General). The Head of the HCFG is the Commissioner, who is the superior officer for the staff of the HCFG. (Section 1(3) of the Act on the HCFG). The Commissioner is independent in and responsible for managing the Directorate General, directing and controlling the middle-level and lower-level units within the framework of the effective laws and other legal tools of government control. The CCIB is the central middle-level unit of the HCFG's law enforcement activity. The tasks and scope of competence of the CCIB are laid down in the Government Decree 314/2006 (XII.23) on the organisation of the HCFG and on the selection of the proceeding organs (See Annex XVI). Performance of the responsibilities defined under the AML/CFT Act and the FRM Act for the authority acting as the FIU are two of responsibilities of the CCIB (For other responsibilities of the CCIB see Section 7 of the Gov. Decree 314/2006).

213. The new FIU was set up and has been operational since 15 December 2007 within the organisation of the CCIB.[10] The department consists of three units: the Analytical Unit, the International Unit and the Administration Unit. At the time of its establishment the HFIU had staff of 12, although no staff from the previous FIU joined the new HFIU. The previous FIU later became the Asset Recovery Office in the NPHQ. In order to familiarise themselves with the AML/CFT system, the investigators of HCFG, who had experiences in investigating ML crimes, shared their expertise with new staff of HFIU. Training was also provided by the prosecutors, criminal law experts of the University and by the previous FIU. Furthermore, the head of new HFIU, who had been familiar with AML issues (having previously worked in the Ministry of Finance), provided training for the FIU staff and as well as for reporting parties (including the manner of reporting).

[10] The Central Criminal Investigation Bureau, under the lead of the Commander of CCIB, consists of different departments such as the Hungarian Financial Intelligence Unit, the Coordination Department, the Department of Serious Financial Crimes I, the Department of Serious Financial Crimes II, the Business Support and IT Department, the Legal Administration Department, the Department for Serious Crime, the Department for Human Resources, and the Department for Intelligence.

Table 12: Organisational structure of the HCFG



214. The tasks/competences and procedures of the HFIU are laid down by the following laws and regulations: the AML/CFT Act, the FRM Act, Act on the HCFG), the Gov. Decree 314/2006 and the Council Decision 2000/642/JHA (in the context of EU FIUs); and by the following internal rules: the Order of the Commissioner of the HCFG and the General Methodology Guidance (that determines the detailed internal rules of handling an STR, carrying out the analytical work, disseminating information, etc.), Statistical Methodological Guidance and the Methodological Guidance on Financial Restrictive Measures.

215. According to subsection (1) of Section 3 of the AML/CFT Act, the authority operating as the financial intelligence unit is a department of the HCFG appointed under specific other legislation and functioning as the national financial intelligence unit.

216. The tasks and competences of the HCFG CCIB, among others, are to fulfil the tasks determined in the AML/CFT Act of the financial intelligence unit and to perform the tasks ordered in the FRM Act (Subsection (e) and (f) of Section 7 of the Government decree 314/2006). The HFIU was appointed as a department of the HCFG CCIB by the Order of the Commissioner of the Directorate General of the HCFG to perform the tasks of the authority acting as a financial intelligence unit.

217. The HFIU is the national centre for receiving, analysing and disseminating disclosures of STRs and other relevant information concerning suspected ML and TF activities. The obligation to report STRs is always linked to the HFIU both for financial and non-financial institutions.

218. According to the AML/CFT Act, the HFIU is authorised to disseminate information to law enforcement authorities, the public prosecutor, national security service and foreign FIUs for the purposes of prevention and combating money laundering and terrorist financing, and for the purpose of detecting 8 offences (criminal offences of terrorist act, unauthorised financial activities, money laundering, failure to comply with the reporting obligation related to money laundering, tax fraud/tax evasion, embezzlement, fraud or misappropriation of funds).

219. The method of reporting is stated in subsection 3 of Section 23 of the AML/CFT Act. Section 23 (3) states: "*Service provider shall forward the report to the authority that operates*

*as the financial intelligence unit in the form of a **protected electronic message**, about the arrival of which the authority that operates as the financial intelligence unit in the form of an electronic message shall notify without delay the service provider that forwarded the report*."

220. In regard to providing the service providers with guidance regarding the manner of reporting, the Hungarian AML/CFT regime is a twofold system. The supervisory authorities are obliged to release model rules that lay down typologies on unusual transactions and the HFIU releases a semi-annual report which serves as guidance in order to improve the reporting mechanisms of service providers. As far as guidance for electronic reporting system is concerned, written detailed technical guidance is provided for reporting entities on the HFIU's website and designated members of the HFIU provide an oral helpdesk for representatives of reporting entities.

221. The HFIU has a link on the HCFG's website[11] and this link contains easily accessible information (AML/CFT, Financial Restrictive Measures, Cash Control, and FATF Recommendations etc.), reports and downloadable documents. Typologies and statistics are included in the reports published by the HFIU. The model rules for service providers being subject to supervision of the HFIU are also available on this website. Other information such as information on the protected electronic reporting system, the legal background, financial restriction measures and useful links are also available on the website.

222. There are model rules issued for every reporting entity sector. The HFSA has issued model rules for financial sector, insurance sector, investment service providers, funds, money changers and pawnbrokers. The HFIU has issued model rules for accountants, tax advisors, tax consultants and the real estate sector. Other supervisory bodies (for auditors, traders, gambling etc.) have issued similar model rules for their sectors. The model rules also contain the following annexes: typology of unusual transactions, reporting form, identification form, contact details of the HFIU, reporting form for the measures to freeze assets, etc.

223. The 3rd round MER recommended that an electronic STR reporting system was put in place which system has now been implemented. However, during the on-site visit the evaluators were concerned that the new electronic reporting system might be a barrier on the reporting of STRs by DNFBPs, particularly lawyers and notaries; concerns were also expressed by representatives of the banking sector over the functionality of electronic reporting, stating that the system seem to be created for the individuals rather then meeting the needs for larger legal entities. Furthermore, concerns were expressed about the user-friendliness of the electronic reporting system.

224. The evaluators were advised by the Hungarian authorities that the electronic reporting system required no IT developments from reporting entities; a single internet access is required exclusively. From that point of view the introduced electronic reporting system assists smaller reporting entities such as DNFBPs. The Hungarian authorities pointed out that the introduction of the electronic reporting system is a step forward in improving the effectiveness of HFIU since the information sent by reporting entities is stored automatically in the STR database and no human resources is needed to copy the STR data from paper format to the STR database. The HCFG has provided another option for larger reporting entities: the general form with reduced content together with the relevant XML file. This option provides more user-friendly reporting conditions (technically speaking), but requires certain IT developments. This issue is further elaborated under R.13 in this report.

225. The authorities indicated that the HFIU has direct access to the following databases:

- the STR (FIU) database (only available for the staff of the HFIU and the Commander and Deputy Commander of the HCFG CCIB);

[11] www.vam.hu/pio

- the national criminal record database (which contains the criminal records, if there are any, of all Hungarian citizens and foreigners in cases of a legally binding penalty being given by a criminal court acting in the territory of Hungary, and immigration data);
- the customs investigating database and IT case management system (which contains all ongoing investigations concerning criminal offences or contraventions investigated by the HCFG);
- the database of stolen vehicles and documents, wanted persons;
- personal data and home address registry (contains all personal information including date of birth, mother's name, pictures, number of ID card, passport etc.);
- company register (which contains all relevant information of companies such as seat, members, business activity, financial data;
- land register;
- motor vehicles register;
- custom records (databases):
    - NCTS: The New Computerised Transit System is a European wide system, based upon electronic declarations and processing. It is designed to provide better management and control of Community and Common Transit;
    - CDPS: (Custom Data Processing System) contains the export-import customs clearance of the legal entities and individuals from/to the thirds country;
    - AFIS: Member state authorities may also exchange information directly, by using the AFIS mailing system operated by the OLAF (European Anti Fraud Office);
    - CIS: the CIS developed by the Commission is to promote the disclosure of irregularities and frauds related to customs affairs, agriculture and illegal drug precursors;
    - CEN: CEN is an internet database, operated by the WCO. It contains the general, statistics data and arrest of cigarettes, drugs etc. CEN does not contain personal data;
    - ÁRUREG: Database of the transferred goods**;**
    - ETR: ETR system contains the licence of the legal entities and individuals who have custom registration number;
    - GTR: GTR system contains the detailed data of the legal entities and individuals who have custom registration number**;**
    - D&B: international company register;
    - Rabán: contains the registration of the unusual explorations (cigarettes, drugs data**);**
    - HÜFO System: containing cash declaration forms with regard to cash control.

The authorities further indicated that the HFIU have also restricted direct access to the police database (which contains all ongoing investigations concerning criminal offences or contraventions investigated by the Hungarian Police. If the HFIU identifies any match in the Police database during its analytical work, the HFIU can obtain more information (e.g. statements of the individuals, etc), by reference to the police via phone or officially in written form. The head of HFIU is authorised to sign such a request. In addition, the evaluators were

advised that the HFIU has indirect access (upon request) to records on bank accounts, CDD and transaction history which are stored by reporting entities upon request to them and to tax administration data upon request to the Hungarian Tax Authority.

226. The customs information that is exploited by the HFIU during its analytical work and in international information exchange is regularly and –on the basis of received feedbacks– successfully shared with foreign FIUs (upon request).The only precondition for requesting financial information stored by reporting entities is the emergence of any information, fact or circumstance indicating money laundering or terrorist financing. It has to be pointed out that the emergence of such information, fact or circumstances can take place on the side of the HFIU or on the side of a foreign FIU (if it is indicated and grounded in its request). The same mechanism is applicable for information held by tax authorities.

227. Comparing the former legislation with the present legislation it is visible that having access to customs and tax information by the FIU is a new element of the present legislation. Hungarian authorities expressed that they have benefited from these new provisions and both the tax and customs information have supported significantly the HFIU's (and the foreign FIUs') analytical work and had a direct positive impact on effectiveness.

228. Although the HFIU has direct access to most of the relevant databases, they would, however, benefit from unrestricted direct online access to all police databases. This restricted access was developed in the first half of 2008 and applying this tool became a compulsory element of the data conciliation process (as it is laid down by the General Methodological Guide). The Hungarian authorities indicated that the reasons for currently having only restricted online direct access to the police database is due to the strict data protection regime in force. Data processing is only legitimate for a specific well defined purpose. Taking into consideration the very short period for suspending transactions (1 working day in the case of domestic transaction and 2 working days in cases of international transactions (see sections 2.3 & 2.4 above), then the indirect access to relevant police information might become an issue regarding the performance of the HFIU's analytical functions (although so far, according to the Hungarian authorities, this has not created any problems). (The number of STRs where transaction have been suspended by service providers was 33 in 2008 and 20 in 2009) Furthermore, the HFIU does not have direct access to information on law enforcement covert investigations (due to the data protection and state secrecy provisions). The above mentioned safeguards, together with the fact that currently there is no electronically accessible database containing information and data gathered as intelligence (in the course of covert investigation) disables the HFIU to have direct access to such information. However the HFIU is authorised to have indirect access if its request is legally authorised, justified and explained, however, they indicated that such information is rarely requested.

229. The powers to request information, in the event of obtaining any information, fact or circumstance indicating ML or TF, from the tax or customs authorities are set out in Section 23 (7) of the AML/CFT Act. However, this Section appears to only authorise the HFIU for indirect access to information from tax and customs authorities in order to undertake its STR analysis function. The authorities indicated that the access to tax and customs secrecy are granted in both the sector-specific and AML/CFT laws, whilst the access to the information not protected by tax and customs secrecy held by other authorities (administrative, law enforcement) are regulated in the Article 34 and 35 of the Act on HCFG. This also applies in the cases of foreign requests. The evaluators noted that Section 35 of the same Act provides the HCFG with the possibility to access personal data processed by other bodies – as specified by law –and to request data, in order to perform its crime detection and enforcement tasks, from:-

- the bodies that register personal data and addresses,
- the basic national registers of vehicles and drivers,

- the registers on persons subject to measures restricting their travels to abroad and the registers concerning passports,
- the criminal register system as defined in separate law and the register of criminal and enforcement biometric data,

regardless of the limitations of general work schedules as well as from the register of persons held in penalty institutions by taking into account the general work schedule. The evaluators also note that in the Methodological Guide concerning the tasks relating to the reports lodged by service providers in accordance with the AML/CFT Act indicates ways in which the staff of the HFIU will request information from the relevant authorities such as the HSFA, the Court of Registry, the Immigration and Citizenship Office, the land offices, the cadastre etc. when the completion of an analytical task so requires. Therefore, it can be inferred from those provisions that the HFIU has indirect access to numerous domestic authorities in order to undertake its STR analysis functions.

230. It should be noted that the essential criterion 26.3 requires that the FIU should have access, directly or indirectly, on **a timely basis** to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STRs. Access to the information is considered timely if a response from another agency is provided in a time frame that does not impede the analytical process. There are no provisions on time frame of how rapidly the information should be provided to the HFIU. Considering the very short timeline in which the analysis process has to be undertaken, especially in cases where a transaction has been suspended (see sections 2.3 & 2.4 above), the evaluators had serious concerns about whether the indirect access to police information is an impediment to undertaking its analytical function effectively. Although the Hungarian authorities explained that the absence of clear provisions does not create any problems in practice and that the inquiries to the police are answered on a timely basis, the evaluators were not provided with any statistics illustrating the average response time from police authorities. Therefore the effectiveness of these processes could not be evaluated.

231. According to subsection 6 of Section 23 of the AML/CFT Act, in the event of obtaining any information, fact or circumstance indicating ML or TF, the HFIU, acting either under its own initiative or in order to fulfil the requests made by an authority operating as a foreign financial intelligence unit, is authorised to make a request to service providers for data and information that are considered to be bank secrets, payment secrets, etc. as well as additional information, the release of which the service providers may not deny. The wording of Section 23 (6) of the AML/CFT also covers the situations where subjected entities have not submitted an STR previously. The Hungarian authorities did not maintain statistics on the number of requests sent to service providers according to subsection 6 of Section 23 although they roughly estimate that the HFIU sends a request/requests to reporting entity/entities in approximately every second or third STR received.

232. There are, however, no clear provisions in law or regulation to ensure that such information is obtained in a timely fashion. Considering the very short timeline in which the analysis process has to be undertaken, especially in cases a transaction has been suspended, the evaluators had serious concerns about whether the absence of such provisions might not become an impediment for undertaking its analytical function.

233. According to Section 26 of the AML/CFT Act the HFIU is authorised to disseminate financial information obtained under this Act to other investigating authorities, the public prosecutor, the national security service or an authority operating as foreign FIU. The former AML Act was rather restrictive from the aspect of dissemination since the information could be used only for anti-money laundering purposes. However, the new AML/CFT Act (Section 26) gives the legal authorisation to disseminate the information for the purpose of prevention and combating money laundering and terrorist financing, and for the purposes of the detection of acts of terrorism, unauthorized financial activities, money laundering, failure to comply

with the reporting obligation related to money laundering, tax fraud, embezzlement, fraud and misappropriation of funds. The procedures for dissemination are described in the General Methodological Guide (prepared by the HFIU itself) to the AML/CFT Act. The decision for dissemination to the HCFG is taken by the commander (or deputy commander) of the HCFG CCIB upon the proposal of the head of the HFIU. However, the decision on dissemination for supporting criminal investigation handled by the police is taken by the head of HFIU.

234. The HFIU is authorised to disseminate information on the basis of the Section 26 paragraph 1 of AML/CFT Act. The dissemination STRs are allocated in five categories:

1. Initiating covert investigation: the HFIU sends the analysed case to the law enforcement authorities in order to commence a covert investigation on the basis of the collected and analysed information. (In 2008 – 55 STRs; In 2009 - 354)
2. Supporting covert investigation: the HFIU sends the case to the law enforcement authorities in order to support an ongoing covert investigation. (In 2008 – 1345 STRs, in 2009 – 545 STRs)
3. Initiating open criminal investigation: the HFIU send the analysed case to the law enforcement authorities in order to commence an open criminal investigation on the basis of the collected and analysed information. (In 2008 - 18 cases with 30 STRs, including 6 money laundering cases: in 2009 – 24 cases with 88 STRs)
4. Supporting open criminal investigation: the HFIU sends the case to the law enforcement authorities in order to support an ongoing criminal investigation. (In 2008 - 109 cases with 190 STRs; in 2009 – 61 cases with 281 STRs)
5. Sending information to foreign FIUs: the HFIU carries out spontaneous information exchange and responses to requests.

235. Nevertheless, comparing the data on dissemination of STRs in 2008 and 2009 it can be concluded that the proactive side of the HFIU has considerably improved. Improvement is visible in initiating open criminal investigation, but the changes in the figures of initiating covert investigations are more considerable. In 2008, 55 STRs were disseminated for initiating covert investigations, whilst 354 STRs in 2009. The increase of these figures accompanied with the decrease of the figures of supporting covert investigations. According to these statistical data it might be concluded that the emphasis has been moving from the reactive side to the proactive side, i.e. the law enforcement authorities carrying out covert investigations are more relying on the cases analysed and disseminated by the HFIU, instead of using the STR database by them as a source of possible information.

236. The authorities also indicated that the domination of reactive dissemination in 2008 might have been the result of the structural changes in FIU functions, as a completely new FIU has been set up in a new legal environment (new AML/CFT Act), with new functions.

237. The HFIU could provide the evaluation team with statistics on results of disseminated STRs only about the year 2009. The tables below show the result of STRs disseminated for the purpose of initiating and supporting covert investigations (first table) and for the purpose of initiating and supporting open criminal investigation (second table) in 2009 broken down by their procedural status in July 2010.

Table 13: STRs disseminated by the HFIU for initiating/supporting covert investigation in 2009

	Closed or no covert investigation	Ongoing covert investigation	Ongoing open criminal investigation	Total
	STRs	STRs	STRs	STRs
Tax fraud	41	326	64	431
Tax fraud and money laundering	27	137	99	263
Tax fraud, fraud and money laundering		24	93	117
Illegal trafficking of excise goods, smuggling and money laundering		3		3
Tax fraud, smuggling and money laundering			85	85
Total	68	490	341	899

Table 14: STRs disseminated by the HFIU for initiating/supporting open criminal investigation in 2009

	No open criminal investigation		Ongoing open criminal investigation		Closed criminal investigation		Proposal for indictment		Total	
	STRs	Cases	STRs	Cases	STRs	Cases	STRs	Cases	STRs	Cases
Tax fraud	27	7	220	28	19	5	3	3	269	43
Tax fraud and money laundering			31	6			5	3	36	9
Fraud	3	2	33	12			4	4	40	18
Fraud and money laundering			3	3					3	3
Money laundering			1	1					1	1
Tax fraud and fraud			2	1					2	1
Unauthorised financial activity	3	1	4	1					7	2
Embezzlement	2	2	1	1					3	3
Misappropriation of funds							1	1	1	1
Tax fraud and unlawful acquisition of economic advantage			1	1					1	1
Bribery and money laundering	4	1							4	1
Criminal bankruptcy and money laundering	2	2							2	2
Total	41	15	296	54	19	5	13	11	369	85

238. The current HFIU has been operating since the 17th December 2007. Accordingly, its operation and effectiveness can be evaluated on the basis of the years 2008 and 2009. The overall number of STRs disseminated is satisfactory. However, tables 12 & 13 show a preponderance of tax related information. The number of common crime and organized crime related ML cases is disproportionably low. This creates the impression that not enough effort is made to detect and fight serious common crime related ML, which is the primary goal of an AML/TF regime.

239. As the HFIU is one of the CCIB's structural units, it conducts neither covert investigations nor open criminal investigations. The HFIU performs analytical works within the field of criminal prevention. Regarding its functions, the HFIU shall be considered as an administrative type of FIU, however, regarding its structural allocation within the organisation of the HCFG, as it is one of the units of a body having investigative competence, the HFIU shall be considered as a law-enforcement type of FIU. According to this duality, there are certain subjects in which decision-making is delegated to the Commander of the HCFG CCIB

and, in this respect, the Commander (or Deputy Commander) shall be considered as the Head of the HFIU, however, the Commander is the leader of the whole HCFG CCIB. In other cases, the head of the Unit (HFIU) is empowered to bring decisions.

240. The appointment procedure of head of the HFIU as follows. As a first step, the candidate shall take part in an interview conducted by a board, of which the Commander is a member. The candidate shall meet certain criteria e.g. the candidate must have (1) several years of professional experience in AML/CFT matters, (2) foreign language proficiency (English is a must, other languages are advantageous), (3) certain qualification (i.e. law degree, police collage degree, degree in economics), (4) good personal skills and abilities (e.g. written and oral communication skills, creativity, reliability, management skills, etc.), (5) concrete views and opinion on the tasks of the HFIU. After a successful interview, the candidate shall be subject to a security examination carried out by the National Security Office of the Republic of Hungary. After a successful security examination, the candidate shall be appointed by the Commander. The appointment procedure for the Commander is similar to the procedure explained at head of the HFIU with the following differences. The Commander is interviewed by a temporary board which is led by the Commissioner of the HCFG. The candidate must meet a broader criteria list and the security examination is stricter. The Commander is appointed by the Commissioner of the HCFG. There is no pre-determined time frame for a term of office for either the Commissioner of the HCFG, the Commander of HCFG CCIB or the head of the HFIU. Furthermore, there are no safeguards in place to prevent the unilateral dismissal of the head of the HFIU, the Commissioner of the HCFG, or the Commander of the HCFG CCIB. The head of the HFIU and the HCFG CCIB can be replaced, dismissed or reappointed to another position by the Commissioner of the HCFG. This is also valid for the other staff of the HFIU. The Commissioner of the HCFG, who is appointed by the Minister of Finance, can also be dismissed by the same minister. Therefore, it could be concluded that the HFIU is not completely protected from the undue influence or interference.

241. Being the structural unit of the HCFG CCIB, there appear to be some deficiencies regarding its operational independence and autonomy. There appears to be no clear provision in legislation or internal regulations of the HCFG stating that the HFIU or the CCIB are independent units. The HFIU does not have its independent or allocated budget, neither has the head of the HFIU any overview of the budget allocated for the HFIU. However, the Hungarian authorities indicated that the head of the HFIU has a right to make proposals to the head of CCIB regarding the need for resources and that the absence of independent budget has created no issues so far. As was mentioned above, *two heads (The Commander / deputy Commander of CCIB and the Head of the HFIU)* are responsible for the HFIU. The Head of the HFIU is liable for the professional activity (execution of the AML/CFT tasks laid down by the Hungarian AML/CFT Act and the international standards, direction and management of the Unit) of the HFIU, therefore, all decisions belonging to this subject are made by the head of the HFIU. The Head of the HFIU is required to report to the Commander of the CCIB on the professional work and performance of the HFIU. The Commander of the CCIB also makes decisions on the issues related to recruitment and dismissal of the staff of the HFIU, however, the head of the HFIU is in a position to make proposals related to those matters. The staff of the HFIU can be repositioned by the Commander of CCIB or Commissioner of the HCFG. The evaluators were advised that such situations have taken place in practice, however, the HFIU has benefitted from this as the additional staff have been allocated to their unit (especially in the starting phase of the HFIU). The salaries of the head of the HFIU and the staff are stipulated by the law. However there is some flexibility based on performance indicators etc, and in those cases the Commander of the HCFG CCIB is in a position to take the relevant decisions. The salaries of the staff of the HFIU are considered to be at the same level to other staff of the HCFG, depending on the rank, performance, work experience, language skills etc. The evaluators were not provided with any evidence indicating the average

salaries of the staff of the HFIU in comparison with the other staff of the HCFG, law enforcement agencies or financial sector.

242. The STR database is available for the staff of the HFIU and the Commander and Deputy Commander of the HCFG CCIB. Regarding dissemination of information, head of the HFIU is empowered to disseminate information to foreign FIUs and to the police for supporting criminal investigations. In any other cases, such as dissemination to the HCFG, or initiating covert or open criminal investigation by police, or dissemination to prosecutors or national security office, etc., the decision is made by the Commander of the HCFG CCIB. When analysing a report, if the HFIU finds out that further investigation *covert investigation)* by another authority is needed, the head of the HFIU makes a proposal to this effect to the Commander of the HCFG CCIB. To support this, the responsible officer prepares two separate memos, one for the head of the HFIU, proposing that the HFIU should suspend the procedure, the other one for the Commander of the HCFG CCIB proposing the transfer of the issue to another relevant authority (either to other department of the HCFG or to any Police Department). The head of the HFIU is in the position to make decision upon the case: either to propose the case to the Commander for dissemination or to refuse it. If the Commander of HCFG CCIB approves the proposal, it is disseminated. This procedure applies in cases where there is a match or correlation with any criminal investigation handled by any other organisational unit of the HCFG CCIB or the police (the general investigation authority). In order to transfer the report in such cases the approval of the Commander of the CCIB is needed. The procedure is the same while transferring the information to any other organisational unit of the HCFG CCIB, the Regional Investigation Office of the HCFG, any other investigation authority, prosecutor or the national security service for criminal investigation of 8 offences including ML and TF. The evaluators were concerned that the Commander of the HCFG CCIB, who is also the head of central investigation unit of the HCFG, is making both decisions – regarding the dissemination and also, regarding the further status of disseminated case (whether to start an investigation or not).

243. The Hungarian authorities were not able to provide any statistics demonstrating how many cases (if any) the Commander of the HCFG CCIB refused to disseminate the case or refused to start an investigation. Furthermore, there are no procedures in place for the head of the HFIU to challenge a decision not to investigate or disseminate a case.

244. In human resources matters and IT and other background issues giving technical or other kind of assistance to the HFIU, the head of the HFIU has only initiative roles and powers. Final decisions are taken by the Commander of the HCFG CCIB.

245. According to the structure of the HCFG the Criminal Directorate (as a high level organ of the HCFG) carries out supervision above the criminal investigation service of the HCFG including the CCIB and 7 regional investigating offices. Hence, the HFIU itself is also under the general supervision of the Criminal Directorate without having the latter access to the STR database and information processed and possessed by the HFIU. The Criminal Directorate examines the work of the HFIU from the following point of view: (1) regarding compliance with the applicable domestic and EU legislation, (2) concerning the effectiveness and efficiency (e.g. how many investigations were initiated or supported by STRs) of the HFIU. However, no results of any such examination were demonstrated to the evaluators.

246. Therefore it appeared to the evaluators that the head of the HFIU is not in a position to individually take all important decisions regarding the operations of the HFIU (powers of decision-makings explained above, human recourses, budgetary issues etc). Moreover, the legal framework does not provide clear terms and process for dismissal the head of HFIU.

247. Rules on security of information are set out in Section 26 of the AML/CFT Act. The HFIU is subject to the provisions on prohibition of disclosure. Thus, the HFIU is obliged to handle STR data as confidential information. This protected information can exclusively leave the

HFIU on the basis of the Section 26 of AML/CFT Act. In order to ensure the secure process of dissemination, the HFIU uses the couriers of the HCFG. The case materials are placed in a sealed envelope, handed over personally and the receipt for handing over the case is required from the receiving party. For securing the data received or disseminated from/to foreign FIUs, the HFIU uses the Egmont Secure Web and applies the same security standards and procedures as for domestic information. In addition, as noted above, the STR database is only available to the staff of the HFIU and the Commander and Deputy Commander of the CCIB. To ensure that staff is suitable for the position and do not pose a security risk, all personnel undergo a security check undertaken by the Security Service (repeated after every 5 years). The evaluators were informed that no incidents of security breach have been indentified so far. The staff of the HFIU are also required to receive training on data protection. The maintenance of the IT network and database of the HFIU is provided by the IT department of the HCFG. This includes audits and security checks. However, no results of such audits were provided to the evaluators. The Hungarian Authorities indicated that the information stored by the STR database (HFIU database) is not seen – in compliance with the prohibition of disclosure – in any form by the IT Department of the HCFG. The officer of the Criminal Directorate of HCFG, who performs the IT expert and webmaster tasks, controls the STR database logs (checking log-in/access permissions, time and logs of inquiries, types of document generations, etc.) in respect of the HFIU's staff. He/she carries out the controls upon the request of the head of the HFIU, but he has no access to the content of STRs except from the database logs.

248. The evaluators were given the opportunity to visit the premises of the FIU during on-site visit to have a general overview concerning the data protection resources. Several measures have been adopted for the objective of data protection:

a) the CCIB is located on a separated part of the building;
b) the electronic locks of doors can only be opened with cards of employees and superior officers;
c) all computers in the HFIU are accessible only by using personal passwords;
d) computers are protected with firewalls and installed with antivirus software;
e) queues to the STR database are logged. The evaluators were told that the head of the HFIU and heads of groups check the queues on a regular basis in order to identify possible misuse of the system. No such breaches have been identified.

249. Subsection 5 Section 29 of AML/CFT Act requires the HFIU to publish designated statistics on its official website annually.

250. The AML/CFT Act does not explicitly require the releasing of periodic or annual reports. However, subsection 10 of Section 23 of the AML/CFT Act requires that information on the efficiency of the reports and its proposals in order to improve efficiency shall be published on its web site semi-annually, and subsection 5 of Section 29 of the AML/CFT Act lays down the obligation of publishing statistics which have to be maintained by the HFIU on its official web-site annually.

251. Accordingly, the HFIU releases annual reports and biannual reports. Both reports cover, inter alia, statistics, typologies, updated general information.

252. The last biannual report released in August 2009 consisted of the following chapters:

- Summary of the AML System and the HFIU;
- Statistics;
- The Reduction of the Number of STRs;
- Deficiencies in CDD on the basis of STRs;
- Confidentiality in the Procedures of the HFIU;
- Feedback for Service Providers;
- Protected Electronic Reporting System;

- STR-Typology;
- Supervisory tasks of the HFIU.

However, due to the lack of constant feedback from the law enforcement authorities the HFIU does not keep, and was therefore unable to publish, statistics on the results of STRs disseminated for supporting or initiating covert investigations or supporting ongoing criminal investigations. However, for the purpose of this evaluation, the HFIU collected statistics on the result of disseminated STRs in 2009. The detailed statistics are broken down by the purpose of dissemination (criminal offences) and the procedural status.

253. Pursuant to the legal changes in the FIU function, the former FIU was disconnected from the Egmont Secured Web since it stopped functioning as an FIU. At the beginning of 2008 the HFIU applied for membership in the Egmont Group. The HFIU as a new unit has been a member of the Egmont Group of Financial Intelligence Units since the Working Group Meetings of Egmont Group held in Santiago de Chile in March 2008. It has access to the Egmont Secured Web and the Commissioner of the HCFG signed the Commitment Letter of the Charter of the Egmont Group. The HFIU receives and sends requests via the Egmont Secured Web and it also takes part in the work of the Egmont Working Groups.

254. Regarding international information exchange, the HFIU is exclusively authorised to send data and information acquired on the basis of the AML/CFT Act to foreign FIUs that are able to guarantee equivalent or better protection for such data or information than the protection afforded under Hungarian law.

255. There are no further restrictions on exchanging information with other FIUs. It is positive that the HFIU has an ability of sharing financial information with foreign FIUs even without formal rogatory letter. The HFIU can provide other FIUs with any data and information, including banking and law enforcement information. In 2008 the HFIU received requests in 142 cases from foreign FIUs via ESW and sent spontaneous information exchange/requests in 336 cases. In 2009 the HFIU received spontaneous information exchange/requests from foreign FIUs in 234 cases and sent spontaneous information exchange/requests to foreign FIUs in 368 cases. The HFIU gave its prior consent for the foreign FIU in order to disseminate the information sent previously in 84 cases in the 2009. (This figure is not available in the year 2008.). The HFIU does not disseminate any information received from foreign FIUs without having its prior consent.

256. In the last quarter of 2008 the HFIU received 1 request from INTERPOL, 2 requests from the police and 1 request from the other bodies of the HCFG. (The HFIU has only been collecting statistics on these figures since October 2008). In the period of 1 January 2009 – 30 June 2009 the HFIU received 9 requests from INTERPOL, 14 requests from the police and 8 requests from the other bodies of the HCFG. The HFIU response to the requests from the police and HCFG are considered as dissemination of information (in accordance with the Section 26 of the AML/CFT Law) in order to support open criminal investigations. However, no statistics were kept on average response times. Neither does the HFIU use a special feedback form in order to receive feedback on the usefulness of the information. Therefore there is no information available whether those disseminations resulted in any prosecution or conviction.

257. The provision of international information exchange are laid down by the AML/CFT Act, the Council Decision 2000/642/JHA (in the context of EU FIUs), the Order no. 123/2007 of the Commissioner of HCFG, the Charter of the Egmont Group and the General Methodology Guidance (that determines the detailed internal rules of handling an STR, carrying out the analytical work, disseminating information, etc.).

Recommendation 30 (FIU)

258. The HFIU appears to be adequately staffed. As was mentioned in the general description under Recommendation 26, the HFIU has three different groups which is a suitable

organisational structure to assure fulfilment of all its legal duties. In the 2008, the number of HFIU's staff was gradually grown. As no staff from the previous (police) FIU joined the HFIU, in order to make the HFIU operational, customs officers were commanded as secondments from other departments of the HCFG. The number of seconded employees was 4 and total number of HFIU staff was at this time 12. In 2008 the total number of staff reached to 28 (of which 2 officers were commanded). In 2009 the number of budgeted positions in the HFIU was 33 of which 31 were filled (all of the staff being permanent). 26 persons are responsible for analytical work, 8 of them also perform supervisory tasks and 7 are also responsible for international information exchange. 5 persons are exclusively responsible for administrative work. Members of the HFIU have varied backgrounds and skills (lawyers, economists, accounting experts, officers with mid-level education). Some of them are customs officers with investigative or administrative background, some of them came from the central administration or other authorities, new entrants were also hired.

259. The Hungarian authorities mentioned several advantages as a result of the transfer of the FIU function from police to the HCFG. Although immediately after the transfer there was a clear setback in regards of the competence of the staff, they now consider that the staff has reached sound professional standards. In comparison with the previous NPHQ FIU, which also performed an investigative function, the HFIU does not and therefore can concentrate on its analytical work. Furthermore, the authorities are of the opinion that the HFIU is able to provide more comprehensive statistics (though the evaluators have some reservation in this regards) and international cooperation is considered to have been improved. Moreover, as the HFIU now has supervisory tasks it was considered that this has had a positive impact on the AML/CFT system. However, in the view of the evaluators, to date the supervisory functions have not had a significant positive impact on the numbers of STRs received from the sectors under HFIU supervision.

260. The HFIU appears to be adequately funded and provided with sufficient technical and other resources to fully and effectively perform its functions. In spite of not having its independent budget, the representatives of the HFIU indicated that they are currently able to undertake all functions with the current resources. The HFIU received 5,433 STRs in 2009 and has 26 analytical staff. Considering the fact that all STRs are being analysed the workload for each analyst per year is approximately 200. The HFIU is situated in a modern building and has good working conditions and IT equipment. All members of the HFIU have their own computer and have access to the STR database and other directly available databases.

261. All members of the HFIU seem to have appropriate educational skills required for its position; nevertheless, some of them also attend higher educational institutions or universities in order to obtain a second diploma. According to the internal decrees of the HCFG all commissioned officers are required to start the Training School of the HCFG within 3 years of the starting date of service. This provision orders 13 employees to start the special training of HCFG.

262. The HFIU regularly (at least once each two weeks) organises training for its staff with regards to the fact that the educational component of the staff is relatively diversified and there are experts on all important areas in the field of combating money laundering such as lawyers, tax consultants, economists etc. Furthermore, the staff of the HFIU has participated in numerous domestic and international training seminars relevant for performing AML/CFT and supervisory tasks. Nevertheless, taking into consideration the relatively short working experience of the staff of HFIU in AML/CFT field, the Hungarian authorities should assure that the constant training for the staff of HFIU will be further provided.

263. It is welcomed by the evaluators that, according to subsection 3 of Section 35 of the AML/CFT Act, the HFIU has the possibility to use the proceeds from fines, imposed by the supervisory bodies mentioned under Paragraphs (c), (f) and (g) of Section 5, for additional training of staff in the knowledge required in connection with this Act.

Recommendation 32 (FIU)

264. According to the AML/CFT Act the HFIU is required to maintain comprehensive statistics, by virtue of which the effectiveness of the system for the combating of money laundering and terrorist financing can be controlled.

265. According to Section 29 of the AML/CFT Act, the comprehensive statistics specified shall cover:

- the number of suspicious transaction reports made and the number of cases where information was provided under Section 23;
- the number of transaction orders suspended under Section 24;
- the number of cases for the freezing of assets in connection with terrorist financing under the FRM Act which implements the restrictive measures adopted by the EU and the number of cases for the freezing of assets by court order, and the forint value of the funds and economic resources frozen by court order;
- the number of suspicious transaction reports made under Section 23 upon which the HFIU took any action, and the number of cases investigated and prosecuted;
- the number of cases investigated for suspicion of money laundering and acts of terrorism, and the number of suspects;
- the number of cases and the number of persons prosecuted;
- the number of court verdicts and the number of persons convicted, the number of cases where any property has been frozen, seized or confiscated, the value of property seized or confiscated, and how much property has been frozen, seized or confiscated.

266. The Statistic Methodology Guidance determines the duties of the HFIU's staff in respect of preparing statistics.

267. 9,940 STRs were received in 2008. In addition, the HFIU received 142 requests from foreign FIUs. It has to be noted that the number of STRs received in 2008 includes reports sent by the border customs offices and the reports sent on the basis of the FRM Act.

268. In the period from 1 January 2005 to 31 December 2009, the HFIU forwarded 235 case reports on suspicious transactions relating to money laundering offences to law enforcement agencies. No cases have been forwarded regarding TF offences. The numbers of notifications on money laundering sent to the law enforcement authorities have been variable, as indicated below:

- 32 notifications in 2005;
- 51 notifications in 2006;
- 88 notifications in 2007;
- 6 notifications in 2008;
- 58 notifications in 2009.

269. In 2008 the HFIU disseminated information for the initiation of criminal investigations in 30 cases and supported criminal investigations in 190 cases. 55 STRs were disseminated for further intelligence (initiating covert investigation) and 1,345 STRs were disseminated for the support of intelligence (supporting covert investigation).

270. Based on Section 24 of the AML/CFT Act transactions were suspended in 33 cases and reported to the HFIU. Out of this number, in 32 cases the transaction was suspended by the reporting entity (bank) and in 1 case the HFIU suspended the transaction. Concerning the suspended transactions, in 5 cases the HFIU disseminated information for the initiation of criminal investigations and in 5 cases the HFIU supported criminal investigations.

271. The total number of STRs received in 2009 was 5,683. Additionally, 94 requests were received by the HFIU from other authorities. The figure 5,683 covers (1) STRs in ML and FT sent by service providers, (2) reports sent on the basis of the FRM Act, (3) requests sent by foreign FIUs, (4) reports sent by border customs authorities, and (5) information sent by supervisory bodies (Section 25 of AML/CFT Act).

272. In 2009, the HFIU disseminated information for the initiation of criminal investigations in 24 cases with 88 STRs and supported criminal investigations in 61 cases with 281 STRs. 354 STRs were disseminated for intelligence purposes (initiating covert investigation) and 545 STRs were disseminated for the support of intelligence (supporting covert investigation).

273. Based on Section 24 of the AML/CFT Act the transaction was suspended in 20 cases and reported to the HFIU. Concerning the suspended transactions, in 1 case the disseminated information was for the initiation of criminal investigations.

Table 15: Disseminated STRs by the former Hungarian FIU (2005, 2006, and 2007) and the current Hungarian FIU (2008, 2009)

	2005*	2006*	2007*	2008	2009
Number of STRs	11 382	9 999	9 475	9 928	5 433
Disseminated STRs to law enforcement	N/A	N/A	N/A	1620	1268
% thereof	N/A	N/A	N/A	16,32%	23,34%
Disseminated for initiating covert investigation	N/A	N/A	N/A	55	354
Disseminated for supporting covert investigation	N/A	N/A	N/A	1345	545
Initiating open criminal investigation	N/A	N/A	N/A	30	88
Supporting open criminal investigation	N/A	N/A	N/A	190	281
Disseminated STRs to law enforcement for the purpose of detection ML (current HFIU)	N/A	N/A	N/A	N/A	514
% thereof	N/A	N/A	N/A	N/A	9,46%
Disseminated cases to law enforcement (1) for AML purposes (former HFIU) or (2) for the purpose of detection ML(current HFIU)	32	51	88	6	58

* Due to the transfer of responsibilities from the NPHQ to the HCFG the statistics were not made available to the evaluators

274. Notwithstanding the legal requirement of the HFIU to keep statistics some of it was not provided to the evaluation team. Specifically, the data about underlying predicate offences was not provided. Moreover, the HFIU had no statistics regarding the outcome of STRs

disseminated for supporting ongoing investigations, for further intelligence or for supporting intelligence. Although the statistics was eventually provided, the evaluators noted, that this was collected for the evaluation purposes only and not as a standard procedure for evaluating the overall effectiveness of the AML/CFT system.

275. Since the 1st January 2008 in accordance with subsection 1 of Section 26 of the AML/CFT Act, 5 money laundering, and 20 tax fraud investigations (4 cases were forwarded to the prosecutor with proposals for filing an indictment) were directly triggered by STRs (where disclosures of STRs served as the key information to formulate the suspicion of money laundering necessary to initiate a criminal procedure). The Hungarian authorities were nevertheless unable to provide statistics on STRs relating to attempted transactions and on STRs resulting in investigation, prosecution and conviction 2005-2009.

Effectiveness and efficiency

276. The HFIU is required according to AML/CFT Act, to maintain statistics by virtue of which the effectiveness of the system for the combating of money laundering and terrorist financing can be controlled. The FIU posts these statistics annually on its website. However, the evaluation team is of the opinion that coordination is lacking on gathering of statistics which prevents the authorities from making a comprehensive review of the effectiveness of the system on combating money laundering and terrorist financing.

277. Furthermore, it remains unclear whether the Hungarian authorities perform a regular overview of the effectiveness and efficiency of the AML/CFT regime based on statistical analysis. Although AML/CFT issues are being discussed in the Anti-Money Laundering Inter-Ministerial Committee the evaluators were not provided with any material demonstrating the effectiveness and efficiency of the statistical part of AML/CFT system.

278. The HFIU lacks feedback from law enforcement authorities regarding the STRs disseminated for supporting ongoing investigations, for initiating covert investigation or supporting covert investigation. Although the statistics was eventually provided, the evaluators noted, that this was collected for the evaluation purposes only and not as a standard procedure for evaluating the overall effectiveness of the AML/CFT system. Evaluators urge Hungarian Authorities to make a collection of such statistics as a standard procedure in order to be able to evaluate the effectiveness and efficiency of the HFIU and law enforcement authorities.

2.5.2 Recommendations and comments

Recommendation 26

279. The limited direct access to the police and law enforcement criminal intelligence information might undermine the analysis function of the HFIU (illustrated by the low number of STRs disseminated to the police related to common and organised crime). Therefore, in evaluators view, the HFIU should be provided by the Law direct (or timely indirect) access to all law enforcement information, including intelligence information as this would significantly improve its effectiveness to undertake its analytical function.

280. The very short timeframe in cases where transactions are suspended (1 or 2 working days) and lack of any statutory timeframe for indirect access to information might become obstacles for being able to effectively undertake its analytical functions. Therefore the Hungarian authorities should consider increasing the suspension period and should introduce a timeframe to ensure that the HFIU has indirect access, on a timely basis, to the relevant financial, administrative and law enforcement information that requires to properly undertake its, functions, including the analysis of STR.

281. Although the overall number of disseminated STRs is satisfactory, the relatively low number of STRs disseminated for initiating open criminal investigation gives the ground to recommend, that the FIU should carry out a more in depth analysis of the reports, aimed at

adding value to the STRs received, with the view of improving the quality of the information it disseminates. The evaluators are therefore of the opinion that an enhanced analysis of the STRs aimed at selecting those worth investigating and at improving the quality of information that is disseminated to law enforcement for initiating new criminal investigations would make AML/CFT systems more effective. In particular, this approach has the advantage of making a more effective use of law enforcement resources and providing a more robust buffer between the reporting and investigation stages.

282. Being the structural unit of the HCFG CCIB, there seems to be some deficiencies regarding its operational independence and autonomy. The HFIU does not have its independent budget. The head of the HFIU is not in position to take autonomous decision upon dissemination of STRs. Additionally, there are no procedures in place for the head of the HFIU to challenge a decision not to investigate or disseminate the crime. In respect to employment, the Commander of the CCIB is in charge of deciding on human resources issues. Moreover, the legal framework does not provide clear safeguards for preventing undue dismissal of the head of the HFIU. The Hungarian authorities should adopt clear legal provisions in order to assure the operational independence and autonomy of the HFIU and grant the head of the HFIU with powers to decide on dissemination of STRs.

Recommendation 30

283. As stated above, the HFIU is well structured, resourced and professional. Nevertheless, taking into consideration the relatively short working experience of the staff of the HFIU in AML/CFT field, the Hungarian authorities should assure that the constant training on ML/TF matters for the staff of the HFIU will continue to be provided.

Recommendation 32

284. The evaluation team is of the opinion that coordination on gathering of statistics is lacking which prevents the authorities from carrying out a comprehensive review of the effectiveness of the system on combating money laundering and terrorist financing. Moreover, it is unclear whether the Hungarian authorities perform the regular overview of the effectiveness and efficiency of the AML/CFT regime based on statistical analysis. Although the AML/CFT issues have been discussed during the meetings of the Anti-Money Laundering Inter-Ministerial Committee the evaluators were not provided with any material demonstrating the effectiveness and efficiency of the statistical part of AML/CFT system. Therefore the evaluators urge Hungarian authorities to maintain more comprehensive statistics in order to be able to evaluate the effectiveness and efficiency of the AML/CFT system.

285. Notwithstanding the legal requirement of the HFIU to keep statistics, the HFIU lacks feedback from law enforcement authorities regarding the STRs disseminated for supporting ongoing investigations, for initiating covert investigation or supporting covert investigation. Although the statistics were eventually provided, the evaluators noted that these were collected solely for the purposes of the evaluation and not as a standard procedure for evaluating the overall effectiveness of the AML/CFT system. The evaluators urge the Hungarian authorities to make a collection of such statistics as a standard procedure in order to be able to evaluate the effectiveness and efficiency of the HFIU and law enforcement authorities.

286. Furthermore, the HFIU was unable to provide statistics regarding attempted transactions. It is recommended that the Hungarian authorities review the system of collection of statistics. Moreover, the commissioners of police, the HCFG and the HFIU should take steps in order to make sure that the HFIU receives relevant feedback on the STRs disseminated.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	**PC**	• There exist some deficiencies regarding the operational independence and autonomy of the HFIU. • The absence of a timeframe in legislation for indirect access to information on a timely basis in order to enable the HFIU to properly undertake its functions, including the analysis of STR could undermine its operational effectiveness. • The low number of case reports submitted to law enforcement agencies for initiating common and organised crime related ML brings into question the effectiveness of the HFIU as well as the absence of indictments arising from the dissemination of STRs.

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)

287. Hungary was rated partially compliant in the 3rd round MER and it was recommended that the HCFG should be given the authority to stop or restrain cash to ascertain whether evidence may be found for ML/TF. It was further recommended that the sanctions should be more effective and dissuasive, and immediate seizure should be available in the cases of cash related ML/TF. It should be noted that at the time of third round evaluation Hungary had a domestic declaration system that was set out in Section 7 of the previous AML Act. The new AML/CFT Act does not contain such provisions for cross-border declaration or disclosure, since the domestic declaration system is regulated in a separate legal act (Act XLVIII of 2007) in conjunction with Regulation (EC) No 1889/2005 of the European Parliament and of the Council. While the previous system applied to all movements between Hungary and EU and non-EU countries, the current statutory declaration system only applies to movements between Hungary and non-EU countries. That said, the authorities state that according to subsection (4) (e) of Section 2 of the Act XIX of 2004 on the HCFG, acting within its enforcement and administration powers, the HCFG carries out in-depth inspections along the internal and external borders of the EU by setting up mobile control units. The mobile units reportedly conduct random checks continuously as their primary task, which refers to complex controlling tasks (including cash control compliance) implemented domestically.

288. Hungary applies EC Regulation No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community which is directly applicable in Hungary as an EU Member (hereinafter: Cash Control Regulation) to cross-border transportation of currency and bearer negotiable instruments at its borders with non-EU countries. In order to enhance the enforcement of the EU legislation, Act XLVIII of 2007 on the Implementation of 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 (hereinafter: Cash Control Act) was adopted by the Hungarian Parliament. The evaluators regarded the EU Cash Control Regulation and the Cash Control Act as the legal basis for the cross-border declaration system in Hungary. They assessed the compliance of both the EU Cash Control Regulation and the Cash Control Act with the FATF standards as well as their

implementation in Hungary with an increased focus on effectiveness. Evaluators also checked whether Hungary applies national controls on movements of cash at internal EU borders, since it is stressed in the preamble of the EU Regulation that harmonisation aimed by the Regulation should not affect the possibility for Member States to apply, in accordance with the existing provisions of the Treaty establishing the European Community, national controls on movements of cash within the Community[12].

289. Article 3 of the Cash Control Regulation establishes an obligation to declare cash of a value of €10,000 or more when entering or leaving the EU space. This obligation meets the prescribed threshold in the essential criteria which cannot exceed €15,000. The Regulation provides that an incorrect or incomplete declaration does not fulfil the obligation. The declarations contain requirements which follow Article 3 paragraph 2 of the Cash Control Regulation (which are compatible with FATF standards). Subsection (1) of Section 2 of the Cash Control Act states that the obligation to declare, as laid down in Article 3 of the Cash Control Regulation, must be made in a written form.

290. The authorities indicated that the obligation to declare applies also in the case of shipment and mailing. The border customs offices provide the HFIU with information on cash movements and the HFIU is entitled to request information on cash declarations from the customs offices.

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

292. It is left to the Member States to lay down penalties, which under Article 9 of the Cash Control Regulation have to be effective, proportionate and dissuasive. Though the maximum amount of the fine has been tripled from the previous amount by the Hungarian Government Decree No. 32/2007 (which amended the Government Decree on certain minor offences) non-compliance with the obligation to declare has been penalised as an administrative offence and a fine amounting to 150,000 HUF (c. €550) may be imposed. However, in the view of evaluators the fine for failure to make a declaration does not appear suitably effective and dissuasive.

293. The Hungarian authorities argue that the measures laid down by the Cash Control Regulation are introduced into everyday practice by all customs staff in a comprehensive and strict manner. To accommodate obligations of travellers to declare cross-border cash movement Hungary uses the so-called Common Declaration Form that was elaborated within the Cash Control Working Group of the European Commission, which, at the same time, is used by the rest of the EU Member States in their respective languages.

294. The Hungarian authorities state that this form is made publicly available at every border. They further indicate that a clearly formulated notice is provided for the travellers on the publicly available official website of the HCFG[13]. But it appears that arriving air passengers are not supplied with a declaration form prior to landing, and are not otherwise advised prior to arrival of their obligation to make a declaration. Furthermore at Terminal 2/B at the Budapest Ferihegy International Airport there is reportedly a considerable size installation prepared by DG TAXUD of the EU for Member States called "cash control suitcase"

[12] FATF agreed in February 2009 that a supra-national approach could be applied for EU countries, however, at the time of the on-site visit no decision was taken as to how the EU will be assessed supranationally. Nonetheless the measures Hungary has in place that relate to the supranational approach have been taken into account to the extent that they are relevant.

[13] http://www.vam.gov.hu/loadBinaryContent.do?binaryId=23884

presenting the most important information for travellers. However, the evaluators were not advised or confirmed of whether posters, signs and brochures are deployed at all borders apart from the mentioned Airport. Similarly, the authorities could not demonstrate if travellers are automatically required to present a declaration form along with their travel documents when passing through the first entry points.

295. Hungary applies for its entire internal border the EU and Schengen acquis, which means there are no physical borders or formal border controls on Schengen and EU borders. Cash controls as described in this part forms an integral part of the procedures effective at external borders of the EU as regulated by Regulation (EC) No 1889/2005.

296. In order to strengthen the protection of the borders regular checks are made by the customs inside the borders also in connection with internal EU borders. Subsection (4) e) of Section 2 of the Act XIX of 2004 on the HCFG states "acting within its enforcement and administration powers, the Customs and Finance Guard carries out in-depth inspections along the internal and external borders of the European Union by setting up mobile control units". The Hungarian authorities report that the mobile units conduct planned random checks continuously as their primary task, which refers to complex controlling tasks (including cash control compliance) implemented domestically. However, in the evaluators' view it is questionable whether customs officers can use competences laid down under SR IX in internal EU borders in the absence of clear and direct legal basis for such competences. Moreover, no detailed information or statistics was made available to the evaluation team as to the practical implementation and outcomes of those random checks.

297. Relating to the detailed implementation of EU and domestic legislation at the HCFG, an internal direction has been issued (Nr. is 45/2007, as amended by 92/2008.).

298. The evaluators were informed that in 2009 there was a review of the current practices regarding cross-border transportation of currency and bearer negotiable instruments including the regulatory side and the authorities involved in the execution. The review concluded that there are still constitutional concerns regarding the introduction of an administrative decision which would allow Customs to detain currency and bearer negotiable instruments without a suspicion according the ACP. The Hungarian authorities indicated that this, however, does not prevent the authorities from withholding currency if there is a suspicion of money laundering or terrorist financing as described below. Within the control procedure carried out at the border the HFIU can be contacted directly for further information to support any suspicion.

299. Article 4 of the Cash Control Regulation requires competent authorities to be empowered, in accordance with the conditions laid down under national legislation, to carry out controls. The national authorisation for further scrutiny by a customs officer is laid down, *inter alia*, in Section 5 of Act XIX of 2004 on the HCFG. In order to detect the extent of violations of the law and to secure evidence in cases of detecting or suspecting any violation, they may question persons suspected of having violated legislation in respect of customs duties and non-community taxes and witnesses, may withhold and/or seize things that serve as evidence or are subject to confiscation. The questioning process of passengers wholly or partially failing to comply with the obligation to declare personally carried cross-border cash to customs is exercised within the customs administration jurisdiction of the HCFG.

300. Based on the result of the inquiry the customs are authorised to impose a fine on the carrier. If available other relevant information with regard to the origin of the currency or bearer negotiable instruments and their intended use can be obtained through the Risk Information Form (hereinafter referred to as RIF system). In case of emergence of any substantiated incidental evidence the customs authorities must launch an investigation.

301. There is still no legal basis for the administrative ability to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of

ML or TF may be found, where there is a suspicion of money laundering or terrorist financing or if there is a false declaration or disclosure.

302. The provisions and measures laid down by the Cash Control Act are applied generally, extensively and consequently in everyday work by all customs officers. Those who want to cross the EU external borders via Hungary are provided with a Common Declaration Form, which was prepared by the Cash Control Working Group of the European Commission and which is used in national languages by all EU member states' customs administrations, at the border crossing points for facilitating the fulfilment of the obligation to declare. In respect to the cash entering or leaving the Community, the procedure conducted by the Customs offices at the Hungarian external borders of the EU is set by 1889/2005 EC Regulation and a domestic act on the enforcement of the afore-referred EC Regulation. Any recorded cases of cash controls at border Customs offices, be it an orderly record of a declared amount or a case of false declaration/undeclared cash detected, will remain at the disposal of the Customs and the HFIU for possible future reference normally for 2 years (Article 5 of 1889/2005/EC Cash Control Regulation and Section 4 of Act XLVIII of 2007).

303. On the basis of Section 29 of the AML/CFT Act the HFIU maintains statistics of suspicious transaction reports made by the Customs including all relevant information according to the essential criterion IX. 4. However, according to the statistics provided in MEQ and as explained on-site by the Customs officials, so far no ML/FT investigations have been triggered from cross-border cash declarations. However, some covert investigations have been initiated based on cash declarations.

304. In line with the provisions of Articles 6-7 of the Cash Control Regulation, under Section 5 of the Cash Control Act the records on declarations may be transmitted to competent authorities in other Member States and third states.

305. As an EU member Hungary also applies the EC Regulation 515/97 on mutual assistance in customs matters.

306. By access to a designated IT system, that is set up to store data of the Common Declaration Form, the HFIU is directly linked into the chain of information on every declaration input into the system by border customs officials carrying out cash controls. In cases of suspicion of ML or TF the HFIU is notified about suspicious cross border transportation incidents.

307. The Inter-ministerial AML/CFT Committee meets regularly to discuss all current regulatory and implementation related issues. In addition the HFSA has concluded a MoU with the NPHQ and the HCFG in respect of the responsibilities enacted by the new AML/CFT Act.

308. The HCFG is a major government agency involved in the so-called Integrated Management Centre that focuses a multi-agency approach in one single unit of management level officials from police, the Immigration Authority, the Labour Office and the customs itself. Within the Integrated Management Centre at management level there is the Management Board represented by the primary or secondary director of the participating authorities. The Board meets once or twice a year or in any case when they rule it is necessary. The Commanding Unit, which meets in every month, is composed of designated liaison officers of each participating authorities. This cooperation is primarily aimed at immigration issues; however, this could be expanded to any desired enforcement area that inevitably includes AML/CFT. The evaluators believe that in Hungary, at the domestic level, there are adequate co-ordination mechanisms in place among customs, immigration and other related authorities on issues related to the implementation of SR IX.

309. Within the EU, law enforcement sensitive information is shared between Customs both via formal and informal channels (bearing in mind the time factor in the latter case). An important element of exchanging cash control related information is the Cash Control Working Group

set up by the EU Commission with participants of customs officials of every EU Member State. The Group convenes on a regular basis. The RIF system is accessible to all EU Member States' customs authorities thus ensuring the timely and prompt access to all cash control related suspicious cases and trends.

310. Information on suspicious cash movement are recorded and stored in the RIF system which is accessible to all customs services throughout the EU. In case of third countries, information can be exchanged on request by competent authorities of either third countries or their Hungarian counterpart if rules of professional confidentiality, bilateral agreements and data protection so allow.

311. Besides the rules of Act LIV of 2002 on International Co-operation of Law Enforcement Agencies, Hungary has concluded inter-governmental cooperation agreements and mutual assistance in customs matter with neighbouring countries, most of the EU countries and some non-EU countries (Kyrgyz Republic, Argentina, Russia, Norway, China, Ukraine and US).

312. Non-compliance on the obligation to declare has been penalised as a petty offence and a fine amounting to 150,000 HUF (€550) can be imposed. As noted, the evaluators consider the sanction should be more effective and dissuasive.

313. On the basis of the HCC and the ACP whenever there is plausible, justified and well grounded reason to suspect that partial or complete non-compliance with the obligation to declare cross-border cash movement is connected with terrorist financing or money laundering a criminal investigation is launched by taking the suspect into custody and securing evidence on the spot. Persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to TF or ML can be held responsible under the Criminal Law.

314. However, the evaluators were not provided with the statistics illustrating the extent of practical enforcement of these measures. For instance, no statistics was provided regarding the administrative penalties applied for persons making a false declaration under SR.IX (cross-border cash declaration), either on criminal investigations started for physical cross-border transportation of currency or bearer negotiable instruments that were suspected to be related to TF/ML.

315. Concerning detections, statistics are only available on the number of cases regarding the failure to comply with the obligation to declare.

Table 16: number of cases regarding the failure to comply with the obligation to declare

Failure to comply with the obligation to declare	
Year	**Number of Cases**
2005	76
2006	136
2007	30
2008	24
2009	8

316. If it is established that currency or bearer negotiable instruments are proceeds from, instrumentalities used in or instrumentalities intended for use in the commission of any money laundering, terrorist financing or other predicate offences Act XIX of 1998 on ACP applies. As a result sufficient evidence should be available for initiating criminal proceedings. It

should be noted that issues on confiscation, freezing and seizing of proceeds related to ML or TF discussed under Recommendation 3 apply accordingly to situations involving cases related to SR IX.

317. Obligations under UNSCR 1267 and UNSCR 1373 and directly applicable EU Regulations implementing the freezing requirements of funds related to terrorist financing also apply in situations covered by SR IX. Procedures laid dawn in the FRM Act apply accordingly. Hungarian authorities stated that as customs officers have internet connection at the borders, they also have access to those lists. Nevertheless, this is not a standard procedure and those lists are checked only in case of suspicion.

318. Hungarian authorities stated that customs clearance of precious metals and precious stones is undertaken in a designated customs office in Hungary meaning that there is always active professional attention paid to such cross-border movements as laid down by subsection 5 of the Annex to Gov. Decree 314/2006 (XII. 23). In cases of detected undeclared items general rules of criminal procedures apply. However, the evaluators were not provided with statistics or examples illustrating the information exchange in this regard with the Customs Service or other competent authorities of foreign countries where these items originated from

Table 17: Statistics concerning unlawful activities in connection with the illegal trade of precious metals and stones

	Investigations in connection with the illegal trade of precious metals	Investigations in connection with the illegal trade of precious stones	Customs contraventions in connection with the illegal trade of precious metals
2006	47	2	34
2007	30	1	64
2008	27	1	51
2009	8	0	60

319. There seem to be strict safeguards in place to ensure proper use of the data that is reported and recorded. The safeguards do not impede information sharing within the EU Member States (Article 6 of the Cash Control Regulation).

320. Cash control related training, data collection, enforcement and targeting methods are all part of the customs officers' basic training course. Hungarian authorities reported that in 2008 and 2009 the Criminal Directorate of the HCFG provided awareness raising and training activities for customs rummage teams operating at the border check points on the issues related to implementation of the Cash Control Regulation and the Cash Control Act

321. In cases of requests from third countries, information is shared via ad-hoc conventional means of communication as needed. Information exchange within the EU is regulated by the Cash Control Regulation, as mentioned above.

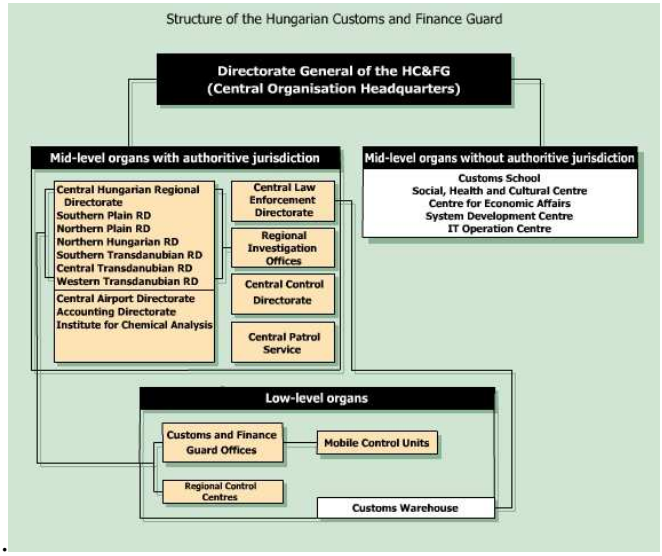
322. Hungarian customs has several means to detect illegally transported cash, including technical devices and intelligence. Technical side of the detection is boosted with baggage and vehicle X-ray systems, the latest advancement of detection technology that speeds up controls and makes them easier to execute. In case of any doubt, technical support is available to customs offices to detect counterfeit cash in the form of UV devices and, for further assurance, by requesting expertise. Intelligence and targeting also constitute a substantial basis in cash control – background knowledge of individual customs officers and information received from other customs services largely contribute to detections.

323. The IT system used in Hungary to record and store data included in the cash declaration form is called the HUFO system. This system allows the information collected under the declaration/disclosure system to be used for building up intelligence for AML/CFT.

Recommendation 30 (Customs authorities)

324. The HCFG seem to be adequately structured and provided with sufficient technical and other resources.

Table 18: Structure of the HCFG



325. The HFIU is structured within customs itself, which ensures close cooperation with customs offices realising the monitoring and recording of cross-border cash movement. Individual customs officers are expressly and clearly obliged to undertake all necessary and legally required measures to carry out customs checks on cross-border cash movement and, whenever necessary, initiate every respective procedure. The structure and modus operandi of Hungarian customs exclude any involvement or interference of levels other than the one in the basic procedure in individual cases related to cash control, which evidently involves increased responsibility of the customs officer carrying out the cash control itself.

326. Appropriate training includes basic training and college education. All customs officials go through thorough training spanning over several months (for college level it is 3 years). When adapting a person into the customs' ranks he/she is required to take an oath containing specific provisions of professional confidentiality.

327. Personal integrity is ensured and monitored in the process of evaluating a request to become a customs official and throughout his/her career by multiple means.

328. General curricula of training courses cover criminal law, criminal procedure and public administration procedures. Additional training on specific subjects (including special investigation techniques for an instance) is organised regularly or as required. Within the general curricula the specialisations include AML/CFT related topics. In 2008 and 2009 the Criminal Directorate of the HCFG provided awareness raising trainings for customs rummage teams operating at the border check points conducting primary and secondary checks.

Recommendation 32

329. Separate quarterly statistics on cross border transportation of currency are registered. Statistics on Cash Control form are also part of the HFIU's semi-annual statistics on reported suspicious transactions.

330. Recorded data on cash control in the so called HUFO system allows the linking of such data to other AML/CFT related data processed by the HFIU to build up intelligence for AML/CFT.

Table 19: Cash Control Recordings (2008-2009)

Quarter	Declaration / Disclosure on entering	Declaration / Disclosure on leaving	Disclosure	Cash Control recordings	Total sum (€)
2008 I.	171	27	6	198	*11,614,342
2008 II.	0	0	8	283	*12,357,000
2008 III.	144	26	3	170	6,757,541
2008 IV.	146	22	5	168	11,342,138
2009 I.	95	11	2	106	5,923,036
2009 II.	112	19	0	131	6,399,996

*Exchange rates are calculated on the exchange rates applicable on 25 October 2009 and not on the day of each individual declaration/disclosure.

331. However, the evaluators were not provided with statistics illustrating the number of administrative penalties applied for persons making a false declaration under SR.IX and statistics on criminal investigations started for physical cross-border transportation of currency or bearer negotiable instruments that were suspected to be related to ML/TF. The lack of detailed statistics therefore undermines the assessment of effectiveness.

Effectiveness and efficiency

332. Although the Hungarian authorities seem to comply with some of the criteria under the SR.IX, some deficiencies remain as noted above. Furthermore, there are no ML/TF investigations triggered from cross-border cash declarations. The lack of detailed statistics regarding the sanctions applied undermines the assessment of effectiveness.

333. The current cross-border declaration system in place in Hungary is based on EU Cash Control Regulation; hence it only applies to the movements at the borders between Hungary and non-EU Member States. Although the authorities stated that the HCFG carries out in-depth inspections along the internal and external borders of the EU by setting up mobile control units, there appears to be no legislative basis that covers all the requirements of SR IX. In the evaluators' view this might have a negative impact on overall effectiveness of the cash control system.

2.6.2 Recommendations and comments

334. The evaluators of this round are still of the opinion that the majority of deficiencies mentioned in the 3rd round evaluation remain apt.

335. The HCFG should be given the administrative authority to immediately stop/restrain cash to ascertain whether evidence may be found for ML/FT.

336. The penalties for non-compliance with the obligation to declare are relatively low (€550). Therefore, sanctions should be more effective and dissuasive.

337. Hungarian authorities should take steps to heighten the awareness of arriving and departing travellers by making the signage at ports of entry and exit alerting travellers to the requirements much more visible (and perhaps in multiple languages).

338. In order to be able to evaluate the overall effectiveness of the system, the Hungarian authorities should maintain more detailed statistics on administrative penalties applied for persons making a false declaration under SR IX, statistics on criminal investigations initiated for physical cross-border transportation of currency or bearer negotiable instruments that were

suspected to be related to ML/TF and statistics on information exchange with foreign counterparts regarding SR IX.

339. The EU Regulation does not affect the possibility for Member States to apply controls on EU internal borders, in accordance with the existing provisions of the Treaty establishing the European Community. In order to comply with SR IX, Hungary should consider developing an appropriate domestic legal mechanism for cash control at the EU internal borders.

340. Specialised training activities related to SR IX (ML and TF related cross-border transportation of cash and bearer negotiable instruments) for the staff of the HCFG should be continued.

2.6.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**PC**	• No administrative ability to stop/restrain or seize in the case of ML/FT. • Sanctions available are not effective, proportionate or dissuasive. • Deficiencies in the implementation of SR.III may have an impact on the effectiveness of the regime. • Lack of available statistics meant that the authorities could not fully demonstrate the effectiveness of the declaration system. • The system is limited to movements beyond the EU.(effectiveness issue)

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

341. Customers due diligence (CDD) and record keeping requirements have been in place in Hungary for several years. As an EU member State, Hungary was required to implement the Third EU AML/CFT Directive (Directive 2005/60/EC) and the implementing Directive (Directive 2006/70/EC) into its national legislation. Hungary was amongst the first EU Member States complying with this requirement, when the new AML/CFT Act entered into force on 15 December 2007. The AML/CFT Act requires financial institutions to adopt preventive measures adjusted to risks, and provide for variable levels of CDD, depending on the risk of money laundering and terrorist financing. The new AML/CFT Act introduces more specific and detailed provisions relating to the identification of the customer and of any beneficial owner and the verification of their identity.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering/financing of terrorism

342. Hungary has adopted and implemented a risk-based approach to AML/CFT, particularly in relation to customer/beneficial owner identification and verification requirements. Pursuant to the AML/CFT Act financial institutions are entitled to specify the extent of customer due diligence measures on a risk-sensitive basis. In this context the AML/CFT Act specifies minimum and maximum data sets for the identification of the customer and of the beneficial owner as well as for recording the details of the transaction order. The Law does not explicitly require enhanced monitoring in instances of enhanced due diligence.

343. Enhanced CDD is required by law for non face-to-face business relationships, cross-border correspondent banking and PEPs. Those three enhanced risk-categories are modelled on the risk-based approach set out in the third EU AML/CFT Directive and are not the result of a specific risk assessment of the Hungarian financial sector. In addition to the enhanced risk categories provided in the third EU AML/CFT Directive, money exchange has been assessed as exhibiting domestically a higher level of ML/FT risks. As bureaux de change by law may only be operated by credit institutions and agencies of credit institutions there is a kind of "double supervision" in the sense that both the operating credit institution/agency and the bureau de change itself are supervised with regard to money exchange activities.

344. In addition financial institutions are required to determine further individual scenarios for enhanced due diligence based on their specific business, clients and products in their internal rules, which have to be approved by the HFSA. According to the HFSA Recommendation such cases for enhanced CDD could include large loans, changing of exotic currencies and unit-linked insurance contracts with high amounts. The HFSA Recommendation further mentions portfolio management agreements and transaction orders with high amounts in relation to the daily practice of the financial institution as instances representing a high risk of ML and/or TF. Financial institutions are required to assess whether these examples apply to their business activities and take them into account when drawing up their internal rules.

345. Based on the instances provided by the third EU AML/CFT Directive Hungarian Law allows for simplified CDD where the customer is a financial institution which conducts its activities within the territory of the EU or in a third country that imposes equivalent AML/CFT requirements, where the customer is a company listed on an EU regulated market or a company from a third country that imposes disclosure requirements consistent with EU standards or where a customer is a specific domestic or EU authority or agency (see c.5.8 for further details).

346. Hungary has further chosen two of the four products, provided in the third EU AML/CFT Directive as examples for simplified due diligence. The options chosen comprise life insurance policies with annual premiums below HUF 260,000 (€960) or a single premium

below HUF 650,000 (€2,400) and insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral. In addition to the examples provided by the Directive Hungary limited the CDD requirements with regard to group insurances. In this case CDD is only required in respect of the contracting party. Financial institutions are not allowed to apply simplified due diligence in other cases than those stipulated in the Act.

347. The authorities are aware of the threats Hungary faces from organised crime, although the TF risk is considered to be low. The nature of the Hungarian financial sector is mainly characterised by retail services and only minor private banking activities. There is no possibility to issue shares in bearer form. However, non-resident customers and customers that are personal assets holding vehicles appear to represent potential risks to the Hungarian financial sector as in other countries. The authorities confirmed the need for a comprehensive risk assessment to properly judge the adequacy of the current approach. The Ministry of Finance envisages the preparation of such an assessment on Hungary which is expected to be launched in 2010.

Legal framework

348. All persons and entities that are in the territory of Hungary engaged in financial activities listed in the FATF Glossary are subject to AML/CFT measures. The Hungarian AML/CFT measures applicable to the financial sector are all set out in the AML/CFT Act, which reflects the provisions of the third EU AML/CFT Directive. Section 6 of the AML/CFT Act stipulates the instances where CDD has to be carried out, while detailed rules on CDD measures are contained in Sections 7-11 of the Act. Simplified and enhanced CDD as well as the acceptance of the outcome of CDD measures carried out by third party service providers are contained in Sections 12-21.

349. Furthermore financial institutions are obliged to have internal rules. The HFSA approves the internal rules, if they contain the compulsory elements set out in the AML/CFT Act and in the Ministerial Decree 35/2007 of the Minister of Finance, and if they are not contrary to any legal provision (Section 33 of the AML/CFT Act). The HFSA has the power to take the action and exceptional measures, and may impose sanctions for any non-compliance with statutory provisions governing the operations of financial institutions set out in their own internal rules (Section 47 (1) (c) of the HFSA Act).

350. In order to provide guidance to the financial institutions when drawing up their internal rules the HFSA has issued Model Rules, in collaboration with the HFIU and in agreement with the Minister of Finance. Those Model Rules highlight in particular how CDD, record keeping and reporting obligations resulting from the AML/CFT Act shall be implemented into the internal rules. While not binding as such, the HFSA can indirectly enforce compliance due to the abovementioned approval requirement regarding internal rules Approval is given upon compliance with the Model Rules of the HFSA, thus Model Rules do acquire binding force and are enforceable in this way.

351. The supervisor for the financial sector, the HFSA (and the MNB as regards cash-processing activities) issued a non-binding Recommendation (Recommendation No. 3/2008 of the Board of the HFSA on the Prevention and Combating of ML and FT) in order to ensure the uniform implementation of the obligation arising from the changes in AML/TF regulation. It sets the expectations of the HFSA in particular with regard to CDD obligations. An annex to the Recommendation contains typologies of unusual transactions. Compliance with this recommendation is examined in the course of its procedures.

3.2 Customer due diligence, including enhanced or reduced measures (R.5)

3.2.1 Description and analysis

Recommendation 5 (rated LC in the 3rd round report)

352. As described in the 3rd round report, Hungary was rated "Largely Compliant" for Recommendation 5. The underlying factor for this rating was a weakness identified in the legislation, as compared to customer identification fewer particulars have to be collected for beneficial owner identification. Nevertheless, in this assessment round Recommendation 5 was reviewed again according to all the criteria of the Methodology.

Prohibition of Anonymous Accounts

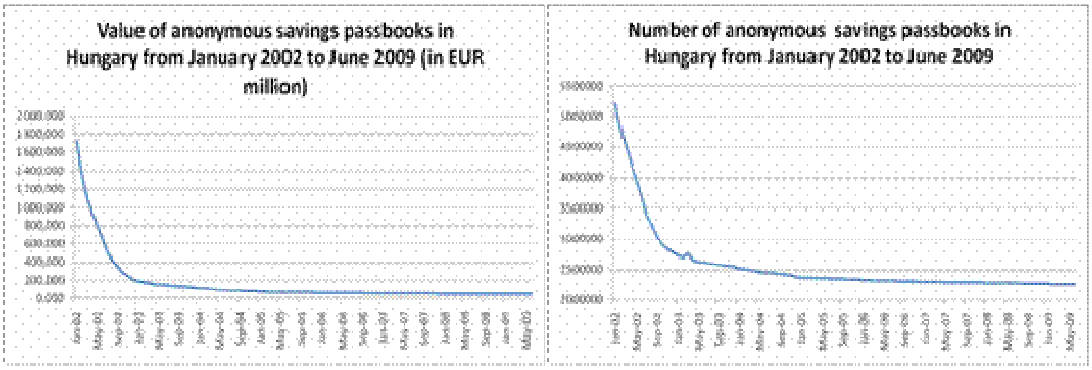
353. Hungary has never permitted the opening of anonymous or numbered current accounts, while the use of bearer savings deposit passbooks was widespread until their prohibition in 2001 since which time the opening of new accounts has been prohibited although existing passbooks are still in circulation (see Table 20 below). The use of these savings instruments was practically limited to placing a deposit with the savings bank of the country and to withdrawing it, without any transfer opportunity. Even transfer between the branches of the same bank was severely restricted.

354. According to Section 1 (1) of the LDSD "savings deposit" means a sum of money placed in a credit institution under a saving deposit contract and recorded in a savings account passbook or some other document. According to Section 2 (2) all savings deposit accounts must be registered under the holder's name (Section 1 (2) of the LDSD). The credit institution must indicate on the document (savings passbook) the deposit holder's and the beneficiary's surname and forename, and place and date of birth.

355. Funds from an unrestricted or restricted bearer savings deposit may only be released to a person who first presents the document to the issuing credit institution and if the credit institution has completed the customer due diligence procedures specified in the AML/CFT Act (described under criterion 5.2) in respect of the customer. The credit institution must register such savings deposit under the name of the deposit holder at the time of completion of the said customer due diligence measures.

356. According to the authorities, through these transformation processes of anonymous deposits, the value of anonymous (and thus immobilised) savings deposits has decreased significantly from approx. €11.7 bn. as of January 2002 to approx. €46 m as of June 2009 (approx. 99.6% decrease). The number of anonymous deposits decreased at a slower pace from 5.2 million to 2.3 million accounts in the same period of time (see charts below). However the average balance of the remaining anonymous deposits is just over €20. The HFSA continuously monitors the trend of the remaining stock of anonymous savings passbooks.

Table 20: Anonymous savings passbooks



357. In addition to the above mentioned LDSD and AML/CFT Act provisions, the MNB Decree No. 18/2009 on payment services activities requires payment service providers to identify the payment accounts they carry by the unique account identification number assigned to each account, and the full or abbreviated name (corporate name) of the account holder (Section 3 (1) MNB Decree).

When CDD is required

358. According to Section 6 of the AML/CFT Act financial institutions are required to apply customer due diligence procedures:

a) when establishing a business relationship;
b) when executing (single or in effect linked) transaction orders amounting to three HUF 3.6 million or more (around €13,333); (for a money exchange transaction a lower threshold of HUF 500,000; around €1,850 applies)
c) when there is any information, fact or circumstance giving rise to suspicion of money laundering or terrorist financing, where the due diligence measures referred to in Paragraphs a)-b) have not been carried out yet;
d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

359. Pursuant to Regulation (EC) No 1781/2006 (transposing SR VII), which is directly applicable in all EU member states, financial institutions in Hungary must also identify the customer and ensure that complete originator information is included in cross-border wire transfers (see write-up under SR VII for more details).

360. The HFSA issued model rules and guidelines which contain references to the obligations under Regulation (EC) No 1781/2006. These are publicly available together with the Common Understanding of the obligations imposed by Regulation (EC) No 1781/2006 on the information on the payer accompanying of fund transfers to payment service providers of the payees issued by AMLTF, the AML/CFT task force of the 3L3 EU Committees, at the HFSA's homepage in the anti-money laundering section.

Identification measures and verification sources

361. Customer identification rules are specified in Section 7 and 8 of the AML/CFT Act. In the cases where CDD is obligatory financial institutions are required to identify the customer, the proxy, the authorised signatory and the representative, and to verify their identity.

362. With regard to natural persons, financial institutions are required to record at least the surname and forename (birth name), address, nationality, type and number of identification document, place of abode in Hungary (with respect to foreign nationals).

363. With regard to legal persons or organisations not having a legal personality, financial institutions are required to record at least the full and abbreviated name, address of registered office or address of their branch office in Hungary (in case of foreign-registered enterprises), company registration number (if applicable) or for other entities the number of the resolution of their foundation (registration, incorporation) or their registration number.

364. In addition the financial institutions may record the following details on a risk-sensitive basis: place and date of birth and mother's name (natural persons) and principal activity, name and position of authorised representatives, identification data of agent for service of process (legal persons or organisations not having a legal personality).

365. For the purposes of verification of identity of natural persons, service providers are required to require the following documents to be presented:,

a) for Hungarian nationals, an official certificate suitable for the proof of identity and an official certificate for the proof of address

b) for foreign nationals, a passport or personal identity card, if it embodies an authorisation to reside in Hungary, or a document evidencing the right of residence or a valid residence permit.

366. According to the HFSA Model Rules an official certificate suitable for personal identification shall mean a personal identification certificate, a passport or a driving license in card format.

367. For the purposes of verification of identity, financial institutions are required to check the validity of identification documents presented.

Identification of Legal Persons or Other Arrangements

368. As regards legal persons or organisations not having a legal personality, the natural persons who are authorised to act in their names and on their behalf have to be identified with the documents required for natural persons (see c. 5.3). In addition financial institutions are required to require a document issued within thirty days to date, to verify:

a) that it has been registered by the court of registration (for domestic economic operator) or the existence of a private entrepreneur's license (for private entrepreneur);
b) the fact of registration by an authority or the court (for domestic legal persons subject to registration);
c) the fact of registration under the law of the country in which it is established (for foreign-registered legal persons or organisations not having a legal personality)
d) the articles of incorporation, if the submission of an application for registration is yet to be made.

369. According to the HFSA Model Rules (for Financial Service Providers), financial institutions are required to specify in their Internal Rules, on a risk-sensitive basis, the cases where they will require certified translations of the registration documents or certificates required for identification.

370. Customer identification and verification requirements described under c.5.3 and c.5.4 also have to be applied to any proxy, authorised signatory and the representative (Section 7 (1)). However there is no explicit requirement to verify that person purporting to act on behalf of the customer is so authorised. Section 5 (6) of the Payment Services Act requires credit institutions to take all reasonable measures to ensure the proper identification of authorised signatories so as to accept instructions only from such signatories. However, this obligation neither covers the full range of financial institutions nor all types of financial services.

Identification of Beneficial Owners

371. In all cases mentioned under c.5.2 where CDD is mandatory the customer is required to provide a written statement as to whether he is acting in his own name or in the name or on behalf of the beneficial owner. In the latter case the written statement shall contain the surname and forename (birth name), address as well as the nationality of the beneficial owner (Section 8 (2) of the AML/CTF Act). The minimum set of data to be recorded with regard to the beneficial owner has been extended since the last assessment. However it still contains fewer particulars than the minimum set of data to be recorded with regard to the customer, for whom the type and number of identification document and the place of abode (for foreign nationals) have to be recorded in addition. Reasons to justify such difference in the amount of the collected information could not be established.

372. However in addition to the abovementioned minimum set of data, the financial institution may request the customer to supply the following particulars of the beneficial owner on a risk-sensitive basis: type and number of identification document, place of abode (with respect to foreign nationals), place and date of birth and mother's name. Hungarian authorities point to the fact that collection of this maximum set of particulars of the beneficial owner is strongly recommended in Par. 2.8 of Annex No. 1 to HFSA Recommendation No. 3/2008

373. Where there is any doubt concerning the identity of the beneficial owner, the financial institution shall request the customer to make a (repeated) written statement concerning the beneficial owner (Section 8 (4) of the AML/CFT Act).

374. Where there is any doubt concerning the identity of the beneficial owner, the service provider is required to take the necessary measures in order to check the beneficial owner's identification data in registers available according to the legal provisions for this purpose or in registers which are openly accessible to the public (Section 8 (5) of the AML/CFT Act). According to the authorities this obligation has to be fulfilled only if the abovementioned repeated written statement of the customer does not remove existing doubts. This procedure appears to contradict Section 11 (1) AML/CFT Act, whose wording suggests – in accordance with the Standard - that the beneficial owner has to be verified in every case, irrespective of any doubts.

375. Modelled on the definition set out by the third EU AML/CFT Directive the term beneficial owner is defined in Section 3 of the AML/CFT Act as

a) the natural person, who owns or controls at least twenty-five per cent of the shares or voting rights in a legal person or in an organisation not having a legal personality, if that legal person or organisation not having a legal personality is not a registered company on the regulated market to which publication requirements consistent with Community legislation or equivalent international requirements apply;

b) the natural person, who has a dominant influence in a legal person or an organisation not having a legal personality (as determined in the 'Civil Code');

c) the natural person, on whose behalf a transaction order is executed.

376. According to the Civil Code a dominant influence has a natural person who is a member or a shareholder of a legal entity or legal arrangement and entitled to elect or recall the majority of the members of senior management or of the supervisory board, or who has sole disposal rights over more than 50% of the votes on the basis of an agreement with other members or other shareholders.

377. The definition of beneficial owner contained in Section 3 (r) of the AML/CFT Act does not refer to ultimate ownership or control. The legal definition neither uses the term "ultimately" (official Hungarian translation: "végső") nor "indirect ownership" (official Hungarian translation: "közvetett tulajdon"). For this reason evaluators had concerns whether indirect ownership and control is covered by the definition of beneficial owner contained in

the AML/CFT Act. However Hungarian authorities assured evaluators that the common understanding of the word "tényleges tulajdonos" ("beneficial owner") does cover the ultimate owner respectively indirect ownership.

378. Furthermore, the definition of beneficial owner appears not to comprise necessarily the mind and management of a company as suggested in the FATF Methodology.

379. As regards foundations, the beneficial owner is defined in Section 3 of the AML/CFT Act as the natural person

a) who is the beneficiary of at least twenty-five per cent of the property of the foundation, if the future beneficiaries have already been determined;

b) in whose main interest the foundation is established or operates, if the beneficiaries have yet to be determined; or

c) who is a member of the managing organisation of the foundation, or who has a dominant influence over at least twenty-five per cent of the property of the foundation, or who acts on behalf of the foundation.

380. The founder, the trustee and the beneficiaries are evident from the documents required by law for the identification of foundations (see c. 5.5).

381. The exemption for companies registered on the regulated market to which publication requirements consistent with Community legislation or equivalent international requirements is compatible with the standard.

382. In addition to the abovementioned identification and verification requirements the Guidelines to AML/CFT Recommendation of the HFSA emphasise that the financial institutions must know the ownership structures of their legal entity customers inclusive of their beneficial owners who may only be natural persons and must know their executive managers with decision making powers and the persons authorised to act in the name of the customer vis-à-vis the financial institution in ways agreed with the financial institution (Par. 2.6. Guidelines to AML/CFT Recommendation of the HFSA).

383. According to the definition of "beneficial owner" in Section 3 of the AML/CFT Act, the beneficial owner always has to be a natural person. However the Model Rules issued by the HFSA contain a sample template for the declaration of beneficial ownership which has to be completed by the customer. According to this template a legal person or legal arrangement is allowed to provide the declaration of beneficial ownership on its own behalf. In such a case the declaration would not contain data with regard to a natural person but only with regard to a legal person or legal arrangement.

Information on Purpose and Nature of Business Relationship

384. Financial institutions are required to obtain information on the purpose and planned nature of business relationships and transaction orders (Section 9 of the AML/CFT Act). To this purpose they shall record at least the following details (minimum data set):

- The contract type, subject matter and term for business relationships;
- The subject matter and period for transaction orders.

385. In addition to the above, financial institutions may also record the following details (maximum data set) on a risk-sensitive basis:

- The circumstances (place, date and time, method) of execution.

386. The legal obligation is further specified in paragraph 2.6 of the Guidelines to AML/CFT Recommendation of the HFSA. Accordingly the financial institutions should understand to the greatest possible extent the substance of the activities of their customers, the nature of their business relationships, their circle of partners, financial habits, domestic and international

market practices, as well as the origins, currencies and usual magnitudes of their executed debits and credits.

387. The AML/CFT Recommendation of the HFSA emphasises that financial institutions shall generate customer profiles on the basis of their customer due diligence measures and having gotten to know their customers with due care, based on a systematic analysis of their customers' financial and payment practices and on the basis of appropriate record-keeping of their customers' contacts and cash flows. The profiles thus generated should ensure the transparency and the lucidity of their customers' transactions and contacts at all times. (Section III of the AML/CFT Recommendation of the HFSA).

Ongoing Due Diligence on Business Relationship

388. Financial institutions are required to conduct ongoing monitoring of the business relationship including the analysis of the transaction orders executed during the existence of that business relationship in order to establish whether a given transaction order is consistent with the information available to the financial institution on the customer in accordance with the relevant provisions (Section 10 (1) of the AML/CFT Act).

389. The AML/CFT Recommendation of the HFSA emphasises that financial institutions should examine whether or not issued transaction orders are consistent with the information and knowledge available on their customers and on their business and risk characteristics, including their sources of funds if necessary (Section III of the AML/CFT Recommendation of the HFSA).

390. Financial institutions are required to ensure that the data and information as well as documents held in connection with business relationships are kept up-to-date. During the existence of the business relationship, the customer is required to notify the financial institution any change in the data and information supplied in the course of customer due diligence or any change concerning the beneficial owner within five working days.

391. Financial institutions are required to draw the attention of their customers concerning their obligation to report any and all changes in their particulars. Where there is no assignment made, either debiting or crediting, to an account maintained by the financial institution, apart from transaction orders that take several years to mature, the service provider is obliged to request the customer in writing, within 30 days or in the next account statement, to report the changes in his particulars that may have occurred during the aforementioned period (Section 10 (2)-(5) AML/CFT Act).

Risk - Enhanced Due Diligence for Higher Risk Customers

392. The AML/CFT Act calls for enhanced due diligence in four cases: non face-to-face customers (Section 14), correspondent banking relationships with non-EEA countries (Section 15), politically exposed persons (Section 16) and money exchange in the amount of HUF 500,000 (€1,850) or above (Section 17). Other circumstances which are listed as examples of higher risk transactions or relationships by the Basel Committee in its CDD paper, in particular non-resident customers or customers that are personal assets holding vehicles are not explicitly categorised as mandatory higher risk transactions or relationships in Hungary.

393. In addition to above mentioned four mandatory cases for enhanced customer due diligence, financial institutions have to determine within their internal rules other products, services and transactions with greater exposures to money laundering or terrorist financing, mandating the application of enhanced customer due diligence measures on a risk-sensitive basis.

394. According to the HFSA recommendation, high-risk business relationships may for instance include transaction orders with high amounts in relation to the daily practice of the financial institutions, most credit relationships, and unit-linked insurance contracts with high amounts in the case of insurance products, or portfolio management agreements in the case of

investment services. For such cases service providers shall record the maximum set of data for the identification of the customer, for the identification of the beneficial owner and for the business relationship and for the transaction order.

395. Except for the PEP, non-face-to face, correspondent banking relationships and money exchange in the amount of HUF 500,000 (€1,850) or above the law only requires the collection of the maximum data set with regard to customer and beneficial ownership identification.

396. Further details regarding the risk-based approach applied in Hungary can be found in section 3.1.

Risk – Application of Simplified/Reduced CDD Measures when appropriate

397. The AML/CFT Act allows for the application of simplified customer due diligence measures for certain customers and transactions representing a low risk of money laundering and terrorist financing. With simplified customer due diligence the customer due diligence measures are to be carried out only if some data, facts or circumstances emerge that indicate money laundering or terrorist financing. Nevertheless, financial institutions are always required to perform continuous monitoring of the business relationship.

398. Simplified due diligence may be applied to the following customers:

a) a financial institution if it conducts its activities within the territory of the European Union or if it has its registered office in a non-EU country which imposes requirements equivalent to those laid down in the AML/CFT Act and supervised for compliance with those requirements;

b) a company whose securities have been introduced to the regulated market in one or more EU member states, or is a company from a non-EU country that imposes disclosure requirements consistent with EU standards;

c) a customer that qualifies as a supervisory agency in the application of the AML/CFT Act, like the Hungarian Financial Supervisory Authority, the National Bank of Hungary;

d) a central state administrative agency, a local government, or an agency of the European Community, the European Economic and Social Committee, the Committee of the Regions, the European Central Bank and the European Investment Bank.

399. As regards equivalence of non-EU countries Section 43 (1) of the AML/CFT Act empowers the Minister of Finance to publish - by way of a decree – a list of third countries which impose requirements equivalent to those laid down in the AML/CFT Act. The list provided in the Decree corresponds to what was agreed upon between the EU Member States in June 2008 (currently including Argentina, Australia, Brazil, Canada, Hong Kong, Japan, Mexico, New Zealand, Russian Federation, Singapore, Switzerland, South Africa, USA, certain French and Dutch overseas territories and British crown dependencies). The list has been drawn upon information available amongst EU Member States on whether those countries adequately apply the FATF Recommendations.

400. According to the AML/CFT Act DNFBPs are required to inform the respective supervisory body if a third country meets the conditions for equivalence. The supervisory body is required to forward that information to the Minister without delay. The Minister hereafter informs the European Commission and the Member States of cases where a third country meets the equivalence requirements (Section 18 (7)-(8)). Authorities state that it is not at the discretion of DNFBPs to decide whether there are further equivalent third countries in addition to the compulsory list published by the Minister. Providing information to the European Commission and the Member States through the respective supervisory body (and the Minister) about the equivalence of another third country serves only for the purpose of review of the EU list

401. Simplified due diligence may also be applied to the following products:

a) insurance policies within the field of life assurance under Schedule No. 2 to the Insurance Act, where the annual premium is no more than HUF 260,000 (€960) or the single premium is no more than HUF 650,000 (€2,400);

b) insurance policies for pension schemes if there is no surrender clause and the funds payable to the insured person cannot be used as collateral for any credit or loan arrangement.

402. With regard to group insurances, CDD measures are only required in respect of the contracting party.

403. The HFSA Recommendation emphasises that financial institutions shall, in all cases, verify the required form of the due diligence obligation applicable to the specific customer. If the details of the respective customer on its face would result in simplified due diligence, but the service provider has doubts as to the justification for the procedure on the basis of the data, then the service provider should carry out normal or enhanced due diligence measures. Hence the abovementioned cases for simplified due diligence do not create a blanket exemption from the normal CDD obligations, but are only applicable where the risk of money laundering is low. This requires a certain level of prior risk assessment in all cases.

Risk – Simplification/Reduction of CDD Measures relating to overseas residents

404. The abovementioned circumstances stipulated in the AML/CFT Act where simplified due diligence is applicable are exhaustive. Simplified CDD is therefore not an option in situations other than those explicitly mentioned in the AML/CFT Act. The mere fact that customers reside abroad does not justify simplified CDD.

Risk – Simplified/Reduced CDD measures Not to Apply when Suspicions of ML/FT or other high risk scenarios exist

405. The AML/CFT Act clearly stipulates that CDD has to be applied when there is any information, fact or circumstance giving rise to suspicion of ML/FT, where the CDD measures have not been carried out yet (Section 6 (1) (c)). This obligation is not exempted under the simplified CDD regime (Section 12-13). Equally the Model Rules of the HFSA emphasise that under the regime of simplified due diligence customer due diligence measures are to be carried out if some data, facts or circumstances emerge that indicate money laundering or terrorist financing.

Risk Based Application of CDD to be Consistent with Guidelines

406. According to the AML/CFT Act financial institutions are required to prepare internal rules (Section 33). The internal rules must provide for the cases, listed by the financial institution, where the financial institution will apply enhanced due diligence (and therefore record the maximum data set) and where they will apply simplified due diligence (and therefore only apply CDD in case of ML/FT suspicion but ongoing monitoring)

407. The internal rules have to be approved by the HFSA. Approval is given if the internal rules contain the mandatory contents set out in the AML/CFT Act and in the Ministerial Decree on the compulsory elements of internal rules. The internal rules also have to be consistent with the model rules for the financial sector, which provide examples for enhanced due diligence instances.

Timing of Verification of Identity – General Rule

408. Except for the cases described below financial institutions are required to carry out the verification of the identity of the customer and the beneficial owner before establishing a business relationship or executing a transaction order.

409. Financial institutions may carry out the verification of the identity of the customer and the beneficial owner during the establishment of a business relationship, if it is necessary in order

to avoid the interruption of normal conduct of business and where there is little risk of money laundering and terrorist financing occurring. In such cases the verification of identity shall be completed before the first transaction order is executed (Section 11 (1)-(2) of the AML/CFT Act).

Timing of Verification of Identity – Treatment of Exceptional Circumstances

410. Insurance service providers, in connection with insurance policies within the field of life assurance, may carry out the verification of the identity of the beneficiary under the policy and any other person entitled to receive services of the insurer/insurance provider even after the establishment of the business relation, if they were not known at the time of signature of the contract. In that case, verification of identity shall take place at or before the time of payout or at or before the time the entitled person enforce his/her rights originating from the contract (policy).

411. Financial institutions entitled to open bank accounts, may open a bank account provided they ensure that transactions are not executed by the customer, the proxy, the authorised signatory or the representative until the completion of the verification of the identity of the customer and the beneficial owner.

412. Financial institutions operating as a voluntary mutual insurance fund may open a personal account governed under the VMIF Act provided they ensure that the customer and the beneficiary will not get any service until the completion of verification of the identity of the customer and the beneficial owner.

Failure to Complete CDD before commencing the Business Relationship and after commencing the Business Relationship

413. Where the financial institution is unable to carry out the customer due diligence measures, the financial institution may not carry out a transaction through a bank account, establish a business relationship or execute a transaction order or is required to terminate the business relationship with the customer in question (Section 11 (6) of the AML/CFT Act).

414. There is no explicit requirement to consider making a STR in such cases.

Existing Customers – CDD Requirements

415. For business relationships established before the effective date of the AML/CFT Act (15 December 2007) restrictive provisions apply. As of 1 January 2009 financial institutions are required refuse to carry out transaction orders for customers if the business relationship with the customer was and if the customer or his/her representative has failed to physically show up in person in front of the financial institution for the due diligence measures to be carried out, and if the due diligence results as specified by the AML/CFT Act are not fully available (Section 42 of the AML/CFT Act). Therefore financial institutions were constrained to apply the revised CDD requirements in time to existing customers in order to guarantee smooth business operations. Financial institutions met stated that these processes have been completed to the greatest extent.

Existing Anonymous-account Customers – CDD Requirements

416. As outlined under c. 5.1, remaining funds from unrestricted or restricted bearer savings passbooks may only be released to a person who first presents the document to the issuing credit institution and if the credit institution has completed the customer due diligence procedures specified in the AML/CFT Act in respect of the customer. The credit institution must register such bearer savings passbooks under the name of the passbook holder at the time of completion of the said customer due diligence measures (Sec. 18 and 19 of the LDSD). In addition the obligation described under c.5.17 applies

Effectiveness and efficiency

417. Meetings with the private sector indicated a high level of awareness of the CDD requirements, and all categories of financial institutions appear to have developed a comprehensive understanding of the CDD and record-keeping obligations under the new AML/CFT Act.

418. As outlined under c.5.18 the new AML/CFT Act that came into force in December 2007 obliged financial institutions to update all CDD data by January 2009. According to authorities and financial institutions millions of natural persons and tens of thousands legal person or legal arrangement customers had to be re-identified applying the new CDD requirements, including the provision of the original deeds of foundation, licences etc. or their equivalents. According to the reports of the credit institutions there were very few foreign customers who did not provide their account keepers with their respective documents. The accounts of these customers have been blocked in accordance with the law.

419. Financial institutions mostly use highly detailed questionnaires to collect information which are filled out either by the relationship manager or by the customer. Financial institutions perform risk classification of customers and have customer acceptance policies in place.

420. Financial institutions report, that they usually require the maximum data set and further information from every client (at least in the case of legal persons or arrangements) irrespective of his risk classification and therefore go beyond the legal requirements. Usually the tax number, notarised specimen signatures and copy of articles of association (also for already registered companies) are also required in addition to the legal requirements. The HFSA promotes IT systems that do not allow opening an account or approving the transaction in case of absence of required data or information as a best practice.

421. Financial institutions try to obtain a copy of ID documents from every client, but report that Hungarian Data Protection Law imposes an obstacle to these efforts, as written consent of the customer is required. Such consent is often denied which imposes difficulties in the verification and fraud prevention process.

422. Client and beneficial owner data is regularly checked against public official and commercial databases (including as well PEP and international sanctions lists). Financial institutions stated that adequate databases to verify beneficial ownership information are available. As far as Hungarian companies are concerned the Business Associations Act requires private and public limited companies to keep a register of shareholders (Sections 202 and 285 of the Business Associations Act).

423. As regards foundations, financial institutions stated that they are able to ascertain the natural persons who are the beneficial owners according to the new definition in the AML/CFT Act (including persons who have a dominant influence).

424. In addition to the mandatory instances for enhanced due diligence stipulated in the law financial institutions typically determine the following country, customer and product risks as requiring enhanced CDD: currency exchange activities, asset management services, activities in oil and natural gas exploitation and processing, trade in raw materials, trade in arms, gambling, construction industry, waste collection and trade, companies registered in offshore jurisdictions, non-transparent ownership structures, account opening through persons not authorised as per company documents, non-profit organisations. However according to analysis conducted by the HFSA cases remain, where the determination of high risk categories and institution specific typology still has to be improved.

425. The Hungarian risk-based approach focuses very much on the amount of data to be collected in the identification and verification process. Except for the PEP, non-face-to face and correspondent banking relationships neither the law nor the Model Rules explicitly require

further controls for high risk business relationships or transactions. They are left to a significant extent to the discretion of the financial institutions. Independently from the legal obligations, financial institutions seem to have adequate additional controls in place such as the approval of enhanced due diligence relationships through head compliance officers, increased monitoring of transactions as well as increased frequency of reviews of such relationships.

426. All banks have implemented screening systems for the monitoring of transactions risks. According to the HFSA in some cases the final systems are under development.

427. Reliance on third party CDD is widely-used in the insurance sector (reliance on insurance intermediaries) but less common for other financial institutions except for intra-group relationships.

428. The internal regulation, procedures and competencies for CDD measures set up by all financial institutions generally comply with regulation and supervisory requirements. The financial institutions are already engaged in the fine tuning of systems and procedures. The identified deficiencies mainly come from misunderstandings and neglected execution. As many financial institutions have head offices in other EU countries, many of them have adopted the internal regulation, procedures and training regarding CDD measures of their parent companies as far as reconcilable with the Hungarian legal framework. They also frequently rely on common centralised monitoring systems, compliance and internal audit structures.

429. The inspection program carried out by the HFSA (and the MNB for cash processors) regularly focuses on the adequacy of CDD measures and procedures and the consistency of the risk based approach. Identified deficiencies in CDD procedures are careless execution, poor knowledge of identification documents and gaps in signature checking. In many cases it was established that criminals build on the deficiencies of identification and verification, deliberately select the institution or its branch office or agent. Authorities further established significant differences in the quality of AML/CFT related training – in particular with regard to agents.

430. Financial institutions considered the training program provided by the HFSA to be adequate. Some institutions see need for guidance with regard to the interpretation provisions relating to beneficial owners.

3.2.2 Recommendations and comments

431. It is noted that the Hungarian provisions on anonymous passbooks require that the owners and beneficiaries of existing anonymous accounts or anonymous passbooks be made the subject of CDD measures as soon as possible and in any event before such accounts or passbooks are used in any way. This is, however, not sufficient to meet the requirements of essential criterion 5.1*, which requires - without grace periods - that financial institutions should not be permitted to keep anonymous accounts (according to the glossary in the FATF Methodology “References to “accounts” should be read as including other similar business relationships between financial institutions and their customers”). It is therefore recommended that all anonymous passbooks, regardless of the balance on the respective account, should be closed or converted to nominative accounts at the earliest opportunity and not later than 1 January 2013.

432. A domestic ML/TF risk assessment should be conducted including an assessment of the adequacy of mandatory instances for enhanced due diligence.

433. It remains unclear whether the definition of beneficial owner comprises indirect ownership and control and the mind and management of a company, it is therefore recommended that these definitions be reviewed and clarified. It is also recommended that the minimum identification requirements for beneficial owners should be aligned with those for other

customers and that the sample template for the declaration of beneficial ownership declaration be clarified.

434. An explicit requirement for financial institutions to consider making a STR where they are unable to carry out the customer due diligence measures should be implemented.

435. An explicit requirement to verify that the person purporting to act on behalf of the customer is so authorised should be implemented.

436. In addition to the collection of the maximum set of identification data further enhanced due diligence measures should be required for higher risk categories of customers, business relationships or transactions (e.g. referring to commercial electronic databases, enhanced ongoing monitoring).

437. The extent to which the Data Protection Law is an obstacle to effective CDD measures should be assessed.

3.2.3 Compliance with Recommendation 5

	Rating	Summary of factors underlying rating
R.5	**LC**	• Anonymous savings passbooks issued before their prohibition in 2001 are still in circulation. • The definition of beneficial owner is not sufficiently broad as it appears not to comprise the mind and management of a legal person and it is unclear whether it covers the ultimate beneficial owner (respectively indirect ownership and control). • The legal provisions for the procedure to be applied for the verification of the beneficial owner are not clear. • Apart from the collection of the maximum set of data no enhanced due diligence measures are required for higher risk categories of customers, business relationships or transactions. • No explicit requirement to verify that person purporting to act on behalf of the customer is so authorized (except for services provided under the Payment Services Act) • No explicit requirement to consider making a STR where the financial institution is unable to carry out the customer due diligence measures.

3.3 Financial institution secrecy or confidentiality (R.4)

3.3.1 Description and analysis

Recommendation 4 (rated C in the 3rd round report)

438. Since the 3rd round MER there have been no major changes made to the legislation with relation to access to information at financial institutions. Therefore, for more detailed information the reader is referred to that report. As noted in the 3rd round MER there is no obstacle for the competent authorities to have access to information of financial institutions and implement AML/CFT measures.

439. Section 23 of the new AML/CFT Act provides the legal basis for the HFIU to request information and data that are considered bank secret, securities secret, insurance secret, fund employer pension secret and business secret. Moreover, Section 71 of the ACP provides the court, the prosecutor and the investigating authority with the right to request information, data or documents from business organisations during criminal proceedings.

440. With regards to banking sector Section 50 of the CIFE Act provides the definition of bank secrets, namely, all facts, information, know-how or date in the financial institution's possession on customers relating to the person, data, financial standing, business activities, management, ownership and business relationships as well as the balance and money movements on the account of a customer maintained with the financial institution as well as to his contracts entered into with the financial institution.

441. As a basic rule the obligation of confidentiality as regards business, banking, securities, insurance and funds secrets shall not apply to the HFSA and the MNB investigating authorities and the public prosecutor (Section 49 (3)–(4) and 51 (2) of the CIFE Act, Section 117 (2) and 118 (3) of the Capital Markets Act, Section 157 (1) and 163 (1) of the Insurance Act.

442. According to the sector specific laws (Section 51 (7) of the CIFE Act, Section 369 (3) of the Capital Market Act referring to Article 117 of the Investment Services Act, Section 157/A of the Insurance Act, Section 40/B (8) of the VMIF Act) the obligation of confidentiality shall not apply to:

- the financial institution's compliance with the obligation of reporting prescribed in AML/CTF Act
- when the Hungarian law enforcement agency or the HFIU
  a) makes a written request for information - that is considered banking, securities, insurance or funds secret - from a financial institution, acting within its powers conferred under the AML/CTF Act or
  b) in order to fulfil the written requests made by a foreign financial intelligence unit, or a foreign law enforcement agency pursuant to an international agreement - if the request contains a confidentiality clause signed by the foreign FIU.

443. Section 41 of the HFSA Act empowers the HFSA to conduct on-site inspections of all financial institutions and enables the HFSA to access to any data and information of these institutions.

444. While there are no explicit exemptions from banking, securities, insurance or funds secrecy as regards information exchange required by Recommendation 7 (correspondent banking), Recommendation 9 (third party and introducers) and SR.VII (wire transfers), secrecy rules are not considered as an obstacle to such information exchange. In practice, financial institutions appear not to have difficulties in this regard.

Effectiveness and efficiency

445. During on-site visit the evaluation team did not detect any problems with effectiveness and efficiency.

3.3.2 Recommendations and comments

446. Overall the legislation on financial institution secrecy appears to enable the authorities to access the information that they require in order to exercise their functions in the fight against money laundering and terrorist financing and does not inhibit the implementation of the FATF recommendations. Furthermore, no problems have been experienced in practice.

3.3.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	

3.4 Record Keeping and Wire Transfer Rules (R.10 and SR.VII)

3.4.1 Description and analysis

Recommendation 10 (rated C in the 3rd round report)

447. Although Recommendation 10 was rated "Compliant" in the 3rd round report it needs to be reassessed in accordance with the requirements of mutual evaluation procedure for this assessment round.

Record-Keeping & Reconstruction of Transaction Records & Record-Keeping for Identification Data, Files and Correspondence

448. The Accounting Act, the AML/CFT Act and Model Rules as well as guidelines of the HFSA contain detailed rules on record keeping requirements.

449. As regards transaction records, all companies are required to keep all transaction records for a minimum of 8 years (Section 169 (2) of the Accounting Act). This retention period commences with the completion of the transaction (Section 166 (3) of the Accounting Act). According to the sector specific laws, financial institutions are required to keep all the transaction records for a minimum of 5 years (Section 13/C (6) (f) of the Banking Act, Section 12 of the Investment Services Act).

450. The above-mentioned provisions apply as a general rule, but when it comes to information related to AML/CFT the requirements of the AML/CFT Act prevail. In all instances of mandatory CDD, financial institutions are required to record the following information (Sec 9 (1) AML/CFT Act):

a) regarding business relationships, the type, subject matter and the term of the contract;

b) regarding transaction orders, the subject matter and the value of the transaction.

451. Essential Criterion 10.1.1 requires transaction records to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. While the general record-keeping requirements stipulated in Section 166 of the Accounting Act fulfil the requirements of this criterion, according to the AML/CFT Act particulars of the performance of a transaction (place, time and mode) only have to be recorded in the cases specified according to the internal rules applying a risk-based approach (Section 9 (2) of the AML/CFT Act). This inconsistency appears to be problematic and might have a negative impact on the proper application of record-keeping rules.

452. According to the AML/CFT Act, financial institutions are required to maintain records of data obtained while carrying out CDD measures (as specified above) as well as documents evidencing reporting activities or data supplied on request from the Authority acting as the Financial Intelligence Unit, as well as documents evidencing the suspension of transactions and to keep such data for at least eight years following the recording or from the date of reporting (suspension). The time limit for keeping data obtained when establishing a business relationship shall commence upon the time of termination of the business relationship (Section 28 (1)).

453. There is no provision to ensure that the mandatory record-keeping period may be extended in specific cases upon request of the authorities. The authorities stress the fact that the retention period of 8 years so far has proved to be sufficient.

454. Financial institutions are not specifically required to maintain records of business correspondence as required under the essential criterion 10.2*.

Availability of Records to Competent Authorities in a Timely Manner

455. All financial institutions are required to satisfy written requests of investigating authorities, the national security service and the public prosecutor's office without delay concerning any client account and the transactions on such account if it is alleged that the account or the transaction is associated with crimes including money laundering, terrorism and others (Section 52 of the CIFE Act, Section 119 (1) of the Investment Services Act and Section 157 (5) of the Insurance Act, Section 40/B(1) of the VMIF Act). Authorities argue that the reason why the HSFA is not covered by this provision is that the HFSA as supervisory authority of financial service providers simply makes use of its power to carry out on-site inspections with or without preliminary notice.

456. In addition to inspection powers, the HFSA Act authorises the HFSA to request the ad hoc supply of specific data on the supervised bodies and persons, where an emergency situation arises which potentially jeopardises the stability of the financial intermediation system (Section 41 (3) of the HFSA Act). Sector specific laws require financial institutions to install data storage systems capable of frequent retrieval of records specified by law to provide sufficient facilities to ensure that archived materials that they can be retrieved and restored at any time (e.g. Section 13/C (6) (f) of the CIFE Act, (e.g. See Section 13/B and 13/C (6) (f) of the CIFE Act, Section 101 of the Capital Markets Act, Sec. 12 of the Investment Services Act, Section 40/C of VMIF Act, Section 77/A of the Mandatory Pension Funds Act, Section 65 b)-c) of the Insurance Act).

457. The ACP empowers the court, the prosecutor and the investigating authorities to contact business companies (which includes financial institutions), to request the supply or transmission of information, data or documents, and may prescribe a time limit for fulfilling such request ranging between a minimum of eight and maximum of thirty days (Section 71).

Effectiveness and efficiency

458. According to Ministerial Decree No. 35/2007 on the Compulsory Elements of Internal AML/CFT Rules, internal rules have to comprise, amongst others, the rules regarding data processing and data storage obtained during CDD and a description of the internal controlling and information system which supports the carrying out of record keeping obligations. In this respect the HFSA Model Rules provide detailed guidance to the financial institutions. Internal controls for record keeping are subject to HFSA offsite analysis, as each internal rule has to be approved by the HFSA.

459. The HFSA also reviews the effectiveness of the internal controls regarding record-keeping, as part of its on-site inspections for financial institutions that are conducted at least every two years. Such inspections have also been confirmed by financial institutions met during the assessment. The authorities informed the evaluators that, as far as record keeping obligations

are concerned, no relevant implementation deficiencies were observed during on-site inspections. None of the competent authorities has mentioned delays in obtaining all relevant data and information from financial institutions.

460. Full electronic access, authorising investigating authorities to get all requested information about the clients of financial institutions not in written but in electronic form, is in its planning phase.

SR.VII (rated C in the 3rd round report)

461. Requirements under SR VII have been implemented within the EU through Regulation (EC) No. 1781/2006, in force since 1 January 2007. This Regulation is directly applicable throughout the EU membership, including Hungary.

462. According to Article 3 of the EU Regulation, it applies to transfers of funds, in any currency, which are sent or received by a payment service provider established in the EU. The Regulation does not apply to:

- transfers of funds carried out using a credit or debit card under specific conditions (Article 3, paragraph 2), electronic money up to a threshold of €1.000 (Article 3(3));
- transfers of funds carried out by means of a mobile phone or similar device (Article 3, paragraphs 4 and 5);
- cash withdrawals, transfers related to certain debit transfer authorisations, truncated cheques, transfers to public authorities for taxes, fines, or other levies within a member state;
- transfers, where both the payer and the payee are payment service providers acting on their own behalf (Article 3, paragraph 7).

463. According to Article 5 of the Regulation, providers shall ensure that transfers of funds are accompanied by complete information on the payer. This complete information on the payer includes name, address and account number of the customer (Article 4).

464. The payment service provider of the payer shall, before transferring the funds, verify the complete information on the payer on the basis of documents, data or information obtained from a reliable and independent source (Article 5 (2)). In the case of transfers of funds not made from an account, the payment service provider of the payer shall verify the information on the payer only where the amount exceeds €1,000, unless the transaction is carried out in several operations that appear to be linked and together exceed €1,000 (Article 5 (4) of the Regulation).

465. However, the EU Regulation also provides for some exemptions of the verification requirements if:

- a payer's identity has been verified in connection with the opening of the account and the information obtained by this verification has been stored in accordance with the obligations set out in the 3rd EU AML/CFT Directive; or
- the payer is an existing customer whose identity has to be verified at an appropriate time as described under Article 9(6) of the 3rd EU AML/CFT Directive.

466. According to the FATF Methodology, for the purposes of the assessment of SR VII, while transfers between Hungary and other EU member countries are considered as domestic, wire transfers between Hungary and non-EU member states are considered as cross-border.

467. Therefore, according to Article 7 (1) of the Regulation, transfers where the payment service provider of the payee is situated outside the area of the EU shall be accompanied by complete information on the payer. In cases of batch transfers, it is not necessary to attach the complete information to each individual wire transfer provided that the batch file contains that

information and that the individual transfers carry the account number of the payer or a unique identifier.

468. In cases where both the payment service provider of the payer and the payment service provider of the payee are situated in the Community, transfers of funds shall be required to be accompanied only by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer. If so requested by the payment service provider of the payee, the payment service provider of the payer shall make available to the payment service provider of the payee complete information on the payer, within three working days of receiving that request (Article 6 of the Regulation).

469. According to Article 14 of the Regulation, payment service providers shall respond fully and without delay to enquiries from the competent authorities concerning the information on the payer accompanying transfers of funds and corresponding records, in accordance with the procedural requirements established in the national law of the Member State in which they are situated. For the purpose of the EU Regulation, the competent authorities in Hungary are the HFSA and the HFIU (Section 22 (1) of the AML/CFT Act). Service providers are obliged to hand over to them the complete information on the payer if requested (Section 22 (2) of the AML/CFT Act).

470. Article 12 of the Regulation stipulates that intermediary payment service providers shall ensure that all information received on the payer that accompanies a transfer of funds is kept with the transfer. In cases of technical limitations to a payment system, an intermediary payment service provider situated within the EU must keep records of all information received for five years (article 13 (5) of the Regulation).

471. As stipulated in Article 8 of the Regulation, the payment service provider of the payee shall detect whether, in the messaging or payment and settlement system used to affect a transfer of funds, the fields relating to the information on the payer have been completed. Providers shall have effective procedures in place in order to detect whether the following information on the payer is missing:

- for transfers of funds where the payment service provider of the payer is situated in the EU, the information required under Article 6;
- for transfers of funds where the payment service provider of the payer is situated outside the Community, complete information on the payer, or where applicable, the information required under Article 13; and
- for batch file transfers where the payment service provider of the payer is situated outside the Community, complete information on the payer in the batch file transfer only, but not in the individual transfers bundled therein.

472. If the payment service provider of the payee becomes aware, when receiving transfers of funds, that information on the payer required under this Regulation is missing or incomplete, it shall either reject the transfer or ask for complete information on the payer.

473. Where a payment service provider regularly fails to supply the required information on the payer, the payment service provider of the payee shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider or deciding whether or not to restrict or terminate its business relationship with that payment service provider. The payment service provider of the payee shall report that fact to the authorities responsible for combating money laundering or terrorist financing (Article 9 of the Regulation).

474. Pursuant to Article 10 of the Regulation, the payment service provider of the payee shall consider missing or incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported, in

accordance with the reporting obligations set out in the 3rd EU AML/CFT Directive (implemented through Section 23 of the AML/CFT Act), to the authorities responsible for combating money laundering or terrorist financing.

475. Additional guidance to the application of the EU Regulation is provided by the HFSA through the "Guidelines" to the model rules for the financial sector as well as through the "Recommendation On the Prevention and Combating of Money Laundering and Terrorist Financing (Rec. No. 3/2008)" and the "Guidelines to Recommendation No. 3/2008".

476. In implementing Article 15 (2) and (3) of the Regulation, Hungary has determined the HFSA as the competent authority to supervise the application of the EU Regulation (Section 22 (3) of the AML/CFT Act) and to penalise non-compliance of the providers (Section 22 (5) of the AML/CFT Act). The one exception is that, in cases where the MNB conducts wire transfers, the competent supervisory authority is the HFIU.

477. The sanctioning system for non-compliance with the provisions of the EU Regulation is based on Section 35 (1) of the AML/CFT Act. In addition to the measures mentioned in Section 35 (1) of the AML/CFT Act, the HFSA may prohibit the service provider from engaging in money transmission services. However, as based on the sanctions stipulated in the AML/CFT Act, the deficiencies mentioned in relation with this Act under the write-up to R. 17 are also valid in context with the implementation of SR. VII.

Additional elements

478. For transfers of funds where the payment service provider of the payer is situated outside the EU (incoming cross-border wire transfers), the payment service provider of the payee shall have effective procedures in place in order to detect whether the complete information on the payer as referred to in Article 4 (complete information on the payer) is missing (Article 8 (b) of the Regulation). If this is not the case, the payment service provider has to follow the procedures described above, regardless of any threshold (exemptions in context with batch file transfers are elaborated above).

479. For transfers of funds where the payment service provider of the payee is situated outside the area of the EU (outgoing cross-border wire transfers), the transfer shall always being accompanied by complete information on the payer, regardless of the threshold (Article 7 of the Regulation; exemptions in context with batch file transfers are elaborated above).

Effectiveness and efficiency

480. The requirements of SR VII are clearly stated in the EU Regulation, respectively under the AML/CFT Act where necessary. All representatives of providers of payment services met during the on-site visit appeared to be aware of their obligations when conducting transfers of funds. The HFSA is the responsible authority to supervise compliance with the provisions set out in the EU Regulation and has therefore put special emphasis on this issue within their inspection programme. Despite some deficiencies of the sanctioning regime of the AML/CFT Act, there was no evidence during the on-site visit that the supervisory system of wire transfers in Hungary does not work properly and effective.

3.4.2 Recommendation and comments

Recommendation 10

481. A legal power for competent authorities to ensure that the mandatory record-keeping period may be extended in specific cases upon request should be implemented.

482. The obligation in the AML/CFT Act should be aligned with the record keeping obligation of the Accounting Act (i.e. the obligation to record the particulars of performance (place, time and mode) should be mandatory in all cases and not be restricted to cases specified according to the internal rules applying a risk-based approach).

483. Financial institutions should be specifically required to maintain records of the business correspondence.

Special Recommendation VII

484. Special Recommendation VII is fully observed.

3.4.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• No provision to ensure that the mandatory record-keeping period may be extended in specific cases upon request of the competent authorities • No requirement to maintain records of business correspondence.
SR.VII	**C**	

3.5 Suspicious Transaction Reports and Other Reporting (R. 13 and SR.IV)

3.5.1 Description and analysis[14]

Recommendation 13 (rated PC in the 3rd round MER)

485. Hungary was rated PC in the 3rd round MER as it needed to improve the quality of STRs and its legislation did not cover terrorist financing and attempted transactions in its STR regime. It was recommended that Hungary should establish a clear legal basis for the obligation to report suspicious transactions related to terrorist financing and should take further measures to improve the capabilities of service providers to detect STRs related to ML and terrorist financing, for example, by conducting training for the service providers. It was further recommended that reporting of suspicious transaction should be in electronic format.

486. Section 23 (1) of the AML/CFT Act imposes the obligation of reporting in the event of "*noticing any information, fact or circumstance* ***indicating money laundering or terrorist financing***". Recommendation 13 however, requires that a report be filed where "*the financial institution suspects or has reasonable grounds to suspect that the* ***funds are the proceeds of a criminal activity***"; at a minimum the reporting obligation should apply to predicate offences under Recommendation 1. However, the reporting obligation is tied to the definition of ML and TF offences in the HCC. Section 303 of the HCC defines money laundering on the basis of 'a thing obtained from criminal activities' … that is punishable by imprisonment. This means that Section 23 captures all criminal activities that are punishable by imprisonment. Therefore, it could be concluded that it is a mandatory obligation to report predicate offences under Recommendation 1. However deficiencies in the ML offence, as discussed under 2.1 and 2.2 above, might have a negative impact on the scope of reporting obligation. It should also be noted that partial incrimination of self laundering might be a barrier for reporting of proceeds of predicate offences in some instances.

487. By the adoption of the new AML/CFT Act terrorist financing is now covered in suspicious transaction reporting. The AML/CFT Act does not specifically require reporting where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. Instead it links the obligation with the TF offence that is defined in the HCC. Nevertheless, as

[14] 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.

described above under SR II deficiencies in the incrimination of TF offences (see 2.2 above) might limit the reporting of TF offences.

488. The reporting obligation is a direct mandatory requirement. Intentional failure to report is considered an offence and is punishable pursuant to Section 303/B (1) of the HCC (up to two years of imprisonment). Moreover, non-reporting is to be penalised under Section 35 of the AML/CFT Act as well as under several sector-specific laws.

489. Criterion 13.3 requires that all suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction. Furthermore, as this is an asterisked criterion the need for attempted suspicious transactions to be reported should be explicitly provided for in either law or other enforceable means. The situation remains unchanged since the 3rd round MER. Moreover, since there is no explicit mention in Section 23 and the model rules, the reporting obligation does not appear to cover attempted transactions; however, the authorities claimed that the HFIU is receiving such STRs in practice, although this could not be demonstrated due to the absence of relevant statistics. There is no threshold determined in Section 23, so the reporting obligation applies irrespective of any threshold. This is also made clear in the model rules for service providers issued by the HFSA. However, since there is no explicit mention in Section 23 and the model rules, the reporting obligation does not appear to cover attempted transactions; however, the authorities claimed that the HFIU is receiving such STRs in practice.

490. Tax fraud and employment related tax fraud are regarded as criminal activities that are punishable by imprisonment in Sections 310 and 310/A of the HCC. Therefore, they are predicate offences for ML. Hungarian legislation does not provide for any exception for STR reporting requirement by reason of tax related matters.

491. Progress has been made since the 3rd round MER in regards of the form of reporting. On 15th of December 2007, after transferring the FIU functions of the NPHQ to the HCFG, the database of STRs from the previous FIU was migrated together with the information regarding ongoing cases. Following the transference of functions to the HCFG, a new electronic reporting system was implemented. According to subsection 3 of Section 23 of AML/CFT Act service providers shall forward the report to the HFIU only in the form of a secure electronic message. Following a registration process at the HFIU, the reporting entities are granted access to this electronic reporting system. However, the evaluators were concerned that the new electronic reporting system might be a barrier on the reporting of STRs by DNFBPs, particularly lawyers and notaries (as not all DNFBPs have direct access to the reporting system and have to use their SROs for reporting); concerns were also expressed by representatives of the banking sector over the functionality of the electronic reporting system. The evaluators were also concerned that not all reporting entities have access to the internet and therefore the absence of such access might become an obstacle to reporting. Moreover, the Hungarian authorities admit, that the reporting system should be made more user friendly. However, they believe that new electronic reporting system has improved the quality of reports.

492. Efforts have been made since the 3rd round evaluation in order to improve the capabilities of financial institutions for detection of STRs related to ML and TF. The STR reporting level from financial institutions, especially banks, appears to be generally good. AML guidance is in place for all of the sectors.

493. The Hungarian authorities indicated that the HFIU has undertaken research on the issues related to the decreased number of STRs and those reasons are explained in its biannual report from 2009. It states that the dramatic change in the volume of reports is a consequence of a variety of factors although the reasons behind this are still unclear. The output of this reduction is rather positive as regards to the analysis and evaluation work of the HFIU. The reduction of the number of reports, the noticeable improvement of the quality and the

implementation of the electronic reporting system have jointly contributed to the rationalisation of the report controlling process and more timely processing of the received information.

494. A table of STRs received for the period of 2005 to 2009 is set out below. Despite sound overall awareness, training and supervision, the DNFBPs show an extremely low level of reporting. It has to be noted that the number of STRs in 2008-2009 includes reports sent by the border customs offices and reports sent on the basis of the FRM Act. The requests sent by foreign FIUs and the information sent by supervisory authorities are not covered in these figures. In order to assess the effectiveness of the STR regime, this table should be considered in conjunction with Table 15 in Section 2.5.1 above.

Table 21: Breakdown of STR received by the HFIU

Monitoring entities, e.g.	**reports about suspicious transactions**		**reports about suspicious transactions**		**reports about suspicious transactions**		**reports about suspicious transactions**		**reports about suspicious transactions**	
	ML	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**
	2005		2006		2007		2008		2009	
Commercial banks	9,964	3	7,197	2	7,675	5	7,730	12	4,497	7
Savings banks							350		129	
Other credit institutions							85		8	
Currency exchange	1,036		1,607		1,207		981		416	
Insurance companies	142		185		180		83		134	
Broker companies	1		7				51		28	
Pension funds							7		3	
Other financial service providers										
Post							2		1	
Lawyers	26		38		35		3		3	
Notaries	61		40		40		4			
Securities' registrars	67		41				370		166	
Accountants/auditors	25		2		2		10		11	
Tax experts							1			
Company service providers			578		56					
Casinos										
Traders in goods							3			
Customs offices							248		37	
Others	60		304		280					
Total	11,382	3	9,999	2	9,475	5	9,928	12	5,433	7

Additional Elements

495. The same deficiencies described under essential criterion 13.1 remain apt regarding the requirement to report suspicious transactions regarding funds that are the proceeds of all crimes or would constitute a predicate offence for ML domestically.

Special Recommendation IV (rated NC in the 3rd round MER)

496. Hungary was rated NC in the 3rd round MER mainly because of the lack of a legal obligation for reporting of suspicious transactions related to terrorist financing.

497. As noted above, by the adoption of the new AML/CFT Act terrorist financing is now covered in suspicious transaction reporting.

498. Section 23 of the AML/CFT Act, requires the obliged entities to inform the HFIU if they notice any information, fact or circumstance indicating terrorist financing. Intentional failure to report TF is penalised by the HCC (Section 303/B). Sanctions for non-reporting are also set out in Section 35 of the AML/CFT Act as well in sectoral laws. Moreover, Subsection 8 of Section 261 of HCC foresees that any person, who has positive knowledge concerning plans for a terrorist act and fails to promptly report that to the authorities, is guilty of a felony punishable by imprisonment for up to three year. The evaluators are concerned regarding the applicability of reporting obligation to service providers when they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism, due to the absence of such a linking provision in the AML/CFT Law. In addition, as noted in section 2.2 above, the definition of "funds" is not set out in the HCC or the AML/CFT Act, and is subject to court interpretation. The evaluators are also concerned that, even if the usage of the definition of TF (in the HCC) can arguably be acceptable in the context of the reporting obligation, deficiencies identified with regard to the criminalisation of TF (See Section 2.2 above) could have a potential negative impact on the reporting of suspicious of TF.

499. As set out under R.13 above, since there is no explicit mention in Section 23 and the model rules, the reporting obligation does not explicitly cover attempted transactions when reasons for suspicion of TF exists.

500. As demonstrated by the data set our in the Table above, few STRs regarding terrorist financing have been reported and then, only by banks.

501. Although the HFIU has published an Egmont Group paper on TF sanitised cases on its webpage, there is still no appropriate sector based guidance on CTF measures.

Recommendation 32

502. The statistics regarding STRs on ML and TF is reflected under R.26. However, the FIU does not keep statistics on STRs regarding attempted transactions. Therefore it is impossible to evaluate whether such transactions have been reported at all.

Effectiveness and efficiency (R.13 & SR.IV)

503. As stated, the reporting level from financial sector appears to be satisfactory. However, the significant decrease in the number of STRs in 2009 gives a rise to concerns over the effectiveness of the reporting system. Furthermore, there are no specific guidance and indicators in place for obliged entities on reporting TF.

504. There is a sharp decrease in number STRs in 2009 (5,440) while it was 9,940 in 2008, 9,480 in 2007, 10,001 in 2006, 11,385 in 2005, 14,120 in 2004, 12,364 in 2003, 6,271 in 2002). The Hungarian authorities stated that the new electronic system has had positive impact on the quality of reports and although the number of STRs received in 2009 was dramatically decreased comparing to 2008, the quality was considered to be improving.

505. In order to evaluate the possible increase in the quality of the STR, the number of incoming STRs was compared with the number of disseminated STRs. In 2008 the HFIU received 9,928 STRs and disseminated 1,400 (14%). In 2009 HFIU received 5,433 STRs and disseminated 957 (17%). Although the percentage of disseminated reports compared to the number of incoming reports has increased, the overall number of disseminated reports in 2009 was 32% less. Therefore, those figures might not give an objective overview about the possible improvement in the quality of reports due to the many dependant factors (resources of the HFIU, access to information and analytical capability thereof, etc). Nevertheless, the decrease in the numbers of reports received also decreases the amount of financial intelligence

available to the FIU and affects negatively the overall number of disseminations (-32 % in 2009 comparing to 2008).

506. Statistics show that when the FIU responsibilities rested with the NPHQ there were indictments and convictions as a result of STRs notified. However, from 2008 there do not appear to be any indictments or convictions resulting from notifications. In 2009, however, there were 13 STRs resulted in proposal for indictments.

507. The evaluators were concerned that the new electronic reporting system might be a barrier on the reporting of STRs by DNFBPs, particularly lawyers and notaries; concerns were also expressed by representatives of the banking sector over the functionality of electronic reporting.

3.5.2 Recommendations and comments

Recommendation 13

508. There is no clear provision in the AML/CFT Act requiring reporting of predicate offences (including tax matters) to the HFIU. The evaluators consider that a clear provision requiring reporting for all predicate offences or a link in the preventive law to the definition of money laundering and terrorist financing would make the overall provisions in the Hungarian legislation more comprehensive.

509. There is no explicit mention in Section 23 of the AML/CFT Act and model rules that the reporting obligation also covers attempted transactions. The situation, therefore, remains unchanged from the 3rd round evaluation of Hungary. In this regard, the Hungarian authorities are invited to adopt such explicit provisions.

510. The Hungarian authorities are invited to review the new electronic reporting system in order to make sure it is not an obstacle for more active reporting and make it more user-friendly in cooperation with reporting entities. Furthermore, as not all reporting entities might have an internet access (which could become an obstacle for fulfilling reporting obligations), the Hungarian authorities should implement alternative reporting options for such situations.

Special Recommendation IV

511. The same deficiencies described under Recommendation 13 also apply to the SR.IV.

512. The small number of STRs related to terrorist financing raises concerns about effective implementation. More outreach and guidance to reporting sector is necessary in order to increase the number of STRs related to TF.

513. Not all designated categories of offences are fully covered as predicates, as incrimination of the financing of an individual terrorist or terrorist organisation is not fully covered. The Hungarian authorities should take legislative measures in order to ensure that there is a clear obligation to report to the FIU when a financial institution suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism

3.5.3 Compliance with Recommendation 13 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• Deficiencies in the incrimination of money laundering and terrorist financing could have an impact on the reporting of suspicious transactions. • No clear reporting obligation covering funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations.

		• Attempted transactions are not explicitly covered. • Declining number of STRs give rise to general concerns over the effectiveness of the system.
SR.IV	**PC**	• No clear reporting obligation covering funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations. • Deficiencies in the criminalisation of terrorist financing limit the reporting obligation. • Attempted transactions are not explicitly covered. • Low number of STRs gives rise to concerns over effectiveness of implementation.

Regulation, supervision, guidance, monitoring and sanctions

3.6 The Supervisory and Oversight System - Competent Authorities and SROs / Role, Functions, Duties and Powers (Including Sanctions) (R. 23, 29 and 17)

3.6.1 Description and analysis

Authorities/SROs roles and duties & Structure and resources

Table 22: Chart of financial institution supervision for AML/CFT purposes

Financial Institutions		
Type of business	**Supervisor**	**No. of Registered Institutions**
1. Acceptance of deposits and other repayable funds from the public	HFSA	179
2. Lending	HFSA	400
3. Financial leasing	HFSA	162
4. The transfer of money or value	HFSA	163
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	HFSA	161
6. Financial guarantees and commitments	HFSA	156
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities (e) commodity futures trading	HFSA	34
8. Participation in securities issues and the provision of	HFSA	27

financial services related to such issues		
9. Individual and collective portfolio management	HFSA	34
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	HFSA	34
11. Otherwise investing, administering or managing funds or money on behalf of other persons	HFSA	38
12. Underwriting and placement of life insurance and other investment related insurance	HFSA	Life insurance companies: 22 (21 joint-stock insurance companies, 1 association)
13. Money and currency changing	HFSA	338

Recommendation 23 (23.1, 23.2) (rated LC in the 3rd report)

514. The AML/CFT Act sets out the necessary regulatory and supervisory powers. Further rules are contained in the HFSA Act, the Ministerial Decree 35/2007 on the compulsory elements of internal rules, the sector-specific laws, and in HFSA Model Rules and guidelines.

515. According to Sections 5 (a) and 34 (1) of the AML/CFT Act, the HFSA is the responsible authority to supervise compliance with the provisions of the AML/CFT Act by service providers, which cover all financial activities described by the FATF definition for financial institutions, engaged in:

- providing financial services or activities auxiliary to financial services;
- providing investment services or activities auxiliary to investment services;
- providing insurance services, insurance intermediary services or employer pension services;
- providing commodity exchange services;
- accepting and delivering domestic and international postal money orders; and
- operating as voluntary mutual insurance fund.

516. Cash processing operations of activities auxiliary to financial services are supervised by the MNB.

517. All these service providers (except service providers engaged in accepting and delivering domestic and international postal money orders) have to be authorised by the HFSA (respectively by the MNB for cash processing operations and clearing operations) prior to commencing their business (Section 3 (3), (4) and (6) of the CIFE Act, Act on the Pursuit of the Business of Payment Services (rules for payment service providers in addition to those established in the CIFA Act), Section 8 (1) and 11 (1) of the Investment Act, Section 5 (1) of the Insurance Act, Section 230 of the Capital Market Act (Investment fund management companies), Section 9 (1) of the Act of Voluntary Mutual Insurance Funds).

518. Financial services and activities auxiliary to financial services are defined under Section 3 (1) and (2) of the CIFE Act. Investment services and activities auxiliary to investment service are cited under Section 5 (1) and (2) of the Investment Act and Section 229 of the Capital Market Act, commodity exchange services under Section 9 of the Investment Act. Insurance services and insurance intermediary services are determined under Section 4, 5 and 33 of the Insurance Act.

519. To obtain the authorisation to conduct above mentioned services, all service providers have to set up their own AML/CFT - internal rules according to Sections 33 and 45 of the

AML/CFT Act and the *Ministerial Decree 35/2007 on the compulsory elements of internal rules*. These internal rules are based on the specific model rules of the HFSA (or MNB) and have to be approved by the HFSA (respectively the MNB) as a condition for granting authorisation. Compliance with the internal rules is thereafter supervised by the HFSA (or MNB); non-compliance with the internal rules is sanctioned under Section 47 (c) of the HFSA Act.

520. The HFSA is organised as a self-regulatory administrative body consequent to an amendment of the HFSA Act which came into force on 1 January 2010. The HFSA is operated and managed independently and is not bound by any instructions. The HFSA reports directly to the Hungarian Parliament via its chairman, and is funded through an independent chapter vested by the Parliament in the central budget. The Parliament has exclusive jurisdiction to revise the principal amounts of the Authority's expense and revenue accounts. The HFSA's tasks and duties are prescribed on the strength of an act or other legal regulation adopted by authorisation of an Act. The HFSA has concluded MoUs with the HCFG (FIU), the Police and the MNB as well as with tax authorities.

521. The HFSA was established as the single regulatory body in charge of banking, insurance, securities and pension company supervision (Section 4 of the HFSA Act). It regulates and supervises all persons and entities that conduct the financial activities listed under the FATF definition of financial institutions, with the exception of cash processing and clearing activities, which are licensed and supervised by the MNB.

522. The HFSA is lead by a chairman, who is elected by the President of the State and is responsible for managing the entire operations of the HFSA. The chairman is supported by two vice-chairman, each of them responsible for certain operational directorates of the HFSA. Overall, there are 6 such directorates, divided into the following areas: Supervisory Directorate, Supervisory Policies and Analyses Directorate, Licensing and Enforcement Directorate, Consumer Protection Directorate, Market Supervision Directorate (with the main responsibility for AML/CFT issues) as well as the Finances and Economics Directorate, which directly report to the chairman. Further bodies of the HFSA are the Human Politics Department, the Communications Department and the Audit Department, which also directly report to the chairman as well as the chairman's cabinet.

523. The MNB, responsible for licensing and supervision of companies that provide cash processing services in Hungary, has an independent supervisory authority granted by the AML/CFT Act and the Act on the Hungarian National Bank. In the MNB the supervisors of the Payment and securities - settlements department perform on-site and off-site supervision. 3 full time employees take part in the supervision, but only part-time; they spend 10% of their working time on the supervision of the companies dealing with cash processing activity (currently: 4 such companies). From 2009 the MNB introduced a risk-based methodology for the AML/CTF-supervision of cash processing providers, where the size of the company, the number of its customers, the past experiences of the MNB examinations and the timing of the previous supervision are taken into account. On the basis of laws, the MNB performs examinations independently without influence. The supervisors have the right to examine all relevant documentation in keeping with confidentiality rules. There are enough technical resources available to perform supervisory tasks.

Recommendation 30 (Resources supervisors)

524. The HFSA is a self-regulatory administrative body. It reports directly to the Hungarian Parliament, which is also in charge of the HFSA's budget. The HFSA's tasks and duties are prescribed on the strength of an act or other legal regulation adopted by authorisation of an Act. The decisions of HFSA cannot be reversed or overturned under supervisory competence, and the HFSA cannot be compelled to conduct certain specific proceedings.

525. In March 2006, the HFSA established the Financial Forensic Department which is responsible for the AML/CFT aspects of the financial supervision. The staff was increased in 2007. The main tasks are the coordination and execution of the AML/CFT activities of the HFSA, prevention of financial crimes in the supervised institutions and daily contact with the investigative and other competent authorities. The Financial Forensic Department was recently promoted to a higher level in the organisation of the HFSA.

526. The Financial Forensic Department works in close cooperation with prudential, licensing, market control and international departments, directly reports to Deputy Director General of market supervision. Its staff consists of 7 professionals and 2 external experts. The staff members are professionals in financial, jurisdictional, criminal, banking and internet banking security and supervisory practice as well as external experts. All prudential and legislative departments have a contact person to co-operate with Financial Forensic Department in AML/CFT matters.

527. The HFSA established a Standing Sub-Committee on the Prevention of Financial Abuses in the form of which the previously ad-hoc AML/CFT Working Group continues its work as a standing working group. The members of the AML/CFT Working Group are the representatives of:

- departments of the HFSA (Financial Forensic, EU and International Affairs, Prudential Supervision, Legal, IT and Regulatory Departments)
- the Hungarian Banking Association,
- the Hungarian Insurance Association,
- the Associations of Saving Cooperatives,
- compliance officers of systemically important banks and insurance companies.

528. The most recent work of the AML/CFT Working Group of the HFSA involved discussions on the practical issues arising from the application of the new AML/CFT Act and Model Rules. At the end of this process, the HFSA elaborated its position towards the new requirements of the AML/CFT Act.

529. In 2008, the HFSA established its Training and Methodology Centre for the training of the staff of the HFSA, other authorities and financial institutions as well as for research. The curriculum contains both AML/CFT and financial crime issues. The following are some examples of training activities organised by the HFSA for its staff:

- training for compliance officers, internal auditors and supervisors on AML model rules on the base of the AML/CFT Act in February 2008 (50 participants);
- an internal training for supervisors on the aims, experiences and methods of the HFSA regarding the elimination and prevention of financial crime against financial institutions and their clients in November 2008 (150 participants);
- an internal training for supervisors on the experiences of AML/CFT supervision and inspections of banking groups in September 2009 (100-120 participants).

530. The HFSA also organised several events jointly with the Police Academy, e.g. about "New challenges in the financial sector, common measures on the prevention of financial abuse" (2008), "Implementation of the 3rd EU AML/CFT Directive and on the fight against financial abuse (2007, 2008) or a "Training by the experts of the Police Academy for Supervisor on the applicable and proposed interview techniques during supervisory inspections". Additionally, the HFSA participated and gave presentations in several national and international conferences and workshops in 2008 and 2009.

Table 23: Training activities for HFSA employees (number of participants)

	2006	2007	2008	2009
In-house training	45	160	190	250
Joint training with the Hungarian Police Academy	40	45	50	49
Participation at MONEYVAL trainings		1	1	
Conferences	1	3	2	1

531. The HFSA and the MNB have concluded an MOU which enables them for the full exchange of data and internal documents, which means that the HFSA gets any information regarding the few fields which are supervised by the MNB. As additional feature, the HFSA, the MNB and the MoF have created a Financial Stability Council, which is responsible for the highest level of coordination.

532. According to the AML/CFT Act, the MNB supervises companies that provide cash processing services in Hungary (CIT companies - Cash in Transit Companies). The reason for that regulatory solution is that the MNB is responsible for licensing the cash processing activity and has a sound knowledge of this particular activity. In the MNB the supervisors of the Payment and securities - settlements department perform both on-site and off-site supervision. 3 full time employees take part in the supervision, but only on part-time basis; they spend 10% of their working time on the supervision of the companies dealing with cash processing activity. Taking into account that in Hungary there are only 4 such companies operating and the staff was and is able to conduct inspections including on-site visits at all CIT companies every year, the allocated resources at the MNB appeared to be sufficient in the opinion of the assessors.

533. The independent supervisory right of the MNB is granted by the AML/CFT Act and the Act on the Hungarian National Bank (Art. 29 of the MNB Act). On the basis of these laws the MNB performs examinations independently without influence. The supervisors have the right to examine all relevant documentation needed, unhindered by any confidentiality rules. Enough technical resources are available to perform these supervisory tasks.

534. From 2009 the MNB introduced a risk-based methodology in the AML/CTF-supervision of cash processing providers, where the size of the CIT company, the number of its customers, the past experiences of the MNB examinations and the timing of the previous supervision are taken into account.

535. In addition, another employee is responsible for AML/CFT matters, who occasionally participate in the meetings of the AML Inter-ministerial Committee. This person elaborates the Model Rules of the CIT companies in cooperation with the supervisors and discusses all emerging issues with the supervisors, and if necessary with the CIT companies.

Authorities' powers and sanctions

Recommendation 29 (rated C in the 3rd round report)

Power for Supervisors to monitor AML/CFT Requirement & Authority to conduct AML/CFT on-site inspections (c. 29.1 & 29.2)

536. The HFSA is the responsible authority for ensuring compliance with the AML/CFT provisions of service providers (except providers of cash processing operations) according to Section 4 of the HFSA Act and Section 34 (1) and (2) and Section 5 (a) of the AML/CFT Act. The supervisory powers are carried out in accordance with the APS Act and the HFSA Act, supplemented by provisions in the sector-specific laws.

537. For the purposes of monitoring compliance, Section 7 (c) and (d) of the HFSA Act entitles the HFSA to monitor the systems of information supply and oversee the data disclosure as well as supervise and control the operations and activities of the bodies and persons described

under Section 4 of the HFSA Act in terms of compliance with the statutory provisions within the HFSA's competence, and oversee the implementation of the HFSA's resolutions. As there is a cross-reference to the AML/CFT Act in Section 4 and all other relevant sectoral laws, this definition includes all the service providers mentioned under paragraph 515.

538. According to Section 41 of the HFSA Act, the HFSA conducts inspections to monitor compliance with the statutory provisions pertaining to the operation and activities of the bodies and persons referred to in Section 4, and for the purposes of enforcement of the resolutions it has adopted. This so called "supervisory control" (Section 41 (1) of the HFSA Act) comprises the verification of data supplied within the framework of regular disclosures specified by law, as well as inspections conducted by the HFSA. The HFSA may impose the obligation for the ad hoc supply of specific data on the bodies and persons described under Section 4, where an emergency situation which potentially jeopardises the stability of the financial intermediation system arises.

539. As stipulated in Section 41, the supervisory control proceedings of the HFSA are comprised of comprehensive inspections as well as direct inquiries at the financial institutions in connection with a specific problem or, if the same problem arises at several bodies or persons, a general inquiry. The HFSA may conduct post inspections and is allowed to request information concerning compliance with its resolutions. Comprehensive inspection procedures conducted by the HFSA also comprise on-site inspections.

540. The HFSA is assisted by the MNB in the comprehensive inspection of bodies providing clearing or settlement services and the central depository regarding operation reliability and system risks.

541. According to Section 41 of the HFSA Act, "comprehensive inspection procedures" at banks, specialised credit institutions, insurance companies and reinsurance companies are conducted at least every three years, at cooperative credit institutions, financial enterprises, investment firms, commodity dealers, venture capital fund management companies, investment fund management companies, private pension funds, voluntary mutual insurance funds and institutions for occupational retirement provision at least every five years.

542. Section 5 (b) of the AML/CFT Act stipulates that the MNB is the responsible authority to ensure compliance with the AML/CFT provisions with regard to companies that provide cash processing services. The independent supervisory right of the MNB is granted by the Act on the National Bank of Hungary (Section 1(2)), the supervisory powers are carried out in accordance with the Act on the National Bank of Hungary (Section (29)), the APS Act and the AML/CFT Act. On the basis of these laws, the MNB performs (on-site and offsite) examinations independently without any influence. The supervisors have the right to examine all relevant documentation needed, unhindered by any confidentiality rules.

Power for Supervisors to compel production of Records (c.29.3 & 29.3.1)

543. As noted above data has to be supplied to the HFSA within the framework of regular disclosures specified by law (Section 41 (2) of the HSFA Act). According to Section 41 (5), the HFSA may (additionally) request information concerning compliance with its resolutions.

544. The HFSA may impose the obligation for the ad hoc supply of specific data on financial institutions, where an emergency situation, which potentially jeopardises the stability of the financial intermediation system, arises (Section 41 (3) of the HFSA Act).

545. The sector-specific laws provide the HFSA with some additional powers to compel production of or obtain access to records:

- CIFE Act: According to Section 143 and 144 financial institutions and other legal entities engaged in activities auxiliary to financial services shall supply data to the MNB and the HFSA regularly and with the content, in the manner and form as described by legal regulation. Furthermore, the HFSA may instruct the financial institution to supply

(extraordinary) information - for a specific period of time - with the content and regularity determined thereby as it deems necessary for the purposes of the performance of its supervisory powers and responsibilities. Section 145 allows the HFSA to request interim reports, statements in a prescribed form and sections, and audit reports by financial institutions and other legal entities not qualifying as financial institutions engaged in activities auxiliary to financial services, and furthermore, may request information from a financial institution and its organisations on all of their business affairs.

- Investment Services Act: In the event of any breach of the provisions of the Investment Services Act, the HFSA may order an investment firm, commodity dealer or a market operator to disclose specific data or information (Section 164 (1) (g)).
- Insurance Act: According to Section 171 of the Insurance Companies Act, insurance companies, independent insurance intermediaries and insurance consultants shall supply the HFSA with data and information on a regular basis and in special cases by virtue of law or a resolution by the HFSA. Additionally, insurance companies provide the HFSA with a quarterly report concerning the key characteristics of their operations, including large exposures and large losses, and the estimated figures for the solvency margin, equity capital and technical provisions (Section 172).
- Capital Market Act: According to Section 230(8), the accounting, registration and information systems of investment fund management companies must have sufficient facilities to provide information on their financial situation on a daily basis; to provide information at any given time concerning the balance of investment instruments, liquid assets, - exchange-traded instruments and real estate properties held under the various funds and portfolios; to continuously monitor compliance with legal provisions and with their own internal regulations, and to keep records of data disclosed as prescribed by law.

546. Further competencies of the MNB to access data are established under Section 29 of the MNB Act.

547. None of the above mentioned options to receive records or information require a court order.

Power of Enforcement & Sanction (c. 29.4)

548. According Section 47 of the HFSA Act, the HFSA has the power to impose sanctions as they are foreseen under Section 47/A of the HFSA Act ("supervisory fines") and in the Acts quoted under Section 4 of this Act (i.e. sector – specific laws, AML/CFT Act) for:

- non-compliance with these Acts,
- non-compliance with HFSA's resolutions and
- non-compliance with internal regulations of the bodies and persons referred to in Section 4 HFSA Act.

549. As a result, the HFSA may impose supervisory fines in accordance with Section 47/A of the HFSA Act, take measures under the AML/CFT Act or under the sector specific laws to sanction non-compliance with AML/CFT provisions respectively non-compliance with the AML/CFT internal rules.

550. Under the AML/CFT Act, the HFSA has several opportunities to sanction the service provider itself (but not executive officers or senior management).

551. Section 47/A of the HFSA Act enables the HFSA to impose fines on the bodies and persons referred to in Section 4 of the HFSA Act.

552. Under the sector-specific laws, the range of sanctions is generally broader and can also be applied to executive officers or senior management in some cases.

553. For the detailed analysis of the sanctions regime, including sanctions by the HFSA, see Recommendation 17 below.

Effectiveness and efficiency (R.23&29)

554. The HFSA (and the MNB within its competence) has broad powers to supervise the relevant service providers and is able to use all its regulatory and prudential measures to control compliance with the AML/CFT requirements. The HFSA is in a position to obtain all the information and data needed for this purpose at any time. Supervisory inspections are conducted as comprehensive, targeted, themed or follow-up inspections and may comprise off-site and/or on-site visits. To improve the performance regarding the disclosing of financial crimes, in 2006 the HFSA established a special financial forensic department comprised of staff members who are professionals in financial, jurisdictional, criminal, banking and internet banking security and supervisory practice as well as external experts, specialised on the prevention and combating of money laundering and financial crime.

555. The representatives of the banks met by the assessors during the on-site visit gave the impression that they are very well aware of their obligations under the AML/CFT Act as well as the competencies of the HFSA in this particular area. The requirement for every institution to set up its own internal AML/CFT rules supports raising the awareness to a large extend.

556. From 2005 to 2009, the number of inspections by the HFSA including an assessment of AML/CFT compliance (from 169 to 231) and the number of targeted inspections conducted by the financial forensic department (from 4 to 26) increases from year to year. The frequency and the extent of inspections appear to be adequate in relation to the total number of institutions which are under supervision (in 2009: 705 institutions). The MNB usually conducts inspections to all (4) money processing providers every year, including on-site visits.

557. As the operative supervisory system generally seems to be well developed and working the partly limited range of sanctions available, the low amount of the fines effectively issued for non-compliance with AML/CFT requirements definitely have a weakening influence on its effectiveness. It is noted that revisions to the HFSA Act, which came into effect on 1 January 2010, has significantly increased the level of fines (up to HUF 2bn (€7.4m) available to the HFSA.

Recommendation 17 (rated LC in the 3rd round report)

558. The HFSA is entitled to address non-compliance with the AML/CFT provisions through administrative sanctions or other measures established by the sanctioning regimes of the AML/CFT Act and the sector-specific laws (Section 47 of the HFSA Act) and supervisory fines according to Section 47/A of the HFSA Act.

559. Measures and fines under the AML/CFT Act are stipulated under Section 35 and comprise:

- calling upon the service provider to take the measures necessary for compliance with the provisions of this Act, and to eliminate the deficiencies;
- advising the service provider:
    - to ensure the participation of their relevant employees (executive officers) in special training programs, or to hire employees (executive officers) with the appropriate professional skills required for those activities;
    - to recondition the internal rules according to specific criteria within a prescribed deadline;
- issuing a warning to the service provider;
- ordering the service provider to cease the unlawful conduct;

- imposing a fine of minimum two hundred thousand (€740) and maximum five million HUF (€18,500) upon the service providers.

560. In the view of the evaluators, the range of measures following the AML/CFT Act per se are not broad or proportionate enough according to the FATF standards and may only be imposed to the service provider itself, and not to its directors or senior management. Furthermore, the level of maximum fines is very low (5.000.000 HUF are around €18,500).

561. The measures under the CIFE Act which are relevant in cases of non-compliance with the AML/CFT Act are the following (Sections 151 (1) and 153 of the CIFE Act):

The HFSA may

- *call upon the financial institution within the framework of negotiations held with an executive officer to take the necessary steps in order to eliminate the revealed deficiencies to comply with the regulations of this Act and the provisions of legal regulations on prudent operation,*
- *advise or oblige the financial institution*
  - *to provide further training to its employees (managers) or to hire employees (managers) with the appropriate professional skills,*
  - *to change its business management concept;*
- *stipulate the fulfilment of obligation for extraordinary supply of data;*
- *oblige the financial institution to draw up and execute an action plan;*
- *issue a disciplinary warning to the executive officer of the financial institution;*
- *adopt a resolution to declare the fact of infringement, and shall order the cessation of the infringement or prohibit any further infringement;*
- *require the credit institution to take measures for the reinforcement of the arrangements, processes, mechanisms and strategies relating to its internal control mechanism, corporate governance functions, risk management procedures and internal models for the assessment of capital adequacy.*
- *delegate - one or more - on-site inspectors to the financial institution;*
- *oblige the financial institution*
  - *to adopt internal rules and regulations, or to adapt and apply these regulations according to specific criteria,*
  - *to conduct an investigation in the interest of determining responsibilities for the damages caused and to initiate proceedings against the responsible person,*
  - *to convene the board of directors or the supervisory board and advise these bodies to discuss specific items on the agenda and to the necessity of making specific decisions,*
  - *to elect another auditor;*
- *it may prohibit, limit or make subject to conditions*
  - *performing certain financial service activities or activities auxiliary to financial services,*
  - *opening new branches, starting new financial services as well as starting up new activities (business lines) within a financial service.*

562. In addition to these measures, the HFSA may impose following fines on credit institutions or their executive officers (169-171 of the CIFE Act):

- Credit institutions: fine between 0.1 to 2 per cent of the mandatory minimum subscribed capital;
- Executive officers: ten to fifty percent of his net income earned through the office in the previous year, or if no such income is available, between 100.000 HUF (€370) and 1.000.000 HUF (€3,700).

563. Penalties imposed on financial enterprises and other business associations other than financial institutions engaged in activities auxiliary to financial services may be between 200.000 HUF (€770) and 2.000.000 HUF (up to around €7,700).

564. In addition, the new Section 47/A of the HFSA Act (in force since 1 January 2010) enables the HFSA to impose supervisory fines on the bodies and persons referred to in Section 4 of the HFSA Act (except executive officers). The fines are between 100.000 HUF (€385) and 2 billion HUF (€7.7m). The ceiling of the supervisory fine may be up to two hundred per cent of the annual supervision fee payable by these bodies and persons, if this is higher than two billion forints. For executive employees, the fine amounts to between ten to eighty per cent of the income earned through the office during the previous year. If no such income is available, the income of other persons employed by the given institution in the same or similar jobs shall be taken into account, or the amount of the supervisory fine shall be between 100.000 (c. €4,000) and 10.000.000 HUF (c. € 40.000).

565. The range of measures and sanctions is very broad, including the power to impose disciplinary and financial sanctions and restrict the financial institutions' operations. However, it does not seem sufficiently proportionate to the severity of different situations, as there are neither powers to remove or ban executives or other key staff from employment within the industry (according to Section 157 of the CIFE Act, executive officers can only be removed "in lieu of bankruptcy proceedings") nor powers to suspend or withdraw a licence to do business. Whereas executive officers are covered by the sanctioning system, the penalisation of senior management is not included. However, the HFSA has the powers to advise to conduct further training for employees and senior management.

566. With regard to payment service providers (Section 2 of the Act on the Pursuit of the Business of Payment Services), the provisions of the CIFE Act and the HFSA Act are applicable, since payment service providers are credit institutions, specialised credit institutions issuing electronic money or other financial institutions (e.g. Payment Institutions according to Section 6/A of the CIFE Act).

567. The Investment Act enables the HFSA to impose the following fines upon any investment firm or commodity dealer, and upon their executive officers and other employees for any violation, circumvention, evasion, non-fulfilment or late fulfilment of the obligations set out in the AML/CFT Act (Sections 166 (1)(a) and 167 of the Investment Act):

- For investment firms or commodity dealers: between 100,000 HUF (€370) and 500,000 HUF (€1,850) for any violation of the obligations set out in the MLT (Section 167 (2) d));
- For executive officers and other employees: between 500,000 HUF (€1,850) and 20,000,000 HUF (€74,000) (Section 167 (4)).

568. Furthermore, the HFSA has the power to impose supervisory fines according to Section 47/A of the HFSA Act (as noted above under paragraph 564).

569. The range of sanctions only include pecuniary sanctions, supervisory measures are not foreseen in the Investment Act for non-compliance with AML/CFT requirements (in contrast to Section 166 (1) (a), Section 164 (1) does not include explicitly a reference to the "MLT"-Act). Interestingly, according to the Investment Act, the upper limit for fines for investment firms is very low (500,000 HUF are about €1,850) and the upper level of fines for executive officers and employees (20,000,000 forints, about €74,000) is much higher than for the investment firms they are working for. However, these limits have been abolished in 2010 by the possibility to impose supervisory fines under Section 47/A of the HFSA Act.

570. The sanctions mentioned above cover companies and executive officers (Section 167 of the Investment Act, Section 47/A of the HFSA Act) as well as employees (only Section 167 of the Investment Act). Thus, the FATF requirements are easily met in this regard. They also appear to be dissuasive taking into account their upper levels after the introduction of Section

47/A of the HFSA Act. Nevertheless, it has to be highlighted again that supervisory measures are not foreseen.

571. According to Section 195 of the Insurance Act, in case of non-compliance with the AML/CFT Act, the HFSA has (inter alia) the powers to:

- issue a warrant in which to demand proper actions to meet the requirements prescribed in this Insurance Act, in other legal regulation on insurance activities within a specific timeframe;
- convene the general meeting (members' meeting) to discuss the issues defined by the Commission;
- impose a disciplinary fine Sections 196-198 of the Insurance Act;
- request the dismissal of the executive officers, other members of the management body or the auditors of insurance companies, or disciplinary action against employees;
- remove an insurance intermediary from the register;
- delegate a supervisory commissioner in an emergency situation;
- prohibit the outsourcing of an activity;
- interview the chief executive officer of an insurance company or the director of operations of an independent insurance intermediary or consultant;
- partially or completely suspend its authorisation for operations;
- withdraw its authorisation for operations;
- withdraw its foundation permit.

572. Additionally, the HFSA may impose the following fines for non-compliance with AML/CFT requirements:

- for insurance companies: 100,000 HUF (€370) and a maximum of 20,000,000 HUF (€74,000);
- for insurance intermediaries and insurance consultants shall be a minimum of 40,000 HUF (€150) and a maximum of 5,000,000 HUF (€18,500);
- for managing directors of insurance companies and of directors of operations of independent insurance intermediaries and insurance consultants shall be a minimum of 40,000 HUF (€150) and a maximum of 1,000,000 HUF (€3,700).

573. The range of measures is very broad and enables the HFSA to use appropriate and proportionate sanctions for any possible situation. Employees other than (managing) directors cannot directly be sanctioned by the HFSA, but there is the possibility to request the insurance company to take disciplinary action against employees (which would include senior management). The upper level of fines for insurance companies seems to be adequate, and taking into account the supervisory fines established under Section 47/A of the HFSA Act, introduced on 1 January 2010, fines are now also adequate regarding managing directors.

574. With regard to Investment fund management companies, Section 400 of the Capital Market Act provides the HFSA with the power to, inter alia:

- issue an official warning to issuers and the organisations under its control, to their executive officers and employees, and to persons acquiring a qualifying holding in the event of any infringement of the relevant statutory provisions, internal regulations and the authorisation concerning the offering of securities, compliance with disclosure requirements, investment fund management activities, custodian services, exchange market operations, clearing and settlement activities, central depository operations, and activities associated with the acquisition of holdings in public limited companies for compliance with the said provisions, or - if necessary - shall order compliance within the prescribed deadline;
- prohibit the conduct of unauthorised investment fund management activities, venture capital fund management services, exchange operations, clearing and settlement operations, and central depository services;

- demand reimbursement of the costs and expenses incurred in connection with the activities of an expert or a regulatory commissioner delegated by the Authority;
- initiate the dismissal of an executive employee or the auditor of an investment fund management company, venture capital fund management company, the exchange, a body providing clearing and settlement services or the central depository, or initiate disciplinary action against an employee of such bodies;
- order the management body of an investment fund management company, a venture capital fund management company, the exchange, a body providing clearing and settlement services or the central depository to call an extraordinary general meeting, and may specify the mandatory agenda for such sessions;
- order an issuer, offeror, a shareholder with a participating interest of five per cent or more in a public limited company, an investment fund management company, a venture capital fund management company, the exchange, a body providing clearing and settlement services or the central depository to disclose specific data or information;
- order the suspension of all or part of investment fund management activities, exchange market operations for a fixed period of time;
- order the suspension of trading in a specific section of an exchange or all trading operations on the entire exchange for a specific period of time;
- revoke the authorisation of an investment fund management company, a venture capital fund management company, the exchange, a body providing clearing and settlement services or the central depository;
- order an investment fund management company or a venture capital fund management company to transfer its pending contractual commitments to another service provider;
- appoint a regulatory commissioner to an investment fund management company, a venture capital fund management company, the exchange, a body providing clearing and settlement services or to the central depository;
- impose fines in the cases and in the measure prescribed by law;
- suspend the offering and subscription of securities and the trading of financial instruments, and the procedure in connection with the acquisition of participating interests in a public limited liability company by way of public offer;
- if a shareholder is banned from exercising his membership rights in a limited company by virtue of law, the Authority shall so stipulate it in a resolution and shall suspend ownership rights if necessary;
- initiate procedures with other competent supervisory authorities;
- ban, restrict or impose conditions on investment fund management companies, venture capital fund management companies, the exchange, bodies providing clearing and settlement services and the central depository, in terms of
  1. their payment of dividends;
  2. any payment made to an executive officer;
  3. their owners to raise loans from the said organisations or that these organisations provide any services to them that involve any degree of exposure;
  4. their providing any loan or credit to, or any similar transaction with, companies in which their owners or executive officers have any interest;
  5. the extension (prolongation) of deadlines specified in loan or credit agreements;
  6. their opening of any new branches, introducing new services and new operations;
- order investment fund management companies, venture capital fund management companies, the exchange, bodies providing clearing and settlement services and the central depository:

  1. to draw up new internal regulations, or to revise or apply the existing regulations along specific guidelines;
  2. to provide further training to employees (executives), or to hire employees (executives) with adequate professional experience and expertise;
  3. to reduce operating expenses;

4. to set aside adequate reserves;

- prohibit the exchange from continuing any unlawful activity, order the exchange to draw up new regulations or adopt a new resolution;
- in the event of any failure to comply with the obligation of public disclosure as prescribed in this Act, the Authority shall publish the information to which the failure pertains in accordance with Section 40 at the expense of the defaulting party.

575. The range of sanctions seems to be broad and proportionate (reaching from warning letters to revoking licenses), and taking into account the fines introduced by the new Section 47/A of the HFSA Act the upper level of fines is sufficient for the companies as well as their executive officers. Regarding executive officers, besides fines, warning letters and dismissals are available. Infringements of employees (thus also senior management) can be addressed by warning letters, additional trainings for employees can be ordered as well by the HFSA. Monetary fines for senior management are not foreseen by law.

Table 24: Statistical tables on measures/sanctions imposed by the HFSA

Credit institutions (Banks+savings/credit associates)

	2003-2004 *for comparison*	**2005** *for comparison*	**2006**	**2007**	**2008**	**2009** *(till 08.2009)*
Number of AML/CFT violations identified by the supervisor	10	11	4	2	5	3
Type of measure/sanction						
Written warnings	9					
Fines	1				1	1
Removal of manager/compliance officer						
Withdrawal of license						
Denunciations (FIU/LEA)				2	3	
Other**		11	4		1	2
Total amount of fines (in EUR; HUF 260 = €1))		0	0	0	2.070	42.500
Number of sanctions taken to the court (where applicable)		0	0	0	0	0
Number of final court orders						
Average time for finalising a court order						

** Public resolution in writing, in which HFSA forces service provider to take corrective measures. Fines can be put on in public resolutions.

Financial institutions

	2003-2004 *for comparison*	**2005** *for comparison*	**2006**	**2007**	**2008**	**2009** *(till 08.2009)*
Number of AML/CFT violations identified by the supervisor	7	1	3	1	1	8
Type of measure/sanction						

Written warnings	5					
Fines			1			2
Removal of manager/compliance officer						
Withdrawal of license	2					
Denunciations (FIU/LEA)				1	1	
Other**		1	3			8
Total amount of fines (EUR, HUF 260 = €1)		0	7.700			11.400
Number of sanctions taken to the court (where applicable)		0	0	0	0	0
Number of final court orders						
Average time for finalising a court order						

** Public resolution in writing, in which HFSA forces service provider to take corrective measures. Fines can be put on in public resolutions.

Funds

	2003-2004 *for comparison*	**2005** *for comparison*	**2006**	**2007**	**2008**	**2009** *(till 08.2009)*
Number of AML/CFT violations identified by the supervisor	0	4	3	1	0	0
Type of measure/sanction*						
Written warnings						
Fines		3***	2***	0	0	
Removal of manager/compliance officer						
Withdrawal of license				1		
Denunciations (FIU/LEA)						
Other**		4	3	1		
Total amount of fines (TEUR, HUF 260 = €1)		0.660	1.438			
Number of sanctions taken to the court (where applicable)		0	0	0	0	
Number of final court orders						
Average time for finalising a court order						

**: Public resolution in writing, in which HFSA forces service provider to take corrective measures. Fines can be put on in public resolutions.

Insurance companies and intermediaries

	2003-2004 *for comparison*	**2005** *for comparison*	**2006**	**2007**	**2008**	**2009** *(till 08.2009)*
Number of AML/CFT violations identified by the supervisor	7	4	6	6	6	0

Type of measure/sanction						
Written warnings	7		1			
Fines		2	2	3	0	
Removal of manager/compliance officer						
Withdrawal of license						
Other**		4	5	6	6	
Total amount of fines (TEUR, HUF 260 = €1)		10.760	26.900	17.300	0	0
Number of sanctions taken to the court (where applicable)		0	0	0	0	
Number of final court orders						
Average time for finalising a court order						

** Public resolution in writing, in which HFSA forces service provider to take corrective measures. Fines can be put on in public resolutions.

Investment Companies

	2003-2004 *for comparison*	**2005** *for comparison*	**2006**	**2007**	**2008**	**2009** *(till 08.2009)*
Number of AML/CFT violations identified by the supervisor	6	6	0	3	0	0
Type of measure/sanction						
Written warnings	6					
Fines		4		3	0	
Removal of manager/compliance officer						
Withdrawal of license						
Other**		6		3		
Total amount of fines (EUR, HUF 260 = €1)		29.952	0	4.997	0	0
Number of sanctions taken to the court (where applicable)		0	0	0	0	0
Number of final court orders						
Average time for finalising a court order						

** Public resolution in writing, in which HFSA forces service provider to take corrective measures. Fines can be put on in public resolutions.

576. According to the statistical tables above, the number of measures taken or fines imposed by the HFSA is very low. In addition, the low amount of fines in many instances (before the introduction of Section 47/A of the HFSA Act in January 2010) and the low amount of fines effectively issued lessens further the dissuasive impact of the system of administrative sanctions imposed by the HFSA.

577. Supplementary to the administrative sanctions or measures by the HFSA, Section 303/B of the HCC provides sanctions for intentional non-compliance with the reporting obligations prescribed by the AML/CFT Act. Such a misdemeanour is punishable by imprisonment up to two years. This provision was amended in 2008 in order to provide a criminal sanction for non-reporting with the aim of eliminating the negligent failure to report offence and

eliminating "defensive reporting" in order to avoid charges of negligent failure to report. The authorities provided that in 2006 there were 2 investigations initiated for non-compliance and 1 conviction; in 2007 there were no investigations but 1 conviction; in 2008 there was 1 investigation; in 2009 there was 1 investigation involving 6 persons covering over 900 incidents which was initiated. Since the amendment in 2008, no convictions have been pronounced by Hungarian Courts. Because of the high degree of guilt to be proved, investigations and sanctions according to Section 303/B HCC are very rarely applied. Therefore, Section 303/B HCC per se does not provide an effective tool for the sanctioning of non-reporting and can only be seen as additional element to the administrative sanctions for non-reporting in cases of extreme severity of the infringement.

578. It seems to be difficult to separate the provision of Section 303/B of the HCC Act from the other money laundering provisions of the HCC Act, as the intentional non-reporting of a STR may become indistinct in relation to the actual laundering of money as an accessory. This may also be a reason why no proof could be provided by the Hungarian Authorities that sanctions according to Section 303/B have ever been imposed after the amendment of the provision in the year 2008. Section 303/B of the HCC is applicable to natural persons as well as legal entities, if the perpetration was aimed at or has resulted in the legal entity gaining benefit (Act on Measures applicable to Legal Entities under Criminal Law). Measures to be taken against legal entities include winding up the legal entity, limiting the activity of the legal entity or imposing a fine up to three times the financial advantage gained or intended to be gained through the criminal act, at least 500,000 HUF (€1,850).

579. Besides Section 303/B of the HCC and the other measures/sanctions elaborated above, Criminal Courts can also apply the HCC sanctioning provisions related to criminal offences of money laundering or financing terrorism (Sections 261, 303, 303/A of the HCC). These are applicable to natural and legal persons under the statutory conditions described above.

Market entry

Recommendation 23

(23.3, 23.5, 23.7) *licensing/registration elements only*

580. The CIFE Act contains the regulatory and supervisory measures for financial institutions (in terms of the CIFE Act, including payment service providers) that apply for prudential purposes and which are also relevant to money laundering.

581. As a general provision, Section 11 of the CIFE Act declares that any person holding a qualifying interest in a financial institution must satisfy the following requirements:

- be independent of any influences which may endanger the financial institution's sound, diligent and reliable (hereinafter referred to collectively as "prudent") operation, and have the capacity to provide reliable and diligent guidance and control of the financial institution, furthermore;
- transparency in business connections and ownership structure so as to allow the competent authority to exercise effective supervision over the financial institution.

582. Pursuant to Section 14 of the CIFE Act, the foundation of all credit institutions and financial enterprises (both are "financial institutions" in terms of the CIFE Act) is subject to prior authorisation by the HFSA. Before making its resolution – in the case of the foundation of a bank or a specialised credit institution – the HFSA solicits the prior opinion of the MNB.

583. The CIFE Act sets up a number of conditions which have to be met before the HFSA may issue the permission for the foundation of a financial institution. Pursuant to Section 17 (2) of the CIFE Act, any person who wishes to acquire a qualifying interest in a financial institution in the process of foundation has to provide the HFSA in the founding application with, inter alia

- a certificate of no criminal record;
- evidence concerning the legitimacy of the financial means for acquiring the qualifying interest;
- documents issued within thirty days to date to verify of having no outstanding debts owed to the competent tax authority, customs authority or to the social security system of the applicant's country of origin;
- proof that other holdings and business activities of the applicant are not harmful to the prudent management of the financial institution;
- if the acquirer is a legal person, additionally
- a detailed description of the applicant's ownership structure;
- the complete text of the applicant's charter document as amended to date, a certificate issued within thirty days to date in proof that the applicant was established (registered) in compliance with the relevant national regulations and is not adjudicated in bankruptcy, liquidation or dissolution proceedings, and its executive employees are not subject to any disqualifying factors.

584. If there are financial institutions, insurance institutions or investment associations domiciled abroad that wish to acquire a qualified influence among the founders, then the applicant shall also submit with the application for authorisation a certificate or declaration issued by the competent supervisory authority of the country of its registered address stating that the enterprise operates in compliance with the rules for prudent operations (Section 17 (3) of the CIFE Act); Similar additional requirements apply in the case of the foundation of a financial institution operating as a branch office (Section 17/A of the CIFE Act).

585. Regarding financial service providers authorised by the MNB (cash processing activities, clearing operations), no such provisions for owners of a qualifying interest exist (Section 19/A to 19/C).

586. For the acquisition of a qualifying interest of an existing financial institution or the acquisition of an additional qualifying interest, the applicant has to obtain permission by the HFSA for this transaction prior to its execution (Section 37 of the CIFE Act). The conditions for the permissions are the same as set out in Section 17 (2) of the CIFE Act. Furthermore, contracts regarding ownership rights, voting rights, and similar advantages of such rights as well as contracts for the acquisition of majority ownership in an enterprise which holds a qualifying interest in a financial institution have to be approved by the HFSA.

587. After receiving the application, the HFSA conducts an investigation within 60 working days to examine whether compliance with the relevant provisions of the CIFE Act can be ascertained. The authorisation is (inter alia) refused if the applicant's (or its owner's or executive officer's) activities or influence on the financial institution endangers the prudential management for effective, reliable and independent operations of the financial institution.

588. The election of an executive officer needs prior authorisation by the HFSA (Section 44 of the CIFE Act). Reasons for rejection of the election as a executive officer are

a. having (or having had) a qualifying interest in or being (or having been) the executive officer of a financial institution:

   - in the case of which insolvency can only be avoided by extraordinary measures taken by the HFSA,
   - which was liquidated due to its operating permit being revoked,

   and whose personal responsibility for the development of this situation has been established in a definitive decree;

b. persons who have seriously or systematically violated the provisions of the CIFE Act or another legal regulation pertaining the banking or the management of financial institutions and such has been determined by the HFSA, another authority or a court in a final resolution dated within the previous five years;

c. having a criminal record.

589. Section 44/A of the CIFE Act stipulates similar conditions for service providers engaged in cash processing activities as mentioned above (and includes employees in the scope as well).

590. Members of the supervisory board are also included with the definition of "executive officer" according to the CIFE Act.

591. For investment firms, similar requirements as elaborated above are in place concerning the acquisition of a qualifying interest (Sections 37 to 39 of the Investment Act). According to Section 22 of the Investment Act, the operating managers must not have any criminal records. Members of the supervisory board are not included within these provisions.

592. The foundation of an Insurance Company, which is subject to authorisation by the HFSA, requires the submission of information concerning the shareholders, whether they are natural or legal persons, on persons holding a qualifying interest and the extent of the qualifying interest to the HFSA (Section 58 of the Insurance Act). Further requirements (especially for the acquisition of a qualifying interest of an existing Insurance Company), are stipulated under Section 60 and Section 111 to 114/A of the Insurance Act.

593. Regarding executive employees (and other management positions), the Insurance Act prohibits any criminal records (Sections 83 to 91 of the Insurance Act). According to Section 3 (1) 71) of the Insurance Act and the Authorisation Guidelines for the insurance market, August 2006, supervisory board members are also included by these provisions.

594. In the area of investment fund management companies, executive employees (this definition includes members of the supervisory board) and persons employed for portfolio management and for trading in investment instruments and exchange-traded instruments must have no prior criminal record (Section 260 and Schedule No. 11 of Capital Market Act). As condition for the acquisition of a qualifying interest no such provisions exist with regard to investment fund management companies.

595. Fit and properness requirements are set out in the CIFE Act, the Investment Act and the Insurance Act. Additionally, Recommendation 4 of 2007 (31 October) of the Board of the HFSA *on the assessment of the fitness and propriety of managers, directors and owners of financial organisations* contains relevant rules on evaluation of directors and managers.

596. Section 44 (5) of the CIFE Act stipulates that the executive officer of a credit institution must satisfy the following criteria:

- have at least three years of experience in banking or business management, or in financial or economic management in government administration;
- shall not act as auditor for another financial institution;
- shall not hold another office or position which may hinder performance of his professional duties.

597. Section 22 of the Investment Act obliges executive officers of Investment firms to have professional experience in the field of three years. Section 24 of the Investment Act elaborates on this issue in more detail.

598. Section 83 of the Insurance Act instructs executive officers to

- have the appropriate professional qualifications and a good business reputation;

- have at least five years of experience in the field of insurance, business management, or as an insurance executive in the government sector in the field of finance (the end of the prescribed period of professional experience shall be within ten years of the date of filing the application for registration);
- have a degree in higher education;
- not be in the employ of an insurance company in the capacity of auditor.

Depending on the concrete position, there are several further requirements executives have to fulfil when working for an insurance company (Sections 84 to 91 of the Insurance Act).

599. Schedule No. 11 to the Capital Market Act demands executive offices of investment fund management companies to have at least 5 years of professional experience, persons employed for portfolio management and for trading in investment instruments and exchange-traded instruments to have at least two years of professional experience. Point 4 of Schedule no. 11 elaborates further the meaning of "professional experience".

600. The appointment of all executive officers mentioned above has to be confirmed by the HFSA which means that the executives have to prove their personal qualifications prior to commencing work. It has to be noted that fit and proper criteria are not required by the above mentioned laws for senior management positions (except regarding investment fund management companies).

601. Recommendation 4 of 2007 (31 October) of the Board of the Hungarian Financial Supervisory Authority *on the assessment of the fitness and propriety of managers, directors and owners of financial organisations* contains additional relevant rules on the evaluation of directors, managers and owners of institutions regulated by (inter alia) the CIFE Act or the Insurance Act. According to the Recommendation, directors, managers and owners should be evaluated on their fitness & properness by their employers, even if there are no such requirements foreseen in the sector-specific laws. Furthermore, details are set out on what qualifications should be expected and which information should be obtained by the employers when conducting fit & proper tests. To complete the Recommendation, the role of the HFSA in context with the supervision of fitness & properness is elaborated. The Recommendation provides a lot of additional information which is not covered by legal provisions and is therefore certainly a very useful and comprehensive guidance paper for financial institutions.

602. Money transfer services are defined as financial services (included in the definition of "payment services") under Section 3 (1) d) of the CIFE Act. According to Section 3 (3) of the CIFE Act, such services can only be provided upon prior authorisation by the HFSA. Pursuant to Section 1 (1) (a) and 5 (a) of the AML/CFT Act, the HFSA is also the responsible authority to supervise and ensure compliance with the AML/CFT requirements. All measures relating to licensing and prudential supervision (Section 4 of the HFSA Act, the CIFE Act) apply to such businesses. Post offices, which are able to accept and deliver domestic and international postal money orders are not licensed by the HFSA but authorised to do so directly by the Postal Act In any case, the performance of postal money orders is supervised by the HFSA, according to Section 1 (1) (e) and Section 5 of the AML/CFT Act. The new Act on the Pursuit of the Business of Payment Services, in force since 1 November 2009, stipulates that payment services can only be conducted by (besides the institution operating the Postal Clearing Centre, the MNB and the Treasury) credit institutions, specialised credit institutions issuing electronic money or financial institutions, e.g. payment institutions according to Section 6/A of the CIFE Act (Section 2 no. 22 of the Act on the Pursuit of the Business of Payment Services). All measures relating to licensing and prudential supervision (Section 4 of the HFSA Act, the CIFE Act) apply to such businesses.

603. Money changing services are defined as activities auxiliary to financial services according to Section 3 (2) (a) of the CIFE Act. Thus, such services can only be provided upon prior authorisation by the HFSA by a credit institution. Pursuant to Section 1 (1) (a), Section 5 (a)

of the AML/CFT Act, and Section 4 of the HFSA Act, the HFSA is also the responsible authority to supervise and ensure compliance with the AML/CFT requirements.

604. The CIFE Act provides for several categories of agents respectively intermediaries ("intermediation of financial services" as stated in Section 3 (1) (h) of the CIFE Act). Those intermediaries do not conduct financial services on their own behalf, but always under contract concluded with a financial institution for professional services facilitating the pursuit of providing financial services and/or activities auxiliary to financial services in the name of the financial institution, for it and on its behalf. The full responsibility for compliance with the AML/CFT framework therefore stays with the financial institution. Additionally, as the "intermediation of financial services" is one of the financial services determined under Section 3 (1) of the CIFE Act, providers of such services are supervised their selves by the HFSA for compliance with the AML/CFT Act (Section 1(1) (a) of the AML/CFT Act).

On-going supervision and monitoring

Recommendation 23&32

(23.4, 23.6, 23.7) - supervision/oversight elements only) & 32.2d

605. The HFSA is the competent authority to authorise, supervise and sanction all service providers under the FATF-Methodology, including money transfer services and currency exchange services. The powers of the HFSA regarding the supervision of the AML/CFT requirements are established under the HFSA Act, the AML/CFT Act and sector-specific laws and include as well all prudential measures (see also write-up to R. 29). For service providers only engaged in cash processing activities, the MNB is the responsible authority for authorising, supervising and sanctioning.

606. Section 7 of the HFSA Act entitles the HFSA to monitor the systems of information supply and oversee the data disclosure as well as supervise and control the operations and activities of the bodies and persons described above in terms of compliance with the statutory provisions within the HFSA's competence. The HFSA opens proceedings in the event of any infringement of the provisions within the HFSA's competence, including the taking of action and exceptional measures, and imposing fines.

607. In the course of supervision, the HFSA receives or can require data by the service providers without any restrictions on a regular or ad-hoc basis as well as conducting inspections both on-site and off-site. The inspections are organised as comprehensive, targeted, themed, follow-up inspections whereat the examination of CDD procedures is part of all supervisory comprehensive inspections, including the inspection of CDD documentation and transactions.

608. The focus of the HFSA's AML/CFT inspection program focuses on the Risk Based Approach (consistency of application); compliance on group level; adequacy of CDD measures and procedures, KYC principles; identifying of beneficial owner; treatment of PEPs and correspondent banking relationships; transaction monitoring and filtering of suspicious clients and unusual transactions, using sanction lists, Quality of STRs, tipping off; record keeping, supervisory reports; obligations imposed by EU Regulation 1781/2006 on the information on the payer accompanying transfers of funds; tasks and responsibilities of compliance officer; integrity and the efficiency of the built-in controls in the operational flows; the quality of obligatory training for the employees and the efficiency in the daily practice.

609. According to the information received during the on-site visit, the regular supervisory reporting system of the HFSA includes the quarterly or annual reporting of the number and amount by financial institutions of:

- Anonymous deposits;
- Clients with missing data;

- CDD, ECDD, SCDD procedures;
- CDD procedures of PEPs;
- STRs (and top 5 STRs by amount);
- STRs by agents;
- STRs related to currency exchange and pawn activity;
- Suspended transactions;
- Funds seized by court;
- STRs related to TF;
- Seized assets related to TF.

610. As noted above relevant data can also be requested on occasional basis.

611. According to Section 41 of the HFSA Act "comprehensive inspection procedures" at banks, specialised credit institutions, insurance companies and reinsurance companies are conducted at least every three years, at cooperative credit institutions, financial enterprises, investment firms, commodity dealers, venture capital fund management companies, investment fund management companies, private pension funds, voluntary mutual insurance funds and institutions for occupational retirement provision at least every five years.

612. During the last five years, the HFSA conducted 1378 inspections, which all have been AML/CFT related to that extend that all supervisory inspections always comprise the examination of compliance with and adequacy of CDD measures. In the same timeframe, there have been 76 AML/CFT targeted inspections operated by the Financial Forensic Department of the HFSA.

Table 25: Number of AML/CFT related on-site and off-site inspections (including targeted inspections) conducted by the HFSA

Year	Total on-site visits	AML/CFT targeted on-site inspections (conducted by the Financial Forensic Department of the HFSA)
2005	169	4
2006	284	13
2007	469	12
2008	198	21
2009	231	26

613. The MNB is responsible for licensing, the supervision and sanctioning of service providers only engaged in cash processing activities. The competencies and the procedures of the MNB are provided under the APS Act and the Act on the National Bank of Hungary. The MNB usually conducts inspections, including on-site visits, to every cash processing provider every year. As there are currently only four providers of such kind, the usual number of on-site visits lies between 3 and 4 per year. According to the information received during the on-site visit, the MNB is able to receive any information and data at any time.

614. In case of an infringement of the AML/CFT-provisions, the MNB is the responsible authority to take measures against the cash processing providers according to Section 35 of the AML/CFT Act.

Effectiveness and efficiency

615. The conditions for market entry for financial institutions are comprehensively described in the different sector-specific laws and cover the corresponding FATF - requirements to a very large extend. As all financial institutions according to the FATF-methodology are obliged to apply for authorisation at the HFSA prior to commencing their business, market entry requirements are checked in all instances.

616. Moreover, the HFSA requires the presentation of internal AML/CFT rules of the future supervised financial service providers when licensing or issuing permissions to the foundation,

operation, starting of activities or agency activities. The approval of the internal AML/CFT rules is a precondition to obtain the license. In order to support the preparation of the internal AML/CFT regulations the HFSA issued 6 types of so-called Model Rules taking into account the different types of activities and specialities of the financial service providers and provides furthermore unlimited consultation opportunities.

Table 26: The number of approved internal AML/CFT rules

Year	Money and capital market	Insurance undertakings and pension funds
2006	110	59
2007	136	56
2008	110	76
2009(1st half)	77	36

617. When the draft AML/CFT internal regulation submitted to the HFSA is not compliant with supervisory requirements, the HFSA instructs the modification of the draft rules. Among the money and capital market providers the rejection rate has been about 50-60% upon first submission. In the field of insurance undertakings and pension funds this rate has been 15-20%. The rejection rates demonstrate that the forwarded AML/CFT-internal rules are assessed with due care by the HFSA and that the approval of these rules is not just a formal act.

618. Therefore, the mechanisms in place and their practical application of the measures available convinced the assessors of a very effective and efficient control system for entry to the financial market in Hungary. In particular the requirement to set up extensive internal rules for AML/CFT purposes which have to be approved by the HFSA before starting business appears to be a pretty effectual tool to raise awareness of the different institutions for AML/CFT issues even before they actually enter the market.

Recommendation 32

619. The HFSA maintains sufficient statistics on measures or sanctions imposed in case of non-compliance with AML/CFT-requirements. Regarding inspections, the evaluators have been provided with general numbers of AML/CFT related inspections conducted every year as well as the number of targeted inspections which have been conducted by the financial forensic department of the HFSA.

3.6.2 Recommendations and comments

Recommendation 23

620. The authorities should

- Introduce requirements and procedures to prevent criminals from becoming members of the supervisory board of investment firms;
- Introduce requirements and procedures to prevent criminals from holding a qualifying interest in investment fund management companies;
- Extend binding “fit and proper” requirements to senior management of all financial institutions (besides investment fund management companies), not only to directors/executive officers.

Recommendation 17

621. The authorities should

- Include senior management in the sanctioning regime of the CIFE Act;
- Extend the range of sanctions available for institutions covered by the Investment Act and include suspension of license and removal from office in the range of sanctions available with regard to the CIFE Act;
- Use the existing sanctioning regime to a broader extend respectively consider applying the full range of sanctions (including higher fines and removal of licences) with regard to identified breaches to increase the effectiveness and dissuasiveness of the system.

Recommendation 29

622. Recommendation 29 is fully observed

Recommendation 30

623. Recommendation 30 is fully observed.

Recommendation 32

624. Recommendation 32 is fully observed.

3.6.3 Compliance with Recommendations 23, 29 & 17

	Rating	Summary of factors underlying rating
R.17	**PC**	• Senior management not included in the sanctioning regime of the CIFE Act. • Range of sanctions under the Investment Act and the CIFE Act not broad enough. • Limited effectiveness.
R.23	**LC**	• No assessment of criminal records regarding members of the supervisory board of investment firms. • No assessment of criminal records of persons holding a qualifying interest in investment fund management companies. • "fit & proper" requirements only applicable to directors/executive officers and not to the senior management of financial institutions (with the exception of investment fund management companies).
R.29	**C**	

4. PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

625. A description of the DNFBPs operating in Hungary is set out in section 1.3 of the 3rd round report.

626. In Hungary, all DNFBPs are covered by the AML/CFT Act and are therefore subject to the same CDD and record-keeping requirements as financial institutions. CDD measures have generally been in force since the implementation of Directive 2001/97/EC (2nd EU AML Directive) adapting Directive 91/308/EEC (1st EU AML Directive). Following the implementation of Directive 2005/60/EC (3rd EU AML/CFT Directive) a new AML/CFT Act has been brought into effect on 15th December 2007. In the new AML/CFT Act CDD measures have been refined and extended to new DNFBPs (electronic casinos, persons trading in goods allowing cash payments above the amount of HUF 3.6 million (€13,333)).

627. As for financial institutions, the obligations stipulated in the AML/CFT Act are further specified in Model Rules, specifically designed by the competent supervisory body for each DNFBP category. They play an important role, especially in the case of DNFBPs, to interpret and implement the provisions of the AML/CFT Act in practice.

628. Some sectoral acts contain provisions linked to the obligations under the AML/CFT Act, in particular as regards the procedure on supervision. For this reason those sectoral acts have been modified following the implementation of the third EU AML/CFT Directive. Thus, the last amendments made to the *Act XI of 1998 on Attorneys at Law*, relating to the procedure on supervision, became effective on the 15th December 2007. The amendments of Act LXXV of 2007 *on the Chamber of Hungarian Auditors, the Activities of Auditors, and on the Public Oversight of Auditors* entered into force on 15th December 2007 and related to the procedure on supervision and violation of the confidentiality requirements.

629. The 35/2007 Ministerial Decree determines the compulsory elements in accordance with the requirements of the AML/CFT Act that the internal rules shall contain e.g. measures and procedures on the identification and verification of the customer, the beneficial owner, and on the record keeping.

630. As the AML/CFT Act contains general provisions, the responsible supervisory bodies (HFIU, HTLO, State Tax Authority, Chamber of Hungarian Auditors, Regional Bar Association, Regional Civil Law Notaries Chamber) play an important role in the implementation of the those provisions. They are responsible for the interpretation of provisions in the daily business environment of DNFBPs due to the differences of types of business, for providing model rules, guidance, best practices which are built upon the AML/CFT Act, as well as for creating the opportunities of consultations. In accordance with Section 33 of the AML/CFT Act, the supervisory bodies mentioned shall approve the internal rules, if they contain the mandatory contents set out in the AML/CFT Act. For the purposes of drawing up the internal rules, the supervisory bodies shall, in collaboration with the HFIU and in agreement with the Minister of Finance (in case of attorneys, the Minister of Justice), provide sample rules as non-binding recommendations. Model rules are available on the website of the different supervisory bodies.

4.1 Customer due diligence and record-keeping (R.12) (Applying R.5 to R.10)

Recommendation 12 (rated PC in the 3rd round report)

4.1.1 Description and analysis

Applying Recommendation 5 to 10

631. As laid out above DNFBPs are subject to the same CDD and record-keeping requirement as financial institutions. Therefore the same concerns in the implementation of Recommendations 5 and 10 apply equally to DNFBPs. For details see section 3 of the Report. The following remarks only refer to topics that differ from the description and analysis made in section 3.

632. Apart from bank –administered escrow accounts held by lawyers and notaries public, none of the DNFBPs are allowed to operate accounts on behalf of their clients. According to Section 3 (1) (a) of the CIFE Act only credit institutions are entitled to conduct deposit-taking (and consequently to keep deposit accounts for their clients). Credit, financial and payment institutions may keep payment accounts, because the operation of payment accounts are payment services according to Annex 2 point 9 (a)-c) that may be provided only with the licence of the HFSA. Subsequently, DNFBPs are not allowed to keep **anonymous accounts** or accounts in fictitious names **(c.5.1 and c.5.18)**.

Applying Recommendation 5

a) Casinos (including internet casinos)

Land-based casinos

633. Gambling operations are regulated by Act XXXIV of 1991 on Gambling Operations and the Decree No. 32/2005 (X. 21.) PM on the Implementation of Regulations Concerning the Authorisation, Organisation and Control of Gambling Activities. All operations of gambling activities must be authorised by the state tax authority.

634. Casinos are divided into different licensing categories depending on the number of tables and gaming devices operated (Class I and Class II casinos). Upon authorisation a Class I game room may be operated under the title of "electronic casino", which is also a land-based gaming unit offering only electronic gaming devices. As a game room their operations are subject to a stricter and wider range of conditions. This latter casino category was introduced when the new AML/CFT Act was implemented. However, such type of game room did not exist at the time of the on-site evaluation.[15]

[15] Certain categories of gambling operations under the scope of the Hungarian Gambling Act are exempted from the scope of application of the AML/CFT Act: Class I game rooms which are not qualified as electronic casino and Class II game rooms.

Hungarian authorities believe that game rooms do not qualify as casinos in the sense of the FATF terminology due to following characteristics of game rooms (as determined by Section 26 Gambling Act): in game rooms only coin-activated (cash-activated) gaming devices may be operated (under certain strict and restrictive range of conditions), no other gambling may be pursued, the stakes are limited in so far as the winnings may not exceed the stake wagered by over 200 times (Class I) respectivley 25 times (Class II); of approximately 20,000 game rooms more than 90 % are categorized as Class II game room, where no more than two Class II coin-activated gaming devices may be operated. Authorities emphasize that considering the above mentioned facts the turnover in a game room is not significant compared to casinos.

While in practice the winnings in game rooms may be usually low, there is no provision that safeguards that the financial transactions in such game rooms remain below the threshold of USD/EUR 3,000 as set out in c. 12.1. In particular, as regards Class I game rooms, there is no limit regarding the maximum amount of stake to be played.

Authorities stress that exclusively casinos are authorized to use gambling chips. However, certificates of winnings may be requested for winnings at game rooms (Art. 1 (8) Gambling Act). Authorities state that according to their knowledge no such certificates have been issued for winnings at game rooms in the past. Nevertheless under the current legal framework game rooms could be misused for money laundering purposes.

635. Transactions that can take place in land based casinos are purchase of chips in cash or credit card (in domestic or foreign currencies), payout of winnings in cash or issuance of certification of winning. A certification of winning may be supplied at the request of a player who is entitled to winnings, on any winnings in a foreign currency of the equivalent of HUF 2 million (€7,400) or more, indicating a description of the game and the exact amount of the prize. The certificate of winning shall contain the identification data of the gambling operator and the player, the date and place when and where the game was held and the winning was collected and the serial number of the coin-activated gaming device if applicable. Casino operators have to implement adequate measures (in particular surveillance systems) to verify the truthfulness of such certificates. Authorities and casino operators met stated that each casino only issues around 10-20 certificates per year.

636. The CDD and record keeping obligations stipulated in the AML/CFT Act (described under Rec. 5) are further specified by the HTFCA Model Rules for Gambling Organising Business Associations, which assist the respective service providers in drawing up their mandatory internal rules.

637. CDD procedures have to be applied at the entrance of the casino (Section 3 (vc) of the AML/CFT Act). Authorities and casino operators met stated that CDD is applied irrespective of whether the customer will engage in financial transactions, regardless of the amount of gambling chips purchased (c.5.2.). The identification and verification requirement at the entrance of the casino consists in the presentation of a document which complies with the requirements described under Recommendation 5. The casinos mainly have permanent customers who own a badge with photo on it. Customer identification does not have to be repeated, if the costumer was already identified at a previous entry by the service provider and the service provider is ensured of the costumer's identity by means of the customer badge. (c.5.3).

638. The players can take part in casino games only in their own names. This rule was involved in the internal game plans of the casinos and players' rules, which are public for the players and must be accepted before starting to play. With this provision it is presumed that the customer always plays in his own name, and therefore a statement regarding the identification data of the beneficial owner is not required in practice (c.5.5.).

639. The casino operator has to draw the customer's attention to his obligation to inform the service provider about any changes in the previously given data in a well visible prospectus/appeal placed at the reception. The HFTCA Model Rules advise calling the customer's attention to this fact also in the players' rules as well. When issuing a certificate of winning, the service provider is required to check and record eventual changes in the costumer's personal data.

640. Except for PEP customers the mandatory cases for simplified or enhanced costumer due diligence stipulated in the AML/CFT Act are not considered relevant for casino customers. As far as PEPs are concerned non-resident customers are required to make a written statement for the casino as described under Rec. 5. However casinos do not appear to have access to databases in order to verify such statements. Authorities stated that in the examined period there were no such PEP statements in the Hungarian casinos. No enhanced due diligence is applied to other higher risk categories of customers, such as non-resident customers. (c.5.8 – 5.12).

Internet Casinos

641. Internet casinos are not allowed in Hungary. According to the Gambling Act, casinos cannot be operated through communications equipment and networks. Casinos shall not be authorised to offer any contests of chance via communications equipment and networks (Section 27 (3) of the Gambling Act). According to the scope of application of the Act on Gambling Operations this prohibition covers all casino activities provided from the territory of the Republic of Hungary (Section 1 (4) of the Gambling Act). Authorities stated that internet activities are regularly examined for possible activities organised by Hungarian subjects or provided via servers located in Hungary.

b) Real estate agents

642. Persons engaged in providing real estate agency or brokering and any related services when they are involved in transactions for a client concerning the buying and selling of real estate, are under the scope of the AML/CFT Act. There are no further sector specific provisions on real estate agents in the AML/CFT Act. Model rules and internal rules are important for the sector specific interpretation and application of the provisions in practice.

643. The AML/CFT Act defines "real estate agency or brokering" as the business of mediation of the transfer or lease of real estate properties, including the preparation of transaction orders, real estate appraisal, real estate investment and real estate development (Section 3 (h)).

644. The AML/CFT Act specifies that in the context of real estate agents a "business relationship" has to be understood as a long-term contractual relationship based on a written agreement between a customer and a real estate agent pertaining to the services mentioned above (Section 3 (va)). As real estate agents and customers always enter into business relationships, the term "transaction" is not further interpreted (c.5.2.).

645. The AML/CFT Act does not precisely state if real estate agents should comply with CDD requirements with respect to both the purchaser and the vendor of the property (c.5.3 – c.5.5).

646. Real estate agents have to apply enhanced CDD to PEP customers and non-face-to-face business relationships as described under Rec. 5. Other mandatory cases for simplified or enhanced costumer due diligence stipulated in the AML/CFT Act are not considered relevant for real estate agents. Legal obligations are further specified in the HFIU Model Rules (c.5.8 – 5.12).

c) Dealers in precious metals or articles made of precious metals

647. Service providers trading with precious metals or articles made of precious metals are under the scope of the AML/CFT Act (as they were under the scope of the previous AML Act). Due to the potential risk of ML/TF as well as the experience of supervisors the scope of the AML/CFT Act was extended to these service providers disregarding the threshold provided by the standard (cash transactions equal to or above USD/€15,000).

648. Service providers trading with precious metals or articles made of precious metals have to apply enhanced CDD to PEP customers and non-face-to-face business relationships as described under Rec. 5. Other mandatory cases for simplified or enhanced costumer due diligence stipulated in the AML/CFT Act are not of practical relevance for dealers in precious metals. Legal obligations are further specified in the HTLO Model Rules. No enhanced due diligence is applied to other higher risk customers, such as non-resident customers. (c.5.8 – 5.12).

d) Dealers in goods accepting cash payments above HUF 3.6 m

649. The scope of the AML/CFT Act has been extended to traders in goods accepting cash payments above HUF 3.6 million (€13,333) during their everyday business. "Trading in goods" is defined as the sale of goods by way of business to buyers, traders or processors (subsection (i) of Section 3 of the AML/CFT Act). This category also covers persons that fall into the FATF category of dealers in precious stones.

650. If the service provider decides to accept cash in or above the given amount in the everyday of business at or after the new AML/CFT Act came into effect, it has to register with the appointed trading authority. The trading authority is responsible for the supervision of preventing and countering ML and TF, and for keeping the register up-to-date. Other activities of the trading authority are separated from the supervision determined in the AML/CFT Act.

651. Only registered service providers engaged in trading in goods are authorised to accept cash payments of HUF 3.6 million (€13,333) or more. Service providers engaged in trading in goods but not listed in the register, have been allowed to accept cash payments of HUF 3.6 million (€13,333) or more only until 15 March 2008.

652. The HTLO Model Rules for traders in goods specify transaction orders as execution of a transaction order in an amount reaching or exceeding HUF 3.6 million (€13,333), including multiple, effectively interdependent transaction orders, i.e. payments or payment orders based on instalment purchases, if their aggregate sum reaches HUF 3.6 million (€13,333).

653. Further the above description and analysis for traders with precious metals or articles made of precious metals applies analogously for traders in goods.

e) Lawyers and notaries public

654. The Notaries Act confers public authenticity on notaries public, so that they may provide disinterested legal service to the parties, in order to avoid legal disputes. The notary public is entitled to prepare public documents about contracts and facts of legal significance, keep legal documents, accept money, valuables and securities at the order of the parties in order to deliver them to the obligee, to help the parties with the exercise of their rights and the fulfilment of their obligations by counselling, while assuring equal opportunities for all parties. He is further entitled to conduct probate action and other out-of-court proceedings assigned to his powers.

655. An attorney provides legal service if he represents his client, provides the defence in criminal cases, provides legal counsel, prepares contracts, petitions and other documents, holds valuables deposited with him in connection with the activities mentioned.

656. According to Sec 36 (1)-(2) both lawyers and notaries are subject to the CDD and reporting obligations prescribed in the AML/CFT Act, if :

- they hold money or valuables in custody (as regards lawyers)
- if they provide custody services (as regards notaries) or
- if they provide legal/ notary services in connection with the preparation and execution of the following transactions in accordance with the Lawyers Act/ Notaries Act:

  a) buying or selling any participation (share) in a business association or other economic operator;

  b) buying or selling real estate;

  c) founding, operating or dissolving a business association or other economic operator.

657. As an exception to the above mentioned rule Section 36 (3) of the AML/CFT Act stipulates that *the obligations determined in this Act* shall not apply to attorneys if the data, fact or circumstance indicating money laundering or financing of terrorism become known in connection with

a) providing the defence in criminal proceedings or legal representation before a court, other than the court of registration, during any stage of such defence or representation or at any time thereafter;

b) the defence or legal representation referred to in Paragraph a) or while providing legal advice relating to the questions for the opening of a proceeding.

The evaluators consider that the wording of this exemption is too broad in that the exemption relating to legal privilege as set out in Recommendation 16 merely relates to the reporting of suspicious transactions. The current wording of Section 36 (3) could be construed to extend to the obligation to conduct CDD where monies are being held by attorneys as part of conducting the defence in criminal proceedings or legal representation before a court.

658. For notaries a similar exception is stipulated in Sec 36 (4) of the AML/CFT Act. According to this provision *the obligations determined in this Act* shall not apply to notaries public if

a) the data, fact or circumstance indicating money laundering or financing of terrorism become known while providing legal advice relating to the questions for the opening of a proceeding;

b) the notary public conducts a non-litigious proceeding.

The same concerns with regard to legal privilege, as set out above, apply to notaries.

659. Interpreting the above mentioned exemptions (for lawyers and notaries) literally, none of the provisions of the AML/CFT Act are applicable when the legal privilege applies. This exemption seems not to be restricted to the reporting obligation as allowed by the Standard. Authorities argued that in those cases the provisions in the Lawyers Act and the Notaries Act apply instead. However, it has not been clearly established that equivalent CDD requirements (including beneficial ownership identification/verification, ongoing monitoring) are stipulated in the Lawyers Act and the Notaries Act.

660. Lawyers and notaries public are not allowed to keep accounts other than bank-administered escrow accounts to pay third party money. The Bar Association indicated bank loans and deposits to be the most typical case where lawyer holds client money in custody. The prohibition and restrictions as regards anonymous or accounts in fictitious names apply as well to lawyers and notaries public. (c.5.1 and c.5.18).

661. With the abovementioned exception (legal privilege) lawyers and notaries public are required to apply CDD measures as described under Rec. 5. The CDD procedures for notaries public and lawyers are further specified in their sector specific Model Rules. However these rules could not be fully assessed as an English version was not available. (c.5.2 – c.5.7).

662. Lawyers and notaries public have to apply enhanced CDD to PEP and non-face-to-face business relationships as described under Recommendation 5. Other mandatory cases for simplified or enhanced costumer due diligence stipulated in the AML/CFT Act are not considered relevant. No enhanced due diligence is applied to other higher risk categories of customers, such as non-resident customers. (c.5.8 – 5.12).

f) Auditors, accountants, and tax advisors, tax consultants

663. In Hungary most of the service providers are engaged in providing auditing activities and in providing accountancy (bookkeeping) activities as well (one person or within the same company).

664. The legal CDD and record-keeping obligations are further specified in the Model Rules of the Hungarian Chamber of Auditors and the Model Rules of tax advisors and consultants. Based on the Model Rules each service provider has to draw up internal rules. Even if auditors and accountants work within the same company they must have their own internal rules, one as operating as accountant, one as operating as auditor. (c.5.2 – c.5.7).

665. Authorities further argued that enhanced CDD provisions regarding PEP are not considered applicable, as the customers of auditors and accountants are always legal persons or organisations not having a legal personality. The Model Rules for auditors and accountants do not refer to PEP obligations either. This seems to ignore the fact that the beneficial owner always has to be a natural person and therefore could be a PEP as well (c.5.8 – 5.17).

g) Trust and company service providers

666. According to the authorities this kind of services are not provided in Hungary. Therefore, the AML/CFT Act does not determine respective requirements.

667. Criterion 12.2 refers to Recommendation 6 and Recommendations 8-11. Recommendation 6 was rated as "Largely compliant" and Recommendations 8 to 11 were rated as "Compliant" in the 3rd round MER. As these Recommendations neither constitute key or core Recommendations, they have not been re-assessed during the 4th round evaluation. In accordance with the considerations in the note to assessors in MONEYVAL's 4th Cycle of

Evaluations the evaluators of this round relied on the information existing in the 3rd round report so far as possible. As the legal framework for this Recommendation has changed following the implementation of the 3rd EU AML/CFT Directive, the new framework is described and respective recommendations and comments are made hereafter, but are not taken into consideration in the rating for Recommendation 12

Applying Recommendation 6

PEPs

Foreign PEPs – Requirement to Identify

668. All DNFBPs are covered by the provisions of the AML/CFT Act regarding PEPs. PEPs are considered to be natural persons residing outside Hungary who are or have been entrusted with prominent public functions within one year before the carrying out of costumer due diligence measures, and immediate family members, or persons known to be close associates, of such persons (Section 4 (1) of the AML/CFT Act). The definition is modelled on the one set out in the Third EU AML/CFT Directive, which differs slightly from the FATF standard.

669. "Immediate family members" are considered to be: spouses, next of kin, adopted persons, stepchildren, foster children, adoptive parents, stepparents, foster parents, brothers, and sisters; relatives, furthermore, domestic partners, spouses of the next of kin, fiancées; next of kin, brothers, and sisters of a spouse; and spouses of brothers and sisters. (Sec 685 (b) Civil Code). The term "persons known to be close associates" is also further specified in line with the definition of the Third EU AML/CFT Directive (Section 4 (4) of the AML/CFT Act).

670. The AML/CFT Act requires customers residing outside Hungary to provide a written statement for the DNPBP declaring whether they are classified as politically exposed persons according to the law of their country (Section 16 (1) of the AML/CFT Act)[16]. DNFBPs are responsible for informing the customer properly on this duty. If a customer residing outside Hungary is classified as a politically exposed person, the aforementioned statement shall also indicate into which category of PEPs they fall.

671. The different PEP categories are defined in detail in Section 4 (8) of the AML/CFT Act and are largely in line with the definition of PEPs in the Glossary to the FATF Recommendations:

- heads of the State, heads of the government, ministers, deputy ministers, secretaries of state;
- members of parliaments;
- members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal;
- heads of courts of auditors, members of courts auditors, or of the boards of central banks;
- ambassadors, chargés d'affaires and high-ranking officers in the armed forces, with the ranks of chief officer or general officer;
- members of the administrative, management or supervisory bodies of State-owned enterprises of majority control.

672. The Hungarian definition of PEPs does not fully cover "senior politicians", "senior government officials" (for example non-political heads of ministries, etc.) and "important political party officials" who are listed as an example under the standard (see definition of PEPs in the Glossary to the FATF Recommendations). However, it is noted that "senior politicians" and important political party officials" are usually captured due to their

[16] It is noted that authorities expect DNFBPs to obtain PEP declarations also from customers holding dual citizenships.

participation in either government or Parliament. Hungarian authorities emphasize that non-political heads of ministries are partially covered by the term "secretaries of state".

673. Where there is any doubt concerning the veracity of the abovementioned customer statement, the DNFBP is required to take the necessary measures to verify the statement submitted by the customer via access to databases or registers that are openly accessible to the public (Section 16 (2) of the AML/CFT Act). The possibility of DNFBPs to verify such statements is usually limited to publicly accessible internet websites (e.g. government websites). Only a few DNFBPs appear to have access to commercial databases.

674. The AML/CFT Act requires foreign customers to declare whether they are classified as politically exposed persons according to the law *of their country* (Section 16 (1)). However the form presented to the customer to provide his written statement refers to the Hungarian PEP definition (as foreseen by the Model Rules). By this means all PEPs should be captured even if the PEP definition in the country of residence should differ from the Hungarian definition.

675. The Hungarian PEP definition refers to persons residing outside Hungary whereas the standard refers to persons entrusted with prominent public functions in a foreign country irrespective of the residence. As a result the Hungarian PEP definition excludes people residing in Hungary and entrusted with prominent public functions abroad. Furthermore only persons that are or have been entrusted with prominent public functions within one year before the carrying out of CDD measures are to be considered as PEPs (as foreseen in the 3rd EU AML/CFT Directive). The standard does not provide for such a time limit.

Foreign PEPs – Risk Management

676. In the case of a foreign PEP, the establishment of the business relationship or the execution of a transaction order may take place only after the approval of the executive officer specified in the organisational and operational rules of the DNFBP (Section 16 (3) of the AML/CFT Act).

677. Accordingly, for a customer that becomes a PEP in the course of a business relationship approval by the executive officer is required as soon as the execution of a transaction for this customer is intended, which implies as well that the executive officer approves the continuation of the business relationship.

Requirement to Determine Source of Wealth and Funds & Ongoing monitoring

678. DNFBPs are required to record the type and subject matter and the term of the contract of the business relationship for any customer (Section 9 (1) (a) of the AML/CFT Act). However there seems to be no explicit requirement to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs.

679. DNFBPs are required to conduct ongoing monitoring on a business relationship (Section 10 (1) of the AML/CFT Act) for any customer. However, there is no explicit requirement to conduct enhanced ongoing monitoring on a PEP customer.

Domestic PEPs – Requirements Ratification of the Merida Convention

680. The Hungarian PEP regime only covers natural persons residing outside Hungary. Domestic PEPs are not covered (except for PEPs holding foreign and Hungarian citizenships). There is no PEP list on national PEPs.

Ratification of the Merida Convention

681. The 2003 UN Convention against Corruption has been ratified in September 2004 by the Decision of the Parliament 73/2004. The 2003 UN Convention against Corruption was promulgated by the Act CXXXIV of 2005. Act IV of 1978 on the Criminal Code and Act XIX of 1998 on the Criminal Proceedings implement the Chapter III of the Convention; Act

XXXVIII of 1996 on international legal assistance in criminal matters and Act LIV of 2002 on International Co-operation of Law Enforcement Agencies implement Chapter IV that of.

Recommendations 8-11

Applying Recommendation 8

Misuse of New Technology for ML/FT (c.8.1) & Risk of Non-face-to-face Business Relationships

682. As regards non-face-to-face business relationships all DNFBPs are required to record the maximum data set as specified for customer due diligence. In order to enable the verification of personal identity the customer is required to submit to the DNFBP certified copies of documents prescribed for CDD measures. The requirements to be met by the certified copies are further stipulated in the Law (Section 14 of the AML/CFT Act). The rules on non-face-to-face business relationships are only applicable to a few DNFBPs; in practice, namely real estate agents, lawyers, notaries public as well as dealers in precious metals and goods.

683. There is no explicit requirement anywhere in the existing legislation that requires DNFBPs to have policies in place or to take measures to prevent the misuse of technological developments in ML or TF schemes.

Applying Recommendation 9

684. All of the service providers under the scope of the AML/CFT Act are entitled to accept the outcome of the CDD measures carried out by financial service providers within the territory of Hungary, another EU member state or a third country that meets equivalent requirements. Service providers carrying on money transmission and currency exchange activities are exempted from the abovementioned financial service providers that can be relied on (Section 18 (1)-(2) of the AML/CFT Act). Casinos, real estate agents, traders in precious metals and traders in goods can never qualify as reliable third parties.

685. Auditors, accountants, tax consultants, tax advisors, notaries and lawyers are allowed to accept the outcome of CDD of other auditors, accountants, tax consultants, tax advisors, notaries and lawyers within the territory of Hungary, another EU member state of or a third country that meets equivalent requirements (Section 18 (3)-(4) of the AML/CFT Act).

686. In addition to the abovementioned conditions third party CDD may only be accepted if the third party is included in the mandatory professional register and applies CDD and recordkeeping measures equivalent to those laid down in the AML/CFT Act, and their supervision is executed in accordance with equivalent requirements, or the registered office in a third country applies equivalent requirements. (Section 18 (6) of the AML/CFT Act).

Requirement to Immediately Obtain Certain CDD elements from Third Parties

687. There is no explicit requirement for DNFBPs to obtain immediately the necessary information from the third party. Section 19 (2) of the AML/CFT Act only stipulates an authorisation for the third party to make copies available.

Availability of Identification Data from Third Parties

688. The availability of identification and verification data to the DNFBP accepting the outcome of third party CDD procedure is subject to the prior consent of the customer affected. The authorities confirmed to the evaluators that third party reliance is not permissible if such consent is not given by the customer (Section 19 (1)-(2) of the AML/CFT Act).

Regulation and Supervision of Third Party

689. As outlined above, only financial service providers, auditors, accountants, tax consultants, tax advisors, notaries and lawyers, which are equivalently regulated and supervised can be relied on for the outcome of costumer due diligence. This implies that DNFBPs are required to

satisfy themselves that these requirements are fulfilled when relying on a third party, in order to comply with the AML/CFT Act.

Adequacy of Application of FATF Recommendations

690. As mentioned in Section 3.2.1 above, third parties can only be based in the territory of Hungary, another EU member state or a non-EU country that meets equivalent requirements. The non-EU countries which impose requirements equivalent to those laid down in the AML/CFT Act are determined by a Decree published by the Ministry of Finance. The list corresponds to what was agreed upon between the EU Member States in June 2008.

Ultimate Responsibility for CDD

691. The AML/CFT Act stipulates explicitly that DNFBPs, accepting the outcome of the CDD procedures carried out by another service provider, bear ultimate responsibility for CDD compliance.

Applying Recommendation 10

692. Like financial institutions all DNFBPs are required to maintain records of data obtained while carrying out CDD. This includes in particular data and documents regarding customer and beneficial owner identification/ verification, nature of business relationship, data on transaction orders and monitoring information. They also have to maintain documents evidencing reporting activities or data supplied on request from the HFIU, as well as documents evidencing the suspension of transactions. Such data has to be kept for at least eight years following the recording or from the date of reporting (suspension). The time limit for keeping data obtained when establishing a business relationship shall commence upon the time of termination of the business relationship (Section 28 (1) of the AML/CFT Act).

693. Criterion 10.1.1 requires transaction record to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. In this regard (beyond the requirements of Section 28 (1) of the AML/CFT Act) the Hungarian authorities refer to the general record-keeping requirements stipulated in Section 166 of the Accounting Act (see write up to c. 10.1.1 for financial institutions). Furthermore regarding private entrepreneurs who are not subject to the Accounting Act, the relevant record-keeping regulations are stipulated in the Act on Personal Income Tax

694. In addition to the above mentioned Acts, Section 28 (2) of the AML/CFT Act requires DNFBPs to keep records of all executed cash transaction orders transacted in an amount of, or exceeding HUF 3.6 million (€13,333). However, the evaluators could not establish why casinos and dealers in precious metals and goods are exempted from this obligation. Authorities maintain that the latter have to keep the same records based on the above-mentioned Accounting Act. However, this raises the question why all the other DNFBPs, which fall as well under the scope of the Accounting Act, do have to comply with the Section 28 (2) AML/CFT Act. These inconsistencies may have a negative impact on the proper application of record-keeping requirements by DNFBPs.

Applying Recommendation 11

Special Attention to Complex, Unusual Large Transactions & Examination of Complex & Unusual Transactions & Record-Keeping of Findings of Examinations

695. According to the Ministerial Decree on the Compulsory Elements of Internal Rules those rules shall contain aspects that are to be borne in mind when considering any information, fact or circumstance indicating ML or TF for each profession which can be used in the everyday of business. Model Rules provided for each DNFBP category contain examples for such aspects, which include inter alia unusual transactions for each specific sector. Except for a reporting obligation there is no specific obligation stipulated either in the law or in the Model Rules to pay special attention and to examine as far as possible the background and purpose of all

complex or unusual large transactions. Furthermore, there are no requirements to set forth their findings in writing and to keep such findings available for competent authorities and auditors for at least five years.

Effectiveness and efficiency

696. Overall, the meetings with the private sector demonstrated high awareness and good understanding of the CDD and record-keeping obligations under the AML/CFT Act (apart from below mentioned exemptions). They also showed high awareness for sector specific and current AML/CFT risks.

697. The extensive Model Rules issued by the competent authorities appear to provide a very useful basis for effective implementation of CDD and record keeping requirements. Based on these Model Rules the vast majority of DNFBPs has drawn up internal rules further specifying, *inter alia*, the internal measures that shall be applied in cases of simplified, normal and enhanced CDD situations, internal procedures as regards third parties and introduced business as well as record-keeping.

698. CDD (including PEP requirements, non-face-to-face business relationships, third parties and introduced business) as well as record-keeping requirements are integral parts of the inspection program.

699. As regards dealers in goods and real estate agents the competent authorities and industry representatives confirmed that consciousness for AML obligations and AML risks are not evenly established within these DNFBP sectors. The competent authority focused on raising awareness amongst market participants through public campaigns (seminars and trainings).

700. As dealers in goods only recently became subject to AML requirements (following the introduction of the new AML/CFT Act) resources of the competent authority appear to have been absorbed to a great extent by identifying and registering dealers falling under the scope of the law. The authority indicated the need for a risk-analysis to assess which traders are worthwhile to focus examinations. The authority stated that the results of the recent examinations show improvement in the CDD application compared to major deficiencies observed during first on-site inspections. However, the implementation needs to be further strengthened. The quantity of inspections appears still to be low in relation to the number of market participants.

701. Awareness amongst large parts of the real estate agents sector also appears to be low. Significant efforts have been made to reach out to the estate agent sector and the competent authority, the HFIU, has provided several trainings and seminars which are conducted on a continuing basis. In spite of that, industry representatives expressed concern about whether those measures reach all of the market participants. Poor registration data with regard to the number of effectively active real estate agents impedes efficient information campaigns. Implementation needs to be further strengthened to ensure that all estate agents are aware of their obligations and there appears to be need for more on-site inspections.

702. Implementation levels with respect to CDD and record keeping requirements of other DNFBP appear to be more advanced. Nevertheless, industry representatives of most DNFBP sectors expressed need for an update of the typologies contained in their sector specific Model Rules and guidance with regard to the implementation of preventive measures should be tailored still more to their specific business environment. The training program provided by competent authorities was widely judged as supportive and adequate.

4.1.2 Recommendations and comments

703. With regard to all DNFBPs the Hungarian authorities should:

- Apply recommendations and comments made under Recommendation 5 and 10 to all DNFBPs;

- Review the relationship between record keeping obligation according to Accounting Act and respective obligations under the AML/CFT Act;
- Review the PEP definition as the scope differs slightly from the FATF standard;
- Require DNFBPs explicitly to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs;
- Require DNFBPs explicitly to conduct enhanced ongoing monitoring on a PEP customer;
- Require DNFBPs explicitly to have policies in place or to take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes
- Require DNFBPs to obtain immediately the necessary information from the third party;
- Require DNFBPs to pay special attention and to examine as far as possible the background and purpose of all complex and unusual transactions;
- Require DNFBPs to set forth their findings in writing and to keep such findings available for competent authorities and auditors for at least five years.

704. With regard to lawyers and notaries public the Hungarian authorities should:

- Clarify the scope of the legal privilege for lawyers and notaries.

705. With regard to casinos the Hungarian authorities should:

- Limit the possible winnings at game rooms in order to ensure that customers may not engage in financial transactions equal to or above EUR 3,000 and abolish the possibility of "certificates of winnings" being issued for winnings at game rooms.

706. With regard to real estate agents the Hungarian authorities should:

- Clarify that CDD measures have to be applied with respect to both the purchaser and the vendor of the property.
- Strengthen effective implementation of CDD requirements.

707. With regard to dealers in goods accepting cash payments above HUF 3.6 m the Hungarian authorities should:

- Strengthen effective implementation of CDD requirements.

708. With regard to auditors, accountants, and tax advisors, tax consultants the Hungarian authorities should:

- Clarify that the provisions regarding PEPs also have to be applied by auditors, accountants, and tax advisors/ consultants in cases where a PEP is the beneficial owner of a legal entity.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**LC**[17]	• The same concerns in the implementation of Recommendations 5 and 10 apply equally to DNFBPs. • Scope of the legal privilege for lawyers and notaries unclear. • Weakness in effective implementation of CDD requirements in particular as regards real estate agents and dealers in goods.

[17] The review of Recommendation 12 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 9 and 11.

		• The activities of game rooms are not adequately limited in order to allow for a distinction from casinos and therefore exclude them from the scope of the AML/CFT Act.

4.2 Suspicious transaction reporting (R. 16)

(Applying R.13 to 15 and 21)

Recommendation 16 (rated PC in the 3rd round report)

4.2.1 Description and analysis

Applying Recommendations13-15

709. The STR reporting regime has already been described under section 3.5 above. The weaknesses that applied to the financial sector also apply to DNFBPs.

710. Casinos (including internet casinos), real estate agents, dealers in precious metals and dealers in precious stones, also traders in goods who accept cash reaching or exceeding 3,6 million HUF (€13,333), are under the same reporting obligation as financial institutions. According to Section 23 of the AML/CFT Act, all reporting entities are obliged to submit a report to the HFIU when noticing any information, fact or circumstances indicating money laundering or terrorist financing, through a designated person, without a delay. The reporting obligation is suspicion based and applied irrespective of any threshold. Additionally, accountants, auditors, tax consultants and tax advisors are obliged to submit a report directly (through a designated person) to the HFIU when noticing any information, fact or circumstance indicating money laundering or terrorist financing, or having reasonable grounds to suspect that ML or TF has been committed. Model rules which include some interpretation of the requirements of the AML/CFT Act, typologies on unusual facts and circumstance which might be indicated as a suspicion of ML/TF and the process and requirement of reporting in compliance with the AML/CFT Act have been issued by the respective supervisory authorities.

Lawyers, notaries and other independent legal professionals

711. According to Section 36 (2) (c) of the AML/CFT Act, notaries public and attorneys are obliged to submit a report if they provide services in connection with the preparation and execution of founding, operating or dissolving a business association or other economic operator. This covers the notion of 'creation, operation or management of legal persons or arrangements'. Concerning the notion 'managing of bank, savings or securities accounts', notaries public only provide safe custody services which can be considered as a form of securities accounts. However, the reporting obligation exists, if they provide such safe custody services. Referring to 'managing of bank, savings or securities accounts', attorneys do not manage bank, savings or securities accounts, but they hold money or valuables in custody. Nevertheless, the reporting obligation shall also apply to them, if they provide custody services.

712. Attorneys and notaries public, when performing the actions described in Section 36 of AML/CFT Act, shall submit the report prescribed in Section 23 of the AML/CFT Act via the regional bar association or regional chamber of notaries public, respectively. The employees of attorneys and notaries public (including assistant attorneys) shall submit the report with the attorney or notary public who exercises employer's rights. Employees of law firms shall report to the person designated by the members' meeting, who shall forward the report without delay via the bar association with which the law firm is registered. The presidents of regional bar associations and regional chambers of notaries public shall designate a person to be responsible for forwarding without delay the reports received from lawyers to the HFIU.

713. Lawyers, notaries, other independent legal professions are not required to report suspicious transactions, if the data, fact or circumstance indicating ML or TF become known in circumstances where they are subject to legal professional privilege or legal professional secrecy.

Effectiveness

714. There has been progress in Hungary. Due to the experience of the supervisory bodies of the DNFBPs so far, it can be stated that the awareness within service providers has grown, open conversations and consultations have been organised, although more are still needed, and supervision has become more effective. Moreover, model rules have been modified containing more profession specific provisions and interpretation of requirements of the Act in each sector, the number of consultations, conferences have grown in this field. The cooperation of the HFIU and the different supervisory bodies as well as self-regulatory bodies has become more intensive, a common reasoning and intelligence has started. Section 32 of the AML/CFT Act determines compulsory training requirements, including national and international standards in the AML/CFT. Due to this progress which has started, the authorities anticipate the improvement of awareness, the quality of STRs and the normalisation of the quantity of STRs.

715. According to subsection 10 of Section 23 of the AML/CFT Act the HFIU publishes information about the efficiency of the reports and its proposals to improve the efficiency on its official website semi-annually (for professions). The meetings with representatives of DNFBPs on the whole indicated a good awareness of the STR regime. However, the overall number of STRs sent by the DNFBPs is low. The Hungarian authorities explained that the situation has occurred by necessity of more training and the lack of international guidelines, best practices on the basis of experience as well as the low number of investigations, prosecutions and convictions at an international level which could be the basis of processes, measures and best practices regarding DNFBPs. There are professions with a small size supposing that it is easy to detect the reporting person. As most of DNFBPs' business relationship presumes trust and reliance, then according to the explanations given to the evaluators, the possible conflict between violation of confidentiality principle and reporting obligation might be one reason for low number of reports.

716. The evaluators welcome the steps taken by the Hungarian authorities; however, the low number of STRs from the sector raises concerns about the effectiveness of the implementation by DNFBPs.

Table 27: Suspicious Transaction Reports Received

Monitoring entities, e.g.	reports about suspicious transactions		reports about suspicious transactions		reports about suspicious transactions		reports about suspicious transactions		reports about suspicious transactions	
	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
	2005		2006		2007		2008		2009*	
Financial Institutions	11,143	3	8,996	2	9,062	5	9,289	12	5,216	7
DNFBPs	179	0	699	0	133	0	391	0	180	0
Customs and others	60	0	304	0	280	0	248	0	37	0
Total	11,382	3	9,999	2	9,475	5	9,928	12	2,490	4

717. There has been a significant decline in the number of STRs received from lawyers and notaries which appears to coincide with reporting via the SROs. The local chambers claimed to receive no feedback from the HFIU regarding particular cases. On the other hand, with the introduction of the secure electronic message system, when receiving an STR the HFIU shall, without delay, send a confirmation to the service provider forwarding the report in a form of a secure electronic message. Furthermore, the HFIU publishes information on STRs for professions under the AML/CFT Act on its website, although information on specific cases under investigation cannot be reported back to service providers.

718. The cooperation between the regional chambers and the HFIU is governed by Section V of the Model Rule for notaries. According to this Model Rule, regional chambers forward reports electronically to the HFIU. The regional chambers and Hungarian National Chamber of Civil Law Notaries have good professional relationship with the HFIU. The HFIU also cooperates in the training of notaries and the professional staff at the regional chambers.

719. Nevertheless, during the on-site visit, it was mentioned by several representatives of DNFBPs and SROs, that more training or feedback about modern ML trends and about practical case examples would be needed. Overall awareness of AML/CFT requirements in the real estate sector seems to be very low. The representatives of Hungarian Real Estate Association stated that many agents have ever heard of AML/CFT regulations. The small number of reports from DNFBPs confirms the relevance of awareness rising and trainings.

Recommendation 14

720. According to subsection (9) of Section 23 of the AML/CFT Act, executive officers, employees of service providers and their contributing family members as well as the designated person, in the case of good faith, shall not be held liable if the report ultimately proves to be unsubstantiated. As STRs shall be forwarded to the HFIU through the designated person, the reporting persons are kept confidential.

721. DNFBPs are not allowed to disclose information to a customer or a third person. The reporting persons and the HFIU shall not provide information to the customer concerned or to other third persons on the fact that report has been transmitted to HFIU, on the contents of the report, or on the fact that the transaction order has been suspended due to Section 24 of the AML/CFT Act, on the name of the reporting persons, or on whether a money laundering or terrorist financing investigation is being or may be carried out on the customer, and is required to ensure that the filing of the report, the contents thereof, and the identity of the reporting persons remain confidential. (Section 27 of the AML/CFT Act)

722. Subsection (2)-(5) of Section 27 of the AML/CFT Act sets out the exceptions to disclose information taking into consideration the determined conditions.

Other enforceable means on Rec. 14, 15, 21

Recommendation 15

723. According to Section 31 of the AML/CFT Act service providers including DNFBPs are required to establish adequate and appropriate internal control and information systems for the procedures of CDD, reporting and record keeping in order to prevent business relationships and transaction orders through which ML and TF is realised or possible. In addition, Ministerial Decree 35/2007 on the compulsory elements of internal rules requires that internal rules shall contain requirements on the compulsory training and on the organisation of special training of national and international standards of AML/CFT; procedures and norms for employees how to act and behave when meeting the customer and carrying out CDD; and description of the internal controlling and information system which supports the carrying out of customer due diligence, reporting and record keeping. Model rules, too, contain recommendations on internal system and policy

724. Section 32 of the AML/CFT Act requires service providers to ensure that their employees are aware of the provisions in force relating to ML and TF including the provisions of the FRM Act and to ensure that they are able to recognise business relationships and transaction orders through which ML or TF may be or is realised, and to instruct them as to how to proceed in line with the AML/CFT Act in case a data, fact or circumstance indicates ML or TF. It also requires service providers to ensure the participation of their relevant employees in special training programmes.

Recommendation 21

725. The HFSA and the HCFG usually publishes on their websites those FATF statements which recommend and support enhanced CDD and enhanced procedures against certain countries which fail to provide effective legal background on AML/CFT or Public Statement under Step VI of MONEYVAL's Compliance Enhancing Procedures

726. Besides the available website and information on the terrorist lists accepted by the EU, the model rule for auditors indicates the most important off-shore locations requiring particular attention. These are: Anguilla, Bahamas, Belize, Cayman Islands, Cook Islands, Marshall Islands, Mauritius, Montenegro, Vanuatu, Panama, Seychelles, Netherlands Antilles, Niue, Samoa, Saint Vincent & Grenadine, St. Kitts and Nevis, Turks and Caicos.

Additional elements

727. Service providers engaged in providing auditing activities; and service providers engaged in providing auditing, accountancy (bookkeeping), tax consulting services whether or not certified, or tax advisory activities under agency or service contract are under the scope of the Act and are required to submit a report to HFIU through the designated person without delay or as soon as it is possible (if the execution of the transaction order cannot be prevented, or the filing of the report before the execution of the transaction order is likely to jeopardise efforts to trace the beneficial owner, or the recognition of transaction happens after in case of bookkeeping).

728. Service providers are not obliged to report when noticing the suspicion of any predicate offence of ML.

4.2.2 Recommendations and comments

729. Overall, during the on-site visit, DNFBPs appeared to be aware of their responsibilities. The view was expressed that there was a low risk of ML/TF through DNFBPs. The real concern remains with the decline in STRs from lawyer's and notaries which seem to coincide with the reporting obligation through an SRO. The HFIU and SROs should, in cooperation with the HFIU, review the reasons for the significant decrease in reports from lawyers and notaries. Furthermore, the Hungarian authorities should take continued and enhanced measures (especially through improved feedback from the HFIU and trainings) in order to increase the number of STRs submitted.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors underlying rating
R.16	**PC**[18]	• Low number of STRs from DNFBPs (effectiveness issue). • The same shortcomings as identified under Recommendation 13 and Special Recommendation IV apply.

[18] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 14, 15 and 21.

5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Non-profit organisations (SR.VIII) (rated PC in the 3rd round report)

5.1.1 Description and analysis

730. The 3rd round evaluation report noted that the Hungarian authorities had not yet undertaken a review of the vulnerabilities of the NPO sector although one was planned. It was recommended that, while reviewing the system, the Hungarian authorities to look at increasing the transparency in the sector, strengthening the legal basis for supervision and oversight over NPO fundraising. It was also recommended that authorities should consult widely with the sector on ways of improving transparency and reporting.

731. According to the Hungarian legal system the range of NPOs covers non-profit oriented organisations operating under different complex legal frameworks like associations, limited liability companies, private and public foundations, and non-profit business associations. Section 2 of Act CLVI of 1997 on Non-Profit Organisations states that the following Hungarian-registered entities may qualify as non-profit organisations: a) non-governmental organisations, not including insurance associations, political parties and employers' and employees' advocate associations; b) foundations; c) public foundations d) *(Blank in law)* e) public corporations, if so permitted by the law on the establishment of such; f) national associations of specific sports; g) non-profit business association; h) the Hungarian Board of Accreditation for Higher Education, the Higher Education and Research Council and the Hungarian Rectors' Conference; i) European groupings of territorial cooperation; j) institutions of higher learning not financed from the central budget; k) engaged in activities for the benefit of the public. Moreover, the entities mentioned in a)-e) may also have non-profit status.

732. Based on a publication of the Central Statistical Office from 2009 about Non-profit Organisations in Hungary *(KSH, Non-profit szervezetek Magyarországon 2007, Budapest 2009)* it is estimated that the total number of NPOs in 2007 was 62,407, out of which over 23,000 are established as foundations.

733. Over 53% of all NPOs are registered as "non-profit organisations" in the sense of Act CLVI of 1997 on Non-Profit Organisations which gives the organisations a public benefit status. According to the statistics provided by the authorities, 86% of the NPOs were registered for money movement, 5% were only involved in collecting funds and more than 6% of the registered entities did not have any financial activity.

734. In 2007, the total income of the sector reached 964 billion HUF (€3.5 bn). Funds from public sources account for 41% of the total. 45% of the organisations have an average annual income below 500,000 HUF (around €1,850). Statistics after 2007 were not made available by the authorities.

Table 28: Statistics on the number of NPOs between 1999 and 2007

Year	Number of foundations included in the total	Total
1999	19,754	48,171
2000	19,700	47,144
2003	21,216	53,022

2004	21,817	55,197
2005	22,255	56,694
2006	22,464	58,242
2007	23,732	62,407

KSH, Nonprofit szervezetek Magyarországon 2007, Budapest 2009

735. The basic legal principles for NPOs are laid down in Act IV of 2006 on Business Associations and in Act CLVI of 1997 on Non-Profit Organisations, Civil Code and Act II of 1989 on Associations. The amendments of Act IV of 2006 on Business Associations stipulate that from 1 July 2007 as a separate form of company no 'public benefit organisation' can be established (registered). From 30 June 2009 only non-profit organisations registered as non-profit business associations are allowed to exist. Section 4 of Act IV of 2006 on Business Associations sets out the requirements for non-profit business associations.

736. For foundations the general rules are regulated in Sections 74/A – 74/G of the Civil Code currently in effect (Act IV from 1959). The authorities stated that the new Civil Code will provide new rules on foundations. During the on-site visit the authorities anticipated that the new law will come into force in spring 2010, however, due to a decision of the Constitutional Court of 26 April 2010 the date of entry into force of the new Civil Code has become uncertain.

737. Associations are subject to the provisions of Act II of 1989 on the Freedom of Association. This Act provides for judicial supervisory competence of the public prosecutor's office. As noted in the 3rd round MER, the general supervisory powers of the General Prosecutor's Office still do not include access to bank records and therefore do not provide a basis for tracing financial flows through the organisation. However, the General Prosecutor's office has powers of making general inspections of foundations, associations and other civil society organisations on regular basis to investigate the lawful functioning of NPOs. For example, in 2009 the General Prosecutor's Office made 453 inspections of foundations, 87 inspections of public foundations, 2,314 inspections of associations and 40 inspections of non-profit business associations[19]. Moreover, measures taken were 400 complaints (óvás), 1,873 objections (felszólalás), 29 notices (figyelmeztetés) and 1,010 warnings (jelzés). In addition, prosecution was initiated in 28 cases.

Table 29: Responsibility for supervision on AML/CFT controls

Non-Profit organisations		
Type of business	Supervisor	No. of Registered Institutions
Please set out different types of NPO below	(general supervision)	*Total : 62,407 (in 2007)*
Foundation	Chief Prosecutor's Office	22,075
Public Foundation	Chief Prosecutor's Office	1,657
Non-profit Institution	Chief Prosecutor's Office	43
Association	Chief Prosecutor's Office	32,670
Employees' Interest Groups	Chief Prosecutor's Office	1,128
Employers' Interest Groups	Chief Prosecutor's Office	2,521
Public Benefit Organisation	Chief Prosecutor's Office	1,690
Society	Chief Prosecutor's Office	138
Public Corporation	General Prosecutor's Office	485

[19] *2009 Report of the Public Prosecutor Office to the Hungarian Parliament*

Reviews of the domestic non-profit sector

738. The authorities noted that bearing in mind the complexity of the NPO sector and the different legal frameworks under which NPOs operate in Hungary, the related legal provisions are under constant review. They further advised that policy initiatives include a more transparent and coherent regulation of the sector as envisaged by the amendments of Act IV of 2006 (as stated above) or the new provisions concerning foundations regulated in the new Civil Code.[20]

739. However, the evaluation team did not receive any substantial information which demonstrates that since the 3rd round evaluation; Hungary has reviewed the adequacy of its domestic laws and regulations that relate to non-profit organisations as a whole and has conducted any periodic re-assessment by reviewing new information on the sector's potential vulnerabilities to terrorist activities.

Protecting the NPO sector from terrorist financing through outreach and effective oversight

740. Hungary has not undertaken any outreach to the NPO sector to raise its awareness about the risks of terrorist abuse and promote transparency, integrity and public confidence in the administration and management of all NPOs with a view to protecting the sector from terrorist financing. Notwithstanding the recent and modest steps of the Ministry of Foreign Affairs in this regard, the absence of effective outreach to the NPO sector was confirmed by the interviewed representatives of the sector.

741. The authorities indicated that there are no specific oversight rules for NPOs, given the different legal frameworks applicable. At the same time, partial oversight is ensured via registration by the competent county courts, registration in certain cases with tax authorities as well as the exercise of the supervisory functions of the prosecutor.

742. The standard also requires that countries should be able to demonstrate that steps have been taken to promote effective supervision or monitoring of those NPOs that account for a significant portion of the financial resources under the control of the sector and a substantial share of the sector's international activities. In these cases NPOs should maintain publicly available information on the purpose and objectives of their stated activities, and identity of persons who own, control or direct their activities. It was unclear to the evaluators whether those particular parts of the NPO sector have been specifically identified for effective supervision or monitoring. The Hungarian authorities advised generally that information relating to NPOs' stated activities or the identity of persons who own, control or direct their activities (including senior officers, board members and trustees) is held in accordance with the rules for the relevant type of structure and in the relevant registries administered by the court of registry (competent county court at the seat of the organisation). All non-profit organisations in accordance with Act CLVI of 1997 on Non-Profit Organisations prepare a report on public welfare activities simultaneously upon approval of the annual report, which available to public.

743. Foundations and public foundations are set up by a declaration of establishment, which documents the legal intent of the founder to dedicate assets for a specific purpose in accordance with the Civil Code. The founding deed must indicate the fund's name, objective, assets and the manner in which they are to be utilised and the registered address. Regulation on public corporations and national sport associations is provided in the Act II of 1989 on

[20] The evaluators were informed after the on-site visit that for the transparency and supervision of the non-profit sector, a new law has been introduced on the 2nd March 2010. Act XVI of 2010 (in force from the 1st January 2011) provides for the electronic registration of foundations and for the open access to this database for all relevant authorities (Section 5 of the Act). They were further advised by the authorities after the on-site visit that on 15 February 2010 Act XVI of 2010 on the Electronic Registration of Foundations and Data Disclosure from the Registration was adopted. This Act will enter into force on 1 January 2011. The aim of this Act is to have the data of foundations be registered in a national, public, authentic and electronic register

Associations, as well as Civil Code. Non-profit business associations are regulated by Act IV of 2006 on Business Associations, as well as Act V of 2006 on Public company information, company registration and winding-up proceedings. With regards to the other organisations as provided by Act CLVI of 1997 on Non-Profit Organisations, such as the Hungarian Board of Accreditation for Higher Education, the Higher Education and Research Council and the Hungarian Rectors' Conference; European groupings of territorial cooperation; institutions of higher learning and social cooperatives engaged in activities for the benefit of the public the authorities provided that only few work in special transparency, their registration and functioning is regulated under separate legal regimes..

744. The evaluators were advised during the on-site visit that the registers, which include information on the purpose and objectives of their stated activities and the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees, kept by the court of registry are not publicly available in practice, with exception of foundations and non profit associations.

745. Legal provisions for each organisational form of NPOs require the registration of the organisation/company. Registries are held by the competent county courts. Relevant information is also collected and stored by the competent tax authorities. According to the authorities inter-authority exchange of information is ensured. Nevertheless, representatives of the NPO sector expressed that there is a need for a coherent database and existing databases are sometimes outdated. They mentioned the Government's Decree of 2007 which requires central registration of NPOs for the whole country. But the authorities indicated that, due to the development of the new Civil Code, the preparation of the Act on central registration changed, thus only the registration rules of the foundation were reformed in Act XVI of 2010 on the Electronic Registration of Foundations and Data Disclosure from the Registration, which will enter into force on 1 January 2011.

746. Registration with tax authorities is limited to NPOs active in sectors that are eligible to tax relief on membership fees or qualify donors for tax relief. Those NPOs must be able, at all times, to justify their eligibility to tax relief, on the basis on information on activities etc. Other NPOs are generally taxable and must also keep records for the assessment of the tax authorities as any other taxable entity.

747. Sanctions under the various laws controlling company, association or other NPOs are applied including the termination of an organisation by the competent court. Administrative penalties do not preclude the use of criminal sanctions.

748. The Public Prosecutor's Office has, in accordance with the relevant regulations, judicial supervisory competence over the most organisations in the NPO sector. The public prosecutor is entitled to file for court action if the legitimacy of an organisation's activities cannot be otherwise ensured. However, the interviewed NPO representatives indicated that supervision by the Public Prosecutor's Office as insufficient and rarely applied.

749. Reporting and book-keeping obligations for all economic entities, which also includes non-governmental organisations (Section 3 of the Accounting Act), are laid down in the Accounting Act.

750. According to Section 169 of the Accounting Act:

(1) The economic entity shall be required to retain in a legible form the annual report on the financial year, along with the inventory, valuation, the ledger statement and the general ledger and other registers satisfying the requirements of this Act in support of the annual account, for a period of at least 10 years.

(2) The accounting documents for direct or indirect support of bookkeeping records (including ledger accounts, analytical records and registers) shall be retained for

minimum 8 years, shall be readable and accessible by code of reference indicated in the bookkeeping records.

751. Auditing of accounts is compulsory at public foundations and at the other non-profit organisations that run undertakings, if their yearly revenues reach a particular amount, as laid down in the Government Decree 224/2000.

752. According to Act CLVI of 1997 special record keeping and publication (transparency) requirements apply for organisations having a "public benefit status".

Targeting and attacking terrorist abuse of NPOs through effective information gathering, investigation

753. The investigative powers of Hungarian law enforcement authorities as set out in the ACP are also applicable to the NPO sector. Related information is accessible for all investigation authorities.

754. No specific provisions apply to permit domestic cooperation and information sharing outside the usual criminal investigation framework and the general rules of the Act on Administrative Proceedings which may allow competent authorities to request information in all their proceedings.

755. Full access to information on the administration and management of a particular NPO can be obtained during the course of an investigation, as soon as there is a legal basis for the information to be recorded. The legal framework as set out above allows for information sharing at investigation level as well as at administrative level.

Responding to international requests for information about an NPO of concern

756. Responding to foreign authorities involves intelligence, police and the judiciary. There is no reason to doubt good cooperation by these authorities is any different in this area. There are no reasons to doubt that the same would apply on these issues.

Effectiveness and efficiency

757. The evaluation team believe that, since the 3rd round report, insufficient steps had been taken to bring the Hungarian system into conformity with SR.VIII. In the 3rd round MER it was recommended that Hungary to conduct a review of the sector in order to be fully compliant with the FATF Recommendations. Moreover, it was recommended that the examination should look at increasing the transparency in the sector, strengthening the legal basis for supervision, and oversight over NPO fundraising. It was also advised that the authorities to consult widely with the sector on ways of improving transparency and reporting.

758. The evaluators did not receive any information from the authorities to indicate that review of the adequacy of domestic laws and regulations that relate to NPO sector was conducted and that would be done periodically. Moreover, the representatives of the NPO sector stressed that the awareness of NPO sector on the risks of terrorist abuse is lacking, as well as supervision of the prosecutors is more of the formal character.

5.1.2 Recommendations and comments

759. The recommendation from the 3rd round MER to conduct a review of the sector in order to be fully compliant with the FATF Recommendations should be implemented.

760. The authorities should provide clear legal provisions to require and maintain information on NPOs' purposes, activities and the identity of person(s) who own, control or direct their activities.

761. Steps should be taken to raise awareness in the NPO sector about the risks of terrorist abuse. In particular, the active steps should be taken to clearly identify those parts of the NPO sector that account for a significant portion of the financial resources of the sector and a

substantial share of the sector's international activities, and ensure at a minimum in these areas that:

- Publicly accessible information is available on the purposes and objectives of their stated activities, and on those who own, control or direct their activities;
- Promotion of effective oversight measures (supervision and monitoring) of these parts of the sector should be undertaken;
- Appropriate measures are in place to sanction violations of oversight measures.

5.1.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• No special review of the risks in the NPO sector undertaken. • Insufficient outreach to the NPO sector on FT risks. There is no formalised and efficient system in place that focuses on potential vulnerabilities. • No clear legal provisions in place to require and maintain information on NPOs purposes and objectives in relation to their activities. • No clear identification of those NPOs that account for a significant portion of financial resources under the control of the sector and a substantial share of the sector's international activities. • No specific meaningful measures or sanctioning capability for the most vulnerable parts of the sector.

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)

762. Hungary was rated compliant in the 3rd round MER for national cooperation. As noted in this report Hungary has established various forums where competent authorities exchange information and views on AML/CFT issues and coordinate their activities.

763. The Anti-money Laundering Inter-ministerial Committee[21], under the chairmanship of the Minister of Finance, and the Inter-ministerial Working Group against Terrorism, chaired by a representative of the Ministry of Justice and Law Enforcement have continued their functions since the third round.

764. The Anti-money Laundering Inter-ministerial Committee which is headed by a Deputy State Secretary of the Minister of Finance meets at least three or four times a year. The evaluators were informed that the Committee has met 15 times since February 2006. As noted in the 3rd round MER, though not a decision making body, its main responsibility is to discuss AML/CFT issues, including legislation relevant to AML and measures necessary to address international requirements. However, the evaluators of this round were not provided with any minutes of meetings or evidence of processes to follow up on issues raised during national coordination efforts. The Hungarian authorities reported that at the Committee's meetings a broad range of issues have been discussed. For instance, after the entering into force of the new AML/CFT Act, discussions (with the involvement of chambers of auditors, notaries, lawyers, etc.) were made on how to ensure a unique approach to elaborate sample rules by supervisory authorities, and continuous updates and information were provided on the newly introduced electronic STR reporting system. Preparation for the 4th round evaluation and review of the 3rd round Action Plan were also coordinated at the Committee's meetings. The Committee appears to be an effective forum for exchange of information and coordination on AML/CFT matters.

765. Though the Anti-money Laundering Inter-ministerial Committee might be regarded as a suitable forum for domestic co-operation and co-ordination, not all AML/CFT supervisory authorities seem to be included in the work of this Inter-ministerial Committee such as Chamber of Hungarian Auditors, Regional Chambers of Notaries Public, Regional Bar Associations, Hungarian Trade Licensing office) and there seem to be no other forum that would bring all relevant supervisory, regulatory, LEA, HFIU and prosecutorial authorities together. It is noted that other relevant supervisors are invited to attend meetings of the committee to discuss relevant issues.

766. The aim of the Inter-ministerial Working Group against Terrorism is to identify the possible legal and/or capacity obstacles as regards the national implementation of the EU policy of fight against terrorism and the national counter-terrorism machinery in general. Since October 2003.

[21] Composed of representatives of the Ministry of Justice and Law Enforcement, the Ministry of Finance, the MNB, the HFSA, Gaming Board Department of the Tax and Financial Control Administration, the HCFG, National Police Headquarters, the Ministry of Foreign Affairs, the General Prosecutor's Office, National Judicial Council, Tax and Financial Control Administration, National Security Office and other representatives from the field. On a casual basis, subject always to the agenda, there had been other stakeholders invited to the meetings of the Committee, such as the Hungarian Banking Association, the Association of Hungarian Insurance Companies, the Hungarian Trade Licensing Office, the Chamber of Hungarian Auditors, the Hungarian Bar Association, the Chamber of Public Notaries..

767. The evaluators were informed of the formation of a "Financial Stability Board", since 1 January 2010, which is composed of the Minister of Finance, the Head of the HFSA and the Chairman of the MNB. It holds monthly meetings and is chaired on a rotational basis (under the chairmanship of the Minister of Finance in 2010). The Board has been conceived as a decision making mechanism on a high level and in operative manner on the issues including – among others – AML/CFT matters.

768. The HFSA has concluded an MoU with the NPHQ and the HFIU in respect of the responsibilities enacted by the new AML/CFT Act. The HFSA provides permanent professional support for the investigative authorities and keeps the daily relationship regarding the reported cases and required assistance. It has modified the existing MoU with the MNB which allows closer co-operation between the two institutions.

769. Although the HFSA and HFIU seem to have a sound basis for co-operation as supervisory authorities there does not appear to be much formal co-ordination (in terms of formal agreements, sharing of information etc) between all the supervisory bodies mentioned in Section 5 of the AML/CFT Law. The co-operation and co-ordination between all supervisory authorities does not appear to be formally structured.

770. General rules for mutual assistance between authorities are laid down in Act CXL of 2004 on the General Rules of Administrative Proceedings and Services. Sections 26 covers the basic principles of national and international co-operation (legal assistance).

771. The national and international information exchange with regard to the HFIU is based on the provisions of the AML/CFT Act (Section 26).

772. The criminal service of the HCFG, cooperating with and collecting the necessary information from other competent authorities in the intelligence phase as well as in a criminal investigation, is legally covered by the ACP and Act on the HCFG.

773. According to Section 71 of the ACP, the court, the prosecutor and the investigating authority may contact central and local government agencies, authorities, public bodies, business organisations, foundations, public endowments and public organisations to request the supply or transmission of information, data or documents. Furthermore, on the basis of Section 178/A, if deemed necessary owing to the nature of the case, the prosecutor or the investigating authority may request data – according to the rules of official requests – on the suspect (the person against whom the complaint was filed, the potentially suspected offender) from the tax authority, organisations providing communication services, organisations managing medical and related data, as well as from organisations managing data classified as bank secret, securities secret, fund secret or business secret, in order to uncover the facts of the case.

774. In order to prevent crime, the ACP (Section 63/A) makes it possible for the prosecutor and the investigating authority to forward indications to the relevant authority of the central administration and the local government competent for the prevention of certain acts of criminality if deemed necessary or soon after it finishes the procedure it conducts. The signal contains the facts and circumstances identified during the criminal procedure.

775. If the prosecutor or the investigating authority identifies a fact or detects circumstances which would generate a judicial, administrative or other type of procedure ex officio, it informs the competent authority in order to initiate or conduct the necessary procedure.

776. Section 40 of the Act on the HCFG states that the investigating bodies of the HCFG and the competent authorities of the NPHQ are obliged to co-operate when acting within their competence, and are bound to assist each other when exercising their crime prevention and crime detection tasks. Evaluators were told that co-operation between the HCFG and the competent authorities of the NPHQ in cross-border crimes (like drug trafficking) takes place

regularly. Authorities of the NPHQ and the HCFG meet quarterly to discuss co-operation aspects and investigation matters.

777. In order to enhance the effectiveness of the law enforcement activities, a working group, established by the Hungarian law enforcement authorities, elaborated a procedural recommendation which serves as a basis for the Hungarian investigating authorities in their procedures focusing on assessing the enrichment conditions connected either to suspected single perpetrators or possible criminal groups.

778. The investigating authorities of the HCFG have the responsibility to analyse, in an active criminal investigation, whether the possibility to collect unpaid revenues (taxes, customs duties, est.) is executable in a customs or in a tax administrative procedure or not. If their analysis results in a finding clearly confirming the enrichment of the suspected perpetrator as not being in compliance with his/her income situation (which aspect is also analysed) the relevant law enforcement authority of the HCFG immediately gets in contact with the territorial competent authorities of the Hungarian Tax and Financial Control Administration in order to provide the Tax Authority with data/information on legal entities or natural persons having a clear connection to companies inspected by the criminal service.

779. Regarding co-ordination between investigating authorities, the relevant legal dispositions include that:

- upon the agreement of their heads and the consent of the prosecutor, the investigating authorities may set up a joint task force to investigate a specific case or a specific group of cases [subsection (3) of Section 37 of the ACP];
- in the event of a conflict of competence among the investigating authorities, and if an offence falling within the competence of the proceeding investigating authorities is combined with an offence beyond the competence of the given investigating authority and the procedure cannot be practicably separated, the acting investigating authority shall be designated by the competent prosecutor. The prosecutor may also designate as the acting investigating authority an investigating authority, which would not otherwise be competent in the investigation of the offence [subsection (2) of Section 37 of the ACP].

780. However, the evaluators were informed by the NPHQ authorities, that no joint investigative teams with the HCFG have so far been established.

Additional Elements

781. National co-operation mainly includes joint conference between participation of the different authorities and other (sector specific) presentations concerning AML/CFT related issues which are part of the informal information and experience exchange between authorities (and service providers).

782. On an ad-hoc basis the Inter-ministerial Committee for Anti-money Laundering held its meetings with the participation of representative bodies from the financial sector (e.g. Hungarian Banking Association) and other key stakeholders or affected authorities.

783. Nevertheless, there seem to be no other formal mechanism in place for consultation between the competent authorities, the financial sector and other sectors (including DNFBP) that are subject to AML/CFT Laws, regulations guidelines or other measures.

Effectiveness and efficiency

784. The authorities have a variety of mechanisms in place to facilitate co-operation and policy development. There are also effective mechanisms to facilitate co-operation between the agencies involved in investigating ML and TF.

6.1.2 Recommendations and Comments

785. Although co-operation between the relevant bodies appears to be working effectively in practice, there are insufficient formal co-ordination agreements in place (relating to sharing of information etc.) between all supervisory bodies. To improve the national co-operation in the AML/CFT area, all supervisory authorities should consider devising a formal agreement through an MOU or other means for co-operation and co-ordination on supervisory matters or make sure that the co-operation is co-ordinated in the Inter-ministerial Committee for Anti-money Laundering.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**C**	

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)

786. Hungary signed the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) in 1989 and ratified it in 1996. The United Nations Convention against Transnational Organised Crime (Palermo Convention) was signed by Hungary in 2000 and ratified on 6 December 2006. The 1999 International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) was also signed by Hungary in 2001 and ratified in 2002.

787. The HCC criminalises money laundering offences largely in line with the elements listed in the Vienna and Palermo Conventions. However, as noted in sections 2.1 and 2.2 above, the following uncertainties and shortcomings appear to exist:

- Conversion or transfer for the purpose of helping a person who is involved in the commission of money laundering to evade consequences is not covered by Hungarian legislation;
- Conversion or transfer for the purpose of disguising the illicit origin of property is unclear;
- Unnecessary requirement of the purpose element of concealing the true origin of the thing for the acts of concealment and suppression (disguise) of location, disposition or ownership of or rights with respect to property as well as for the act of "use in his economic activities".
- Concealment or disguise of the true nature, source and movement is not covered (Palermo A.6(1)(a)(ii)).
- Self-laundering is only partly covered.

788. The trafficking in narcotics and other drug related offences are criminalised by virtue of the HCC. The HCC provides for the confiscation of proceeds derived from drug related offences and narcotics and instrumentalities in drug related cases and associated money laundering. Legislation also provides extradition for all offences and MLA is available. Controlled delivery is available as an investigative technique by the LEA under the ACP.

789. Participation in an organised criminal group is also an offence under the HCC as required by the Palermo Convention (affiliation with Organised Crime - Section 263C of the HCC). MLA to foreign countries is available in the legislation for the purposes of confiscation.

However, MLA is subject to unreasonable restrictions, such as dual criminality to all procedural measures. There are no specific rules with respect to the disposal of confiscated assets, as required by paragraph 2 of Article 14 of the Palermo Convention.

790. Extradition for all offences is possible on the basis of the 1996 Act (Chapter II) unless otherwise provided for under an international treaty or agreement (Section 3 1996 Act). LEAs have a range of investigative techniques at their disposal. These include searches for evidence, questioning of suspects and witnesses, and hearing of experts, inspections of sites, searches, frisk searches and seizure.

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

791. Hungary has criminalised the financing of terrorism by virtue of subsections (4) and (5) of Section 261 of the HCC. These offences can be committed by both natural and legal persons. For the terrorism offence, the penalty is imprisonment between 10 to 15 years, or life imprisonment. For the activities stipulated in subsection (4) of Section 261, the penalty is imprisonment between 2 to 8 years. Moreover, for activities specified in subsection 5 committing a terrorist activity in a terrorist group or supporting the terrorist group in any other form the penalty is imprisonment between 5 to 10 years. However, there are still following matters that need to be addressed with respect to the full implementation of the UN Terrorist Financing Convention:

- The legislation does not provide a definition of "funds", which is open for the courts to evaluate.
- Act CIV of 2001 provides that measures are applied to a legal person, if the perpetration of an intentional offence was aimed at or has resulted in the legal entity gaining benefit. Since the terrorist financing offence in general would not result in a legal person gaining benefit, the punishment of legal person would never be possible. The requirement of "benefit" seems to go beyond the requirement of UN Terrorist Financing Convention.
- While evaluating the criminalisation of terrorism the team came across the lack of full criminalisation of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation at the annex of UN Terrorist Financing Convention. The evaluators believe that the financing of the acts of placing or causing to place on an aircraft in service a device or substance which is likely to destroy that aircraft, as provided by the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation is missing.

792. Mutual legal assistance is rewarded on the basis of Act XXXVIII of 1996 on international legal assistance in criminal matters. The discussion of the efficiency of mutual legal assistance questions discussed under Recommendation 36 is also relevant here. It should be noted that inconsistencies in implementing the UN Terrorist Financing Convention have a consequential impact on the rendering of mutual legal assistance, especially in cases when double criminality is checked in all cases, which could be considered as an unreasonable restriction.

793. Hungary can extradite a person to a foreign country and the legal framework for extradition is set out in Chapter II of Act XXXVIII of 1996. This includes terrorist financing offences. A person may be extradited for conducting criminal proceedings or for enforcing a sentence of imprisonment or a measure involving deprivation of liberty. Dual criminality is required.

794. The UNSCRs 1267 and 1373 relating to the prevention and suppression of the financing of terrorism are implemented in Hungary within the EU framework by means of Council Regulations and Common Positions, as well as under national legislation through the FRM Act. However, as noted above, Hungary's national mechanism for giving effect to UNSCRs 1267 and 1373 needs further development.

795. Hungary signed the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime in 1997 and ratified it in 2000. Hungary also signed and ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism on 14 April 2009. Act LXIII of 2008 on the Promulgation of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and on the Amendment of Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing entered into force on 8 November 2008.

6.2.2 Recommendations and comments

796. Hungary has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. The legislation has been amended in order to implement the Conventions, but existing legislation does not cover the full scope of these Conventions as stated above and in the individual discussion on R. 1 and SR II. Therefore, it is recommended that Hungary amend its Criminal Code to fully cover ML and TF offences and thus fully implement the Vienna, Palermo and Terrorist Financing Convention.

797. Measures still need to be taken in order to properly implement UNSCRs 1267 and 1373. The Hungarian authorities should particularly introduce a procedure for making possible the freezing of funds and assets held by EU-internals in all instances set forth by SR.III.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• Reservations about certain aspects of the implementation of the Vienna Convention, Palermo Convention and the TF Convention. • Effectiveness of the implementing the standards in relation to ML and TF give rise to doubts. • There is no definition of "funds" in the Criminal Code. • The financing of certain aspects of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation have not been criminalised. • Legal persons do not appear to be liable in practice for TF offences as required by UN TF Convention.
SR.I	**PC**	• Implementation of UNSCRs 1373 is not yet sufficient. • There is no definition of "funds" in the Criminal Code. • The financing of certain aspects of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation have not been criminalised. • Legal persons do not appear to be liable in practice for TF offences as required by UN TF Convention.

6.3 Mutual legal assistance (R. 36, SR.V)

6.3.1 Description and analysis

Recommendation 36 (rated C in the 3rd round report)

798. As set out in the 3rd round MER Hungary is a party to international agreements, such as the 1959 European Convention on Mutual Legal Assistance in Criminal Matters and its Additional Protocol and the 1990 Strasbourg Convention. Hungary has signed the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Protocol providing direct channels for mutual legal assistance. The Act CXXX of 2003 on the cooperation with the Member States of the European Union in criminal matters provides specific legal regime for extradition and mutual legal assistance between the EU member states. Furthermore, Hungary signed and ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism in 2009. Legal provisions for providing mutual legal assistance are laid down in domestic law, bilateral and multilateral treaties and apply both to ML and FT. According to Act XXXVIII of 1996 on international legal assistance in criminal matters, the Hungarian judicial authorities are able to co-operate without concluding a treaty, since the national legislation allows co-operation on the basis of reciprocity, and in the absence of it.

799. The possible forms of international cooperation cover a wide range of forms, including:

a) extradition;

b) surrender and acceptance of criminal proceedings;

c) acceptance and surrender of the enforcement of sentences of imprisonment and measures involving deprivation of liberty;

d) acceptance and surrender of the enforcement of confiscation or forfeiture or of a penalty or measure having equivalent effect;

e) procedural legal assistance (including investigative activities, searches for evidence, questioning of suspects and witnesses, hearing of experts, inspections of sites, searches, frisk searches, seizure, transit through Hungary, forwarding of documents and objects related to criminal proceedings, service of documents, provision of personal and other information in criminal records on Hungarian citizens subject to criminal proceedings in Foreign States and temporary surrender of such) and laying of information before a foreign state.

800. Central authorities for judicial assistance and for the purpose of the administrative transmission and reception of the requests from non-EU member states, as well as for all other official correspondence relating thereto are the Chief Public Prosecutor and the Minister of Justice and Law Enforcement.

801. The Act XXXVIII of 1996 does not provide procedural deadlines for execution of MLA requests. However, the authorities indicated that the ACP applies to the execution of requests. Furthermore, since it is the responsibility of the 'prosecuting authority' to decide on the applicability of an MLA request, the criminal service of the HCFG must always follow the instructions and orders of the prosecutor when executing the forwarded request.

802. At the same time, the evaluation team were not able to establish effectiveness of practices with regards to time periods given to central authorities, namely, the General Prosecutor's Office and the MoJLE, to evaluate and send the request for execution, because the Act does not provide procedural deadlines for such examination.

803. Section 2 of Act XXXVIII of 1996 states that MLA requests may not be performed nor submitted if they would prejudice the sovereignty, security or public order of the Republic of Hungary. Section 5 defines that requests for legal assistance may only be performed or submitted, on the condition that a) *the act is punishable according to both Hungarian law and the law of the Foreign State; b) the legal assistance is not related to political offences or other closely related offences, nor to military offences.* No ground for refusal for offences involving fiscal matters is regulated in Hungary. Section 3 provides that the Act is applicable unless otherwise provided in an international treaty or agreement.

804. Moreover, Section 7 provides that the Minister of Justice or the General Public Prosecutor may make the performance of requests for legal assistance subject to the provision of appropriate assurances; if the required assurances are not furnished, the Minister or the General Public Prosecutor may refuse the execution of the request where there is reason to believe that the proceedings to be conducted in the foreign state, the penalty likely to be imposed, or the enforcement thereof are not consistent with the human rights protection provisions and principles of the Constitution or of international law.

805. Taking into account the fact that the Act XXXVIII of 1996 is applicable if otherwise is not provided in the international treaty or agreement, the evaluation team was of opinion that the Act provides such grounds for refusal that are vague and indecisive, which could hamper effective international cooperation with those states that are not part of any international treaty or agreement.

806. In relation to dual the criminality requirement, Section 5 of Act XXXVIII of 1996 provides that unless otherwise provided for by the Act, MLA requests may only be performed or submitted on the condition that the act is punishable according to both Hungarian law and the law of the requesting foreign state. Additionally, Section 62 stipulates that the request for procedural assistance may also be granted if the dual criminality requirement is not fulfilled, due to guaranteed reciprocity in this respect.

807. The dual criminality requirement is applicable to all procedural actions, which is a substantial restriction to the effective cooperation with other states. It should be noted that Hungary, being a party to the 1959 European Convention on mutual legal assistance in criminal matters, has made declarations to Articles 2 and 5 of the Convention. In the reservation made to Article 2 it has reserved the right to afford assistance only in procedures instituted in respect of such offences, which are also punishable under Hungarian law. It has also reserved the right to execute the rogatory letters according to Article 5 of the Convention if they are in consistent with the law of Hungary.

808. Moreover, it is not clear which procedure is applicable for the achievement of the requirement of reciprocity. At the same time, such discretionary power could hamper timely execution of the requests with those countries, where there is no such understanding. Additionally, it was not clear what is the practical applicability of such cases, as well as whether there are such requirements is achieved on a case-by-case basis or is a constant factor.

809. Although the evaluators of the 3rd round mutual evaluation concluded that, since both for ML and TF, the FATF states are obliged to criminalise these activities, this should in practice pose no problem in this field. However, practice in one case revealed that the dual criminality requirement sought by the Hungarian law impeded the effective international cooperation of procedural requests. In addition, during the on site visit the evaluators were told that one of the common grounds for refusal of MLA is the lack of dual criminality especially in case of ML cases. In one ML case, Country A requested from Hungary to take the testimony of a person who has been prosecuted by Country A for a self-laundering offence and who had been extradited from Country B to Hungary for other serious offences. In this case, the Hungarian authorities declined the MLA request on the basis that Country B does not criminalise self-

laundering in its domestic law. Evaluators were not provided with any information as to whether Hungary has tried to achieve the requirement of reciprocity in this case.

810. The shortcomings of the HCC with regards to TF offences and imperfections on the ML offence may also negatively impact MLA based on dual criminality.

811. The powers of competent authorities are available for use in response to requests for MLA. Section 10 of the Act states that unless otherwise provided in the Act, the ACP shall be applied accordingly in international MLA. The investigation authority possesses the same procedural powers compared to a national criminal investigation.

812. With relation to clear and efficient processes for the execution of MLA requests in a timely way and without undue delays the authorities indicated that in general the time limits are dependent on the content of the specific requests. If the requested information could only be obtained from specific institutions or organisations, the competent investigating authority under Section 71 of the ACP makes a request which should be fulfilled within a minimum of eight and a maximum of thirty days. It should be noted that interviewed investigation authorities stated that financial institutions in general use the maximum provided time, notwithstanding the requirements of investigating authority.

813. Section 51 (2) of the CIFE Act applies for cases when bank secrets may be disclosed, namely, to investigating authorities and the public prosecutor's office, acting in a pending criminal procedure and seeking additional evidence; as well as courts acting in criminal proceedings. However, it is not clear whether the CIFE Act also covers foreign requests for MLA, since reference to "foreign law enforcement agency" could limit the foreign authorities to police and prosecutors.

814. House search or seizure can be ordered and executed within days. The HCFG also has direct access to various public records/databases and the requested information falling within the accessing possibilities of the HCFG could easily be provided. However, the ACP does not provide specific time limits for execution, except for obtaining the information from specific institutions or organisations.

815. Section 71 of the ACP provides that the court, the prosecutor and the investigating authority may contact central and local government agencies, authorities, public bodies, business organisations, foundations, public endowments and public organisations to request the supply or transmission of information, data or documents and may prescribe a time limit for fulfilling such request ranging between an minimum of eight and maximum of thirty days. Since the ACP is applicable for the execution of procedural actions requested by MLA requests, the same principles apply to bank secrets.

816. There is no mechanism in Hungary for determining the best venue for prosecution. Hungary is not party to the CoE Convention on Transfer of Criminal Proceedings. However, Hungary applies the requirements of the Act. Section 37 of the Act provides the possibility of transfer of proceedings to another state where it is expedient that they be conducted in another state. Additionally, criminal proceedings conducted before the judicial authority of a foreign state may be accepted upon the request where the defendant is a Hungarian national or a non-Hungarian national having immigrated to Hungary. The authorities informed the evaluators that the MoJLE did not receive any requests for transfer of proceedings during the period covered by the evaluation; however, the Prosecutor General's Office receives and sends approximately 10-15 requests a year.

817. As an EU member, Hungary applies instruments of the EU. *Eurojust* may be involved in the process if member states concerned cannot agree on how to resolve a case of conflicts of jurisdiction. *Eurojust* can be asked to issue a non-binding opinion on the case. Moreover, EU Framework Decision 2009/948/JHA on settlement of conflicts of jurisdiction in criminal proceedings, adopted on 30 November 2009, have to be implemented by the EU member states by 15 June 2012.

818. The 1996 Act does not provide the possibility of direct contacts. However, between the EU member states there is closer co-operation based on the EU instruments, which enable the usage of direct contacts.

Special Recommendation V (rated C in the 3rd round report)

819. The provisions described above apply equally to the fight against terrorism and financing of terrorism. It should be noted, however, that the deficiencies described under SR II impact Hungary's ability to provide MLA due to the precondition of dual criminality.

820. The commentaries with regards to dual criminality above also apply to this section.

821. Surrender or acceptance of the execution of forfeiture of assets, confiscation or other punishment or measure of the same effect is one of types of legal assistance that Hungary provides. Notwithstanding the fact that Hungary is not a Party to the 1970 European Convention of Criminal Validity of Judgments, Section 6 of Act XXXVIII of 1996 provides that surrender or acceptance of the execution of forfeiture of assets or confiscation may take place in compliance with obligations undertaken in international treaties, such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds From Crime. Requests for provisional measures are only accepted if the Hungarian legal system regulates such or similar measures.

822. Enforceable sentences of foreign courts as to the execution of forfeiture of assets or confiscation are accepted pursuant to an existing international treaty or agreement (Section 60/B of the 1996 Act).

823. Hungary does not have a mechanism for sharing of confiscated assets with other states, except for EU member states. Hungary implemented the Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders, which provides a mechanism for sharing of confiscated assets. Moreover, based on the Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to crime, which enables exchange of information within the EU an asset recovery office was established, which is a welcomed development.

824. There have been no changes made to the extradition rules since the 3rd mutual evaluation. Extradition can be provided for by international treaties, by the Act XXXVIII of 1996. Section 3 of the Act XXXVIII of 1996 provides that international MLA shall be applied unless otherwise stated by treaties. Persons found in Hungary may be extradited for the purpose of criminal proceedings if the offence is punishable under both Hungarian and the foreign law by imprisonment of at least one year. Extradition of Hungarian national citizens is not possible, except in the case when a person is also a citizen of another state and has no residence in Hungary. The requests for extradition shall be received by the MoJLE, which forward them to the court. In cases of refusal, the MoJLE sends documents to the Prosecutor General for consideration of initiation of criminal proceedings or other measures. Within the EU, the European Arrest Warrant is applicable, based on the implementation of the Council Framework Decision 2002/584/JHA on European arrest warrant and surrender procedures to the national law.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

825. The MoJLE acts as the central authority for a wide range of MLA/extradition requests (transfer of proceedings during trial, recognition of the validity of foreign judgments, surrender of the enforcement of sentences of imprisonment and measures involving deprivation of liberty or of confiscations or forfeitures). There are 14 persons dealing with MLA cases at the MoJLE.

826. The General Prosecutor's Office is acting as the competent/central authority (transfer of proceedings – before the bill of indictment) and there are 23 prosecutors dealing with the MLA requests.

Recommendation 32

827. No comprehensive and adequately detailed statistics on MLA and other forms of international cooperation are kept and maintained by the Hungarian authorities, either in general terms or specifically on ML/TF offences. Each authority such as the MoJLE, the General Prosecutor's Office, district prosecutor offices, courts and the HCFG maintains its own statistics relating to MLA on separate databases and thus, there is no any central database for this purpose.

828. The MoJLE and the General Prosecutor's Office under Act XXXVIII of 1996 are the two central authorities which are responsible for receiving and sending the requests for international cooperation. This function also sets a responsibility of keeping statistics. The authorities have informed the evaluators that Hungary received 1,505 MLA requests including extradition requests in 2007, 1,581 in 2008 and 2,192 in 2009. However, the evaluators were not informed of how many of these requests were relating to each type of international cooperation, how many of those were refused, executed or pending or how long it took to respond. With relation to outgoing requests authorities informed that in 2007 there were 384 requests; in 2008 – 508; in 2009 – 647. At the same time the evaluators were advised that the General Prosecutor's Office, being aware of the necessity of improvement of data collection in this field, has been working on the issue as at the time of on-site visit.

Effectiveness and efficiency

829. In the 3rd round MER it was recommended that more detailed and precise statistics must be kept to track ML/TF cases. The evaluators believe that the authorities have not taken steps to set up a comprehensive mechanism for maintaining statistics. Moreover, at the time of the current assessment, the effectiveness of the system could not be established because of a lack of comprehensive and adequately detailed statistics on MLA requests.

830. Imperfections of the criminalisation of money laundering and terrorist financing offences might provide an obstacle to effective co-operation with foreign states, especially due to the full applicability of dual criminality for all procedural actions (with the exception of reciprocity).

831. Since the 3rd round MER, the authorities do not appear to have given any consideration to the establishment of an asset sharing mechanism with non-EU countries, which is still lacking.

832. The International Co-operation Act does not provide for clear time limits for decision taking by the central authorities. The Hungarian authorities argued that MLA requests are normally dealt with quickly; however, no statistics have been provided to support this contention, although the responses received by MONEYVAL to the inquiry on international co-operation described the quality of responses as good and raised no specific problems.

6.3.2 Recommendations and comments

833. The Hungarian authorities should put in place a system enabling them to monitor the quality and speed of executing requests.

834. The Hungarian authorities should maintain comprehensive annual statistics on all MLA and extradition requests - including requests relating to freezing, seizing and confiscation - that are sent or received, relating to ML, the predicate offences and TF, including the nature of the request, whether it was granted or refused and the time required to respond.

835. Consideration should be given for review of the grounds for refusal, as to clarify its applicability.

836. Hungary should clarify whether the application of dual criminality may limit its ability to provide assistance in certain situations, particularly in the context of identified deficiencies with respect to the ML and TF offences as outlined under Recommendation 1 and Special Recommendation II.

837. Hungary should consider clear time limits for the central authorities to evaluate and forward the MLA requests for execution.

838. Consideration should be given to the adoption of asset sharing provisions with non-EU countries.

6.3.3 Compliance with Recommendations 36 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**LC**[22]	• No formal timeframes which would enable to determine whether requests are being dealt with timely, constructively and effectively. • The application of dual criminality may negatively impact Hungary's ability to provide assistance due to shortcomings identified in respect to the scope of the ML and TF offences. • Effectiveness cannot be demonstrated due to the absence of statistics on MLA requests relating to ML, predicate offences and TF.
SR.V	**LC**[23]	• No formal timeframes which would enable to determine whether requests are being dealt with timely, constructively and effectively. • The application of dual criminality may negatively impact Hungary's ability to provide assistance due to shortcomings identified in respect to the scope of the TF offences. • Effectiveness cannot be demonstrated due to the absence of statistics on MLA requests relating to ML, predicate offences and TF.

[22] 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.
[23] The review of Special Recommendation V 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 37, 38 and 39.

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1 Description and analysis

Recommendation 40 (rated C in the 3rd round report)

Power to provide widest range of international cooperation

Law enforcement

839. The competent authorities of Hungary are able to provide the widest range of international cooperation with their foreign counterparts on the basis of the relevant legislation (as set below) and international mutual agreements.

840. Hungary is a member of all relevant global and regional police co-operation organisations and initiatives:

- INTERPOL,
- signatory to the Schengen Agreement,
- European Union law enforcement Agency (Europol),
- the SECI Centre (The Southeast Europe Cooperative Initiative Regional Centre for Combating Trans-border Crime) which is an operational regional organisation bringing together police and customs authorities from 13 member countries in Southeast Europe.

841. Act LIV of 2002 on International Co-operation of Law Enforcement Agencies (Act LIV of 2002) lays down the basis for co-operation of the Hungarian law enforcement agencies with foreign authorities within the framework of their crime prevention and law enforcement activities in order to improve the efficiency of crime detection. This Act applies to the NPHQ, the crime prevention and law enforcement units of the HCFG, the Protective Service of Law Enforcement Agencies, and any other agency authorised by law to perform crime prevention and law enforcement activities, and to engage in international cooperation. Section 7 of Act XIX of 2004 on the HCFG also gives power to the HCFG to co-operate with foreign and international enforcement bodies.

842. According to Section 8 of Act LIV of 2002 the cooperation may take the following forms:

a) direct exchange of information,
b) exchange of information with the law enforcement agency of an EU Member State,
c) controlled transport operation,
d) establishment of a joint crime investigation team,
e) involvement of persons cooperating with the law enforcement agency,
f) employment of undercover agents,
g) cross-border surveillance,
h) hot pursuit,
i) employment of liaison officers,
j) covert information gathering based on international cooperation,
k) application of the Witness Protection Programme based on international cooperation.

It should be noted that the Act may only be applied if an international agreement regulating the co-operation forms specified in Section 8 exists. But the Act provides that the Hungarian law enforcement agencies may co-operate with the appointed agencies of the EU member states in compliance with the provisions of this Act provided Community legislation requiring implementation by the member states exists.

The HFIU

843. International cooperation by the HFIU has been defined in Sections 23 (8) and 26 (1) of the AML/CFT Act, and Section 16 of Act LIV of 2002. According to Section 16 of the Act LIV of 2002 various organisational units of a Hungarian law enforcement agency set up on the basis of the international commitment of the law enforcement agency concerned and fulfilling the specific crime prevention tasks stipulated in this commitment may exchange information and cooperate with the respective units of the foreign state directly, on their own. Whilst Section 26 (1) of the AML/CFT Act authorises the HFIU to disseminate the information obtained under this Act for the purpose of prevention and combating ML and TF to an authority operating as a foreign FIU, Section 23 (8) authorises it to make a request to the tax authority or the customs authority for data or information that are considered tax secrets or customs secrets in order to fulfil the request made by a foreign FIU.

844. According to the Hungarian legal provisions the HFIU does not require an MoU for information exchange with foreign FIUs. Nevertheless, some countries require MoU, therefore signing MoU is expected. During the activity of the HFIU no MoU has been signed but the HFIU started negotiations with 8 countries (Turkey, Canada, U.A.E., "The former Yugoslav Republic of Macedonia", Ukraine, Serbia, Georgia, and Romania).

Supervisory authorities (The MNB, The State Tax Authority, Hungarian Trade Licensing Office

845. All supervisory authorities carry out their supervisory functions according to the provisions of the AML/CFT Act with special regard to Sections 34-35 on supervision and supervisory measures. According to Section 34 of the AML/CFT Act all supervisory authorities under Article 5 of the Act, except the Chamber of Hungarian Auditors, competent regional bar association and regional chambers, fall under the scope of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (APS Act). The APS Act (in conjunction with sector specific regulations on the supervisory bodies[24]) lays down the legal framework for carrying out their respective supervisory functions including conditions on international cooperation.

846. International MLA requests are dealt with under Section 27 of the APS Act providing for the principle of reciprocity under which all competent authorities may contact a foreign authority to request legal assistance.

The HFSA

847. According to Section 3 of the Act on the HFSA, the Authority may enter into collaboration agreements and exchange information with foreign financial supervisory authorities so as to improve facilities to carry out its duties, to exercise supervision on a consolidated basis and supplementary supervision, and to promote and facilitate integration programs. The HFSA concluded agreements (on bilateral and multilateral level) with more than 100 foreign supervisory authorities for information exchanges which include the possibility to exchange information on AML/CFT related matters.

The Chamber of Auditors

848. Act LXXV of 2007 on Auditors authorises the Chamber of Auditors, which monitors the compliance of the registered statutory auditors and audit firms with the AML/CFT standards, to co-operate with the competent authorities of other countries in connection with issues falling within its competence. Sections 180-183 of Act LXXV of 2007 on Auditors gives clear powers to the Chamber for supplying any data and information required by a competent authority of an EU member state, on request and without undue delay and for conducting an investigation where so requested by a competent authority. The Chamber is also authorised to co-operate with the competent authorities participating in the public oversight of a third-

[24] See e.g. Section 3 of the Act on HFSA.

country auditors -to the extent necessary to discharge their vested duties and in due observation of the relevant provisions of this Act and specific other legislation- solely under an agreement concluded with the competent authorities in questions based on reciprocity. The Chamber in its capacity has the powers to contact any competent authority to request data and information, or to initiate an investigation.

Regional Chambers of Notaries - Regional Bar Associations

849. Act XI of 1998 on Attorneys applies for the international co-operation by bar associations. According to Section 89/O of the Act XI of 1998 in any and all matters that arise in connection with the legal practice of a EC jurist, the Hungarian Bar Association and the regional bar associations shall co-operate and provide assistance to foreign counterparts. However, this competence seems to be more related to matters that arise in connection with the legal practice of an EC jurist rather than supervisory activities of regional bar associations. There does not appear to exist any legal basis for regional bar associations, in their capacity of supervisory authority, to co-operate with relevant foreign bodies competent for the prevention of ML and TF while monitoring the compliance of lawyers public with AML/CFT standards,

850. Such a legal capacity does not exist for regional chambers of notaries as well.

851. Requests for co-operation issued by Hungarian law enforcement agencies are forwarded to the foreign authorities by the International Criminal Co-operation Centre (hereinafter referred to as NEBEK). Requests for co-operation issued by foreign authorities are received also by NEBEK. NEBEK acting and operating as a Central Coordinating Unit is - by the design of the legislator on the basis of the "one-stop-shop" idea or in other terms the "single point of contact" principle -a standard and general (universal) coordinating body between the Hungarian law enforcement authorities and their foreign counterparts. A permanent customs officer is stationed at NEBEK as a liaison officer representing the HCFG. NEBEK has different bureaus, including the Europol desk, the Interpol national central bureau and the bilateral/EU co-operation desk, as well as the Supplementary Information Request at the National Level (SIRENE) desk.

852. According to the ACP, international co-operation in criminal investigations are 'co-ordinated' by the Hungarian General Prosecutors' Office. Requests should directly be forwarded to the judicial authorities on the basis of MLA in criminal matters.

853. Direct co-operation between relevant enforcement agencies is possible outside the competency of a criminal procedure, and in forms regulated by Act LIV of 2002, which basically covers secret information gathering for the prevention and detection of the relevant offences.

854. With regard to co-operation and information exchange with the central and national offices of the INTERPOL and the central and national units of the EUROPOL and the Schengen Information System (SIS) as well as with Regional Law Enforcement Organisations established by bi- or multilateral international treaties, the HCFG is only authorised to receive or forward personal and law enforcement data (including data and information collected in confidential intelligence gathering) in connection with the criminal offences within its investigating competence in compliance with the competency of the above mentioned international law enforcement organisations.

855. Act LIV of 2002 specifies that requests must be complied with by the deadline requested by the foreign authority. If it is obvious upon receipt of the request that it cannot be met within the time limit set out in it and the delay would jeopardise the success of the procedure taken by the foreign authority, NEBEK or the Hungarian law enforcement agency shall immediately communicate information in the period of time required for compliance with the request.

856. The HFIU makes efforts to provide rapid, constructive and effective answers for the requests. In the case of an urgent request based on the information in question, the HFIU aims

to provide its answer within a few days. Should the information need further inquiry such as transaction history, bank account identification etc. the timeframe can vary. From the answers provided by the MONEYVAL member states it was understood that generally HFIU is able to provide answers within deadlines.

857. According to the statistics of the STR database of 2008 the HFIU received 3 requests from international law enforcement agencies (Interpol and Europol), 2 requests from the NPHQ, 1 request from other investigative offices of the HCFG. This database has been run since October 2008 in respect of this data. According to the statistics of the STR database of the first half of 2009 the HFIU received 11 requests from international law enforcement agencies (Interpol and Europol), 14 requests from the NPHQ and 7 requests from other investigative offices of the HCFG.

858. Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for co-operation between FIUs of the EU member states in exchanging information provides for standards which are accordingly implemented in Hungary.

859. According to Sections 16/A-16/B of Act LIV of 2002, information exchange requests (incoming and outgoing) with the Law Enforcement Agency of Member States of the EU should generally be executed within 14 days, in exceptional cases (covering ML as well) the request should be fulfilled within 7 days, while urgent requests must be answered within 8 hours (Sections 16/A-16/B).

The HFIU

860. The HFIU has been reaccepted as the member of the Egmont Group of Financial Intelligence Units since 2008. It follows the Egmont Principles for Information Exchange between financial intelligence units for ML cases and therefore, replies to all foreign requests within 1 month after the receipt of the request. The HFIU receives and sends requests via the Egmont Secured Web and it also takes part in the work of the Egmont Working Groups. As at the time of the on-site visit, the HFIU was in progress of joining the FIU.NET.

861. The HFIU only uses the ESW for information exchange. In case of technical problems or difficulties, based on prior agreements, fax can be considered as a safe way of information exchange.

The HFSA

862. The HFSA signed MoU with more than 100 countries for cross border co-operations as described above.[25] Moreover, in mid 2006 the Committee of European Banking Supervisors has developed the use of supervisory colleges for European national regulators to collaborate and share information for the cross-border supervision of the EU's 17 largest banks. Hungary is also party to the EU Supervisory arrangements (CEIOPS, CESR, CEBS, ECB).

Law enforcement authorities

863. According to Act LIV of 2002, the cooperation of the Hungarian LEA with foreign LEAs is possible in order to improve the efficiency of crime detection. For this purpose a request for co-operation (including direct exchange of information) may be submitted and/or complied with for the purpose of prevention and intelligence of criminal offences to be punished by imprisonment (Section 4). All relevant criminal offences are punishable by imprisonment, therefore, fall under the scope of this provision.

[25] A list of agreements concluded (on bilateral and multilateral basis) between the HFSA (or its predecessors) and the foreign counterpart authorities can be found at the authorities homepage: http://www.pszaf.hu/en/topmenu/about_us/memorandum_of_understanding

864. As noted above, the national and international information exchange of the HFIU is based on Section 26 of the AML/CFT Act. This provision allows both spontaneous and upon request information exchange, but only if it is related to the offences mentioned in the said Section.

865. The criminal service of the HCFG receives requests from foreign counterparts connected to ML mainly by way of MLA through judicial authorities. The MLA is executed according to intergovernmental and mutual agreements implemented in the Hungarian legal system.

866. In connection with the MLA concerning ML received from abroad the Prosecution's office designates the HFCG to execute the procedure and that is regulated by Act XXXVIII of 1996.

867. The Hungarian authorities reposted that, according to the experience of the Counter Terrorism and Extremism Department (Criminal Investigations Division) of the National Bureau of Investigation (NPHQ NBI CTED), no obstacles in the flow of information in domestic and international exchanges regarding terrorism financing (law enforcement agencies directly, Police Working Group on Terrorism) occurred.

868. For the Hungarian Police, information exchange is also assured through EUROPOL both of open and covert investigations. In concrete cases the Hungarian Police carries out exchanges according the provisions of the ACP and concerning the legal assistance on the basis of the rules of the Act CXXX of 2003 on the Criminal Co-operation between the Member States of the European Union and Act LIV of 2002 on the International Co-operation between the Law Enforcement Authorities.

869. The content of the MLA has to meet with the minimum requirements and standards in order to performance.

Public Prosecutor

870. Exchanges of information and also the execution of requests on the basis of a formal request for judicial assistance are available in conformity with the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959, promulgated in Hungary by the Act XIX of 1994, and under the dispositions of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000, promulgated in Hungary by the Act CXVI of 2005 as described above.

871. Section 10 of the Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters states that unless otherwise provided in this Act, the ACP shall be applied accordingly in international legal assistance. Section 2 of Act CXXX of 2003 confirms this provision.

872. The forms of cooperation used in criminal procedures, including the issuing of an official request for information (Sections 71 and 178/A of the ACP) as well as the questioning of the witness (Title II of the ACP - Testimony of the witness) and the defendant (Title VII of the ACP- Testimony of the defendant), considering the restrictions specified under 36.2, are fully allowed within the frame of mutual legal (judicial) assistance. The procedural rights and obligations of the participants of the criminal procedure should always be guaranteed. In accordance with the Hungarian legal system the criminal service of the HCFG as a law enforcement authority is authorised to participate in fulfilling an MLA request forwarded by the prosecutor.

873. According to Act LIV of 2002, (Section 15) direct exchange of information may be intended, in particular, for:

- the search for a person with special skills;
- the supply of data registered in criminal records;
- the supply of data defined in subsection (1) of Section 68 of the Police Act;
- in case of motor vehicles, the supply of individual identification data (registration number, chassis number, engine number);
- the establishment of the operator of vehicles or transport means;

- the establishment of or search for the identity of an operator of a road, water or air vehicle;
- the examination of the existence, validity or restrictions of a driver's licence, sea-pass or flight permit;
- the examination of the existence, validity or restrictions of a licence for carrying firearms;
- the establishment or certification of identity, residence and address;
- the establishment of the identity of the owner, subscriber or user of a telecommunications device;
- the inquiry about things and samples.

874. The HFIU is authorised to make inquiries on behalf of foreign counterparts against its own databases, including information related to suspicious transaction reports and to other databases to which it has direct and indirect access (including criminal records, customs investigating database, police database, database of stolen vehicles, documents and wanted persons, personal data and home address registry, company register, vehicles register, customs record, land register). Data from tax authorities and service providers can be obtained via a request according to Section 23 of the AML/CFT Act. The HFIU is authorised to send a request to any other Hungarian authority in case of necessity. The purpose of the request has to be indicated in the narrative. The information provided is considered to be confidential.

875. As described above, Act XXXVIII of 1996 on mutual legal assistance regulates co-operation with other States in the field of criminal matters. Act CXXX of 2003 states that this Act shall be applied in the co-operation with the EU member states in the field of criminal matters. The Hungarian judicial authorities shall perform and submit MLA requests in criminal matters and are authorised to conduct investigations on behalf of foreign counterparts. More specifically, the prosecutor is authorised to perform and submit MLA requests at the investigative stage; therefore, it is the responsibility of the prosecutor to decide on the applicability of a MLA request. The criminal service of the HCFG must always follow the instructions and orders of the prosecutor when indirectly fulfilling the forwarded request.

876. The Hungarian law enforcement authorities are authorised to conduct investigations on behalf of foreign counterparts. In the case of foreign perpetrator and crimes committed in foreign jurisdictions, the General Prosecutor's Office decides on the execution among the law enforcement authorities.

877. No information or legal provision was made available to the evaluators as to whether the HFSA, the MNB, The Chamber of Auditors Chambers of Notaries, the Bar Associations, the HTLO and the State Tax Authority are authorised to conduct inquiries on behalf of foreign counterparts.

878. Exchanges of information by the law enforcement authorities, the HFIU and the financial sector supervisory authorities are not subject to disproportionate or unduly restrictive conditions.

879. Section 4 of Act LIV of 2002 states that with the exception of requests asking for information exchange between Law Enforcement Agencies of EU member states, a request for co-operation may not be complied with and may not be submitted if it:

- is contrary to the provisions of Hungarian legal regulations;
- jeopardises the security and violates the public order of the Republic of Hungary; or
- relates to political or military crimes.

880. Unless otherwise provided for in the Act, a request for co-operation may be submitted and/or complied with for the purpose of prevention and intelligence of criminal offences to be punished by imprisonment.

881. An offence shall not be considered a political crime if –taking into account all its circumstances, including the objective wished to be achieved by the crime, its motive, the

modus operandi and the instruments used or planned to be used– its characteristics are predominantly criminal as opposed to political.

882. No restrictions on co-operation, other than the ones described above, apply in Hungarian law. Therefore, requests for co-operation are not refused on the sole ground that the request is also considered to involve fiscal matters. Authorities confirmed that these conditions apply for all authorities including the HFIU and the HFSA.

883. If the fulfilment of a MLA request requires that financial institutions give detailed information in line with the ACP, no requests are refused because of bank secrecy laws.

884. Requests are refused in case of the HFIU if no criminal offence is indicated or if the HFIU has no competency for the indicted criminal offence according to Section 26 of the AML/CFT Act.

885. There are no provisions in the ACP related to secrecy or confidentiality requirements on financial institutions or DNFBP which could be an obstacle to cooperation.

886. Hungarian authorities have controls and safeguards in place to ensure that information received by competent authorities is used only in an authorised manner.

887. Personal data protection is based on the Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest.

888. According to subsection (8) of Section 23 of the AML/CFT Act the HFIU may hand over data or information on the basis of subsections (6)-(7) to an authority operating as a foreign FIU, if it is able to guarantee equivalent or better legal protection of such data and information than the protection afforded under Hungarian law.

889. The legal processes ensure the protection of personal data. Mutual legal assistance requests are disseminated to the competent judicial authorities and, if the request meets with the legal requirements, the General Prosecutor's Office or in EU cases the competent Prosecutor's Office appoints the Prosecutor responsible for the performance of the request. The Prosecutor then appoints a law enforcement (investigating) authority to fulfil the request.

890. Other than the measures described above, protection of personal data is also based on other relevant legislation: such as the Act LXIII of 1992 and the ACP.

891. Section 63 of the ACP states that:

> *"**(1)** Personal data of individuals participating in the proceedings may only be inspected and managed by the court, the prosecutor, the investigating authority, the expert, and the authority consulted by the court or the prosecutor, in order to perform their respective duties set forth herein. The scope of personal data of the defendant for criminal records and the rules for managing personal data are stipulated by a separate law.*
>
> ***(2)** The personal data of individuals participating in the criminal proceedings shall only be recorded in the minutes to the required extent."*

892. Subsection (1) of Section 35 of the Act on the HCFG states that personal and special data (for definitions see Act LXIII of 1992) collected and stored by the HCFG for criminal prosecution (crime prevention and crime fighting) purposes shall only be used for law enforcement or criminal prosecution purposes unless the law provides otherwise.

893. Subsection (2) specifies that HCFG shall be entitled to have access to personal data handled by other organisations for the purpose of discharging its criminal prosecution tasks in accordance with the law, provided that the data so obtained shall not be used for a purpose other than criminal prosecution. The above mentioned criteria apply also for all data received in the process of legal assistance by foreign authorities.

894. In Hungary, the law enforcement authorities are allowed to obtain the information from competent authorities in cases of determined conditions laid down in the ACP. These conditions are controls and safeguards simultaneously which are consistent with national provisions on privacy and data protection. The rules of the data protection are regulated in the ACP and the CIFE Act.

895. Hungarian MLA requests, which are addressed to foreign countries, contain a statement declaring that the information which shall be obtained by the execution of the request shall be used by the Hungarian authorities exclusively for the purpose of the concerned criminal proceedings.

896. Section 52 (2) of Act CXXXV of 2007 on the HFSA provides that any data and information supplied or received under co-operation between the competent supervisory authorities may not be disclosed to third parties without the prior written consent of the relevant financial supervisory authority, being the source of such data or information, and if all other requirements for data processing are satisfied.

Additional elements

897. According to the Hungarian legislation, information can be exchanged with non-counterparts on the basis of rules set out in the ACP.

898. In order to prevent crime, Section 63/A of the ACP makes it possible for the prosecutor and the investigating authority to forward a signal to the relevant authority of the central administration and the local government competent for the prevention of certain acts of criminality if deemed necessary or soon after it finishes the procedure it conducts. The signal contains the facts and circumstances identified during the criminal procedure.

899. If the prosecutor or the investigating authority identifies a fact or detects circumstances which would generate a judicial, administrative or other type of procedure ex officio, it informs the competent authority in order to initiate or conduct the necessary procedure in place.

900. The HFIU is only allowed to exchange information as far as it is regulated in Section 26 of the AML/CFT Act. The HFIU exchanges information directly only with Hungarian competent authorities and foreign FIUs. Indirect exchange of information at the investigation phase is possible as described earlier.

901. The Council Decision 2000/642/JHA applies for information exchange between the HFIU and the FIUs of EU member states.

902. The requesting authority is required to give a brief summary on the state of facts. The HFIU can even send its reply in the absence of having information on the predicate offence. However, when the requesting FIU intends to forward the data received from the HFIU, the HFIU gives its prior consent only if the requesting FIU states the purpose of the dissemination and the target authority, and the purpose and the target authority are in compliance with the Section 26 of the AML/CFT Act.

903. In lack of determination of the criminal offence, the HFIU is not authorised to give a response. If the criminal offence mentioned in the request is not among the list of the criminal offences detailed in Section 26 of AML/CFT Act or if it is not connected to ML, the HFIU is not in the position to provide an answer.

904. Requests by the Hungarian law enforcement authorities include the determination of the committed offence, the purpose of the request, reference to the criminal rules and the deadline for the requested authority in every case. Beside these, in cases of MLA, the requested authority has to be informed about the circumstances of launching of an investigation and a short description of the case.

905. As noted above the HFIU can obtain relevant information from other competent authorities or other persons that are requested by a foreign counterpart FIU. (Subsections 6-8 of Section 23 of the AML/CFT Act)

Special Recommendation V

906. As stated above the ability to provide other forms of international co-operation also applies to requests relating to terrorist financing.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

907. According to the statistics of the STR database of 2008, the HFIU received 3 requests from international law enforcement agencies (INTERPOL and EUROPOL), 2 requests from NPHQ, 1 request from other investigative offices of the HCFG. This database has been run since October 2008 in respect of this data. Foreign FIUs sent requests in 142 cases. In 2008, the HFIU sent requests to foreign FIUs in 336 cases.

908. In the first half of 2009 the HFIU received 11 requests from international law enforcement agencies (INTERPOL and EUROPOL), 14 requests from NPHQ and 7 requests from other investigative offices of the HCFG. In 2009, the HFIU received requests from foreign FIUs in 234 cases, whilst the HFIU sent requests to foreign FIUs in 105 cases. It is further reported that in 2009, the HFIU made spontaneous information exchange requests to foreign FIUs in 88 cases and responded foreign requests in 175 cases.

909. No requests were refused, nevertheless, the answers in cases of international law enforcement agencies were sent indirectly via foreign FIUs.

910. Following are the statistics on the formal (sent and received) requests relating to ML maintained by the EUROPOL National Bureau of the NEBEK (located within the NPHQ):

Table 30: Formal requests relating to ML

	Sent	Received
2005	21	29
2006	70	69
2007	220	259
2008	138	178
2009 (1st half)	23	34

Table 31: MLA requests received

Requesting the prosecutor to apply MLA as well as receiving foreign MLA requests from the prosecutor/other international requests for co-operation concerning the criminal service of the HCFG with regard to ML related investigations Proposals for initiating MLA requests submitted to the prosecutor	MLA requests received from the prosecutor:	Requests submitted on the grounds of international cooperation between LEAs (through NEBEK)
1 (US)	3 (DE)	
4 (AT)	2 (CH)	
1 (LI)	4 (NL)	
1 (LU)	1 (IL)	
2 (DE)	1 (PL)	
2 (UK)	1 (RO)	
1 (EE)		
1 (LT)		

1 (LV)		
2 (UA)		
2 (RU)		
2 (PL)		
1 (CZ)		
4 (SK)		
1 (BY)		
2 (RO)		
1 (CS)		
1 (SC)		
1 (HR)		
Overall: 31 projected to 12 cases	Overall: 12	Overall: 48 projected to 11 cases

Effectiveness and efficiency

6.4.2 Recommendation and comments

911. The Hungarian authorities appear to have sufficient powers to enable them to provide different forms of assistance, information and co-operation without undue delay or hindrance.

912. The responses received to MONEYVAL's standard enquiry on international co-operation which was sent to MONEYVAL and FATF members received generally a positive response.

913. Due to the lack of statistics it was not possible to assess how effectively the Hungarian authorities were responding to international requests for co-operation and it is recommended that procedures are put in place to centrally record and monitor all international requests for co-operation on matters related to ML and TF.

6.4.3 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors underlying rating
R.40	**LC**	• Lack of detailed statistics undermines the assessment of effectiveness
SR.V	**LC**	• Lack of detailed statistics undermines the assessment of effectiveness

7. OTHER ISSUES

7.1 Resources and Statistics

7.1.1 Description and analysis

Recommendation 30 (rated C in the 3rd round report)

HFIU

914. Overall the level of resources applied in the HFIU (32 staff) appeared to be adequate. The HFIU is well structured, professional and appears to be operating generally effectively. Out of 32 staff 9 employees are dealing with supervisory tasks (1 person exclusively and 8 next to the analytical work). For further details see Section 2.5 above.

Prosecution service and judiciary

915. The prosecution service is headed by the General Prosecutor's Office. The other levels are the regional appellate prosecutors, the county prosecutors and the local prosecutors. Within the General Prosecutor's Office a Deputy Prosecutor General is responsible for the criminal law division. This division counts amongst others a department for supervision of investigations and a department for special cases. This Department was set up on 1 July 2001. It supervises economic crimes, including ML. By a decision of the General Prosecutor certain cases can be closely watched and monitored by this department, (for example terrorist cases). The county prosecution offices have an office for criminal investigations, a division for supervising investigations and a division for court proceedings.

916. The total number of prosecutors in Hungary as of 1 May 2010 is 1,680, among which 103 prosecutors deal with economic crimes.

917. The total number of judges in Hungary as of 31 December 2009 was 2,890. From among those judges who deal with criminal matters, there were 348 judges employed at the Supreme Court, the courts of appeal as well as the county courts, respectively, while 716 judges were employed at local courts; the total number of judges dealing with criminal matters is 1,064. However, there is no data available on how many judges are dealing mainly with economic crimes.

HFSA

918. In March 2006, the HFSA established the Financial Forensic Department which is responsible for the AML/CFT aspects of financial supervision. The department increased its staff in 2007. The main tasks are the co-ordination and execution of the AML/CFT activities of the HFSA, prevention of financial crimes in the supervised institutions and daily contact with the investigative and other competent authorities. The Financial Forensic Department was promoted to a higher level in the organisation of the HFSA. The HFSA established a Standing Sub-Committee on the Prevention of Financial Abuses in the form of which the previously ad-hoc AML/CFT working group continues its work as a standing working group. The department works in close co-operation with prudential, licensing, market control and international departments, and directly reports to Deputy Director General of market supervision. The departmental staff consists of 7 professionals and 2 external experts. All prudential and legislative departments have a contact person to co-operate with the Financial Forensic Department in AML/CFT matters. For further details see Section 3.6 above

Notaries

919. Regional chambers and the Hungarian National Chamber of Civil Law Notaries are well equipped both technically and as regards staff to effectively perform the tasks resulting from the AML/CFT Act and the Model Rules for notaries. In each of the 5 regional chambers of notaries public there are 2 persons involved in AML/CFT supervision. The number of

supervised notaries is 315. Therefore the number of resources allocated for AML/CFT supervision is satisfactory.

Chamber of Auditors

920. The Chamber of Auditors' Quality Control Committee ("Committee") is responsible for monitoring the activities of registered statutory auditors and audit firms for compliance with the provisions relating to the detection and prevention of money laundering or terrorist financing.

921. There are 5,689 registered statutory auditors of which 2,306 are suspending auditors. The Chamber has a staff of 130 people of which 74 dealing with supervision and quality control. Every year at least 2 training seminars are held for supervisors about AML issues and findings of controls. In 2008 – 458 (169 – non compliant) and in 2009 – 370 (106 – non compliance) controls were performed. The Committee shall publish a call for applications containing evidences on professional qualification and practical experiences to appoint quality controllers to carry out investigations as a regulatory proceeding. In 2008, the investigations were conducted by 72 quality controllers. Sanctions have been applied as a result of findings from supervisory investigations.

922. The regulatory investigations are carried out with the help of software developed specifically for this purpose.

923. The Committee functions as an internal body of the Chamber. It concluded that a registered statutory auditor had failed to meet his obligations specified in the AML Act or in its regulation on the implementation of said Act. The Committee in its Resolution called upon the statutory auditor to act in compliance with the laws and the Regulation and to implement any missing measures.

924. The financial conditions of the operation of the Committee are ensured by a Quality Control Fund (hereinafter referred to as "QCF") separated within the financial budget of the Chamber. The QCF is independent and free of the registered statutory auditors and audit firms and controlled by the Committee. The management of the QCF is the responsibility of the chair of the Committee.

925. The Auditors' Public Oversight Committee monitor and evaluate the functioning of the quality assurance system, including the investigation of the registered statutory auditors and audit firms with a view to the prevention and combating of money laundering and terrorist financing.

National Bank of Hungary

926. According to the AML/CFT Act the MNB supervises companies that provide cash processing services in Hungary (CIT companies -Cash in Transit Companies). (The reason for that regulatory solution is that the MNB is responsible for licensing the cash processing activity and have a sound knowledge of that activity.) In the MNB the supervisors of the payment and securities- settlements department perform the on-site and off-site supervision. Three (3) full time employees take part in the supervision, but only in part-time. They spend 10% of their working time on the supervision of the companies dealing with cash processing activity. But if we take into account that in Hungary there are only 4 CIT companies operating the allocated resources appear to be enough. These resources were enough to supervise all CIT companies every year. From 2009 the MNB introduced risk-based methodology in CIT AML/CTF-supervision, where the size of the CIT company, the number of its customers, the past experiences of the MNB examinations and the timing of the previous supervision are taken into account.

927. The independent supervisory competency of the MNB is granted by the AML/CFT Act and the Act on the MNB. On the basis of Acts the MNB performs examinations independently without influence. The supervisors have the right to examine all relevant documentation

keeping with confidentiality rules. There are enough technical resources available to perform supervisory tasks.

928. In addition, another employee who is responsible for AML/CFT matters for years occasionally participates in the meetings of the AML Inter-ministerial Committee.

Regional bar associations

929. Regional bar associations have 11,545 members. The local bar associations and the Hungarian Bar Association are independent and self-governing bodies of lawyers based on compulsory membership and financed only by their members. Neither the local bars nor the Hungarian Bar Association receive additional funds for their AML/CFT activities.

930. In each of the 20 bar associations there is one specially designated person for supervision. This makes in average 1 supervisor for 577 members. In evaluators view the number of staff responsible for supervision is insufficient. The Budapest Bar Association (which has the largest membership) conducts AML/CFT inspections in connection with 10 attorneys every month in order to monitor the compliance of the attorney with the requirements set out in the AML/CFT Act. The other regional bar associations (with substantially smaller membership) order on-site inspections according to the number of their members.

State Tax Authority

931. The Gambling Supervision Department of the Head Office of the State Tax Authority carries out the official tasks related to gambling operations. Control of the casinos is separated from other tasks and is carried out by the Department and this control is performed by persons having significant professional experiences and unblemished character. Within the framework of supervision the authority examines compliance with the regulations related to the prevention of money laundering and terrorist financing in casinos under on-site, targeted, overall and subsequent controls. During these procedures it has the authority to review all documents, require accounts, certifications, invoices, inspection materials and the videotapes recorded by the video-controlled system. In this field particular attention is paid to the control of compliance with the rules related to the issue of the so called “certification of winnings”, as a document with strict account requirements, whereas the issue and use of certification of winnings is a possible means of Ml. In total a staff of 7 persons is responsible for supervisory activities.

Assay Authority of the Hungarian Trade Licensing Office

932. The supervision of around 2,500 precious metal traders is undertaken by the Assay Authority of the Hungarian Trade Licensing Office, using can perform by redeployment of their disposable resources. The Assay Authority carries out official inspections relating to the observance of the regulations on hallmarking of precious metal articles and the observance of the regulations on trading of precious metal articles pursuant to the stipulations of Commercial Law and the Government Decree on assaying and hallmarking of precious metal articles and goods and certification of their precious metal content. Within this activity the four precious metal supervisors perform the AML/CFT supervision activity, and one supervisor conducts the AML/CFT procedures.

933. The Assay Authority has not received any dedicated resources for performing AML/CFT supervision. As a result, the activity is limited to controlling of the existence of the internal Rules, as regards to approving the Internal Rules of new clients, and to control at the Service Provider’s premises.

Hungarian Trade Licensing Office, Trade and Market Surveillance Authority

934. Registration of service providers engaged in trading in goods involving the acceptance of cash payments greater than 3,600,000 HUF (€13,333) and approval of the internal rules containing compulsory elements as well as exercising supervisory functions are fulfilled by the HTLO/TMSA Special Licensing Department. This department comprises three persons, who are skilled, educated public servants with university degrees and who have experience in monitoring enterprises carrying out on-site inspections, for instance in next fields of activities.

935. Controlling drug precursors, i.e. substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances in order to prevent diversion of drug precursors from legal trade to illicit drug manufacture.

936. Registration of operators dealing with the placing on the market organic solvents in certain paints and varnishing products.

937. HTLO/TMSA is staffed and resourced to carry out approximately 30 on-site controls per year which are conducted in cooperation with the HFIU.

938. In 2008 HTLO/TMSA did not carry out on-site inspections. In 2009 enquiries were made about the activities of about 200 registered service providers who engaged in trading in goods involving the acceptance of cash payments in the amount of 3,600,000 HUF (€13,333) or more. 4 on-site inspections were undertaken. The Authority did not identify any infringement of the provisions of the Regulation or non-compliance with the obligations set out in the Regulation so did not take the measures specified in the Regulation.

Hungarian Trade Licensing Office, Assay Authority

939. In 2008, the Hungarian Trade Licensing Office, Assay Authority performed 204 AML checks and in 133 cases some irregularities were found. No sanctions were applied. In 2009, 265 AML checks were performed, 157 irregularities were identified and 30 sanctions were imposed. The number of supervisors is four.

940. In 2008 HTLO/TMSA did not carry out on-site inspections. In 2009 about 200 registered service providers were enquired about their activities engaged in trading in goods involving the acceptance of cash payments in the amount of 3,600,000 HUF (€13,333) or more and there were carried out 4 on-site inspections. The Authority did not realise any infringement of the provisions of the Regulation or non-compliance with the obligation set out in the Regulation so did not take the measures specified in the Regulation.

Gaming Board of the Hungarian Tax and Financial Control Authority

941. There are 6 staff responsible for supervising casinos. They have the right to conduct on-site inspections. There are approximately 10 targeted checks per year, which also covers AML arrangements. The Authority has conducted 11 overall and 593 continuous on-site controls in the 6 operating casino units (5 units since 18th September 2007), which expressly focused on the control of the compliance with the AML Act. In the course of these controls, the Gambling Supervision Department identified 1 deficiency and as a result of the control, it imposed a fine of HUF 500,000 (€1,850) (in February 2008). In the course of these controls, the Gambling Supervision Department identified 1 deficiency and as a result of the control, it imposed a fine of HUF 500,000 (€1,850) (in February 2008).

942. The Chamber of Hungarian Auditors developed and provided to its members model rules for the prevention and combating of money laundering and terrorist financing, which are to be used as a non-binding recommendation.

943. Furthermore, rules on "Investigating auditing activities for the prevention and combating money laundering and terrorist financing by the Chamber" were developed for those carrying out such investigation. The rules entered into force on 13 March 2008.

- Adequately qualified quality controllers:

  The professional competences of quality controllers are ensured, because only such auditors may be admitted to the register of quality controllers who are active members of the Chamber and have at least six years' professional experience in the field of audit, have not received any disciplinary punishment or warning, met the requirements of the last quality control prior to their registration, and are adequately qualified for carrying out inspections.

- Independence of quality controllers:

  The members of the Committee and the quality controllers may not be each others' relatives or the officers or committee members of the Chamber (not including the chairperson and members of the Quality Control Committee). The quality controller and the inspected audit firm/auditor may not have a business relationship during the quality control procedure and they may not be each others' close relatives. The quality controller shall not be an executive officer or employee, creditor, debtor of the auditor or audit firm. In order to maintain the independence of quality controllers, the quality controller may not accept any compensation or payment from the inspected auditor (or the relative thereof) or audit firm.

- Confidentiality obligation:

  The quality controllers must treat as confidential all qualified information, professional secret and trade secret relating to audit engagements that come to their knowledge during the inspection.

National Bank of Hungary

944. The supervisors of the MNB have been working for the central bank for years as supervisors. All of them are appropriately skilled, are aware of the regulation as well as modifications in the regulatory environment.

Tax authority

945. According to the requirements laid down in Act XXIII of 1992 on the legal status of civil servants, supervisors with a university or college degree shall be employed at the Head Office of the state tax authority. Furthermore, supervisors are obliged to keep all information as a service secret that come to their knowledge during their inspections.

946. The majority of the supervisors have decennial technical experience in the field of casino supervision. All of them are appropriately skilled, are aware of the regulation as well as modifications in the regulatory environment.

Trading Authority

947. According to Act XXIII of 1992 on the legal status of civil servants, the conditions of employment in a central public administrative office, such the Hungarian Trade Licensing Office, are the higher degree and the clean record. In accordance with it, those civil servants of the Hungarian Trade Licensing Office who provides the supervision duty of AML/CFT have university or college decree, speaks one or more foreign languages and have professional experiences in the control area. Moreover, all supervisors should pass the national security clearance, which guarantee the irreproachableness of the staff.

948. In addition, according to Act XXIII of 1992, the civil servants may not engage in any other gainful activities with the exception of scientific, artistic, literary, educational and design activities, which ensure their independence.

949. The Act CXL of 2004 on general rules of administrative public authority prescribes the obligation of the staff regarding the protection of data came to supervisors knowledge during

their authority procedures. It means that the supervisors treat as official secret all information that comes to their knowledge during the supervision activity.

Attorneys

950. Every person involved in AML/CTF activities are attorneys who are members of the local bars and have expertise in disciplinary matters headed by a Disciplinary Commissioner of the Bar. The admittance criteria to become an attorney and a member of the bar are regulated by law. The attorneys are legally bound by confidentiality obligation.

Adequate and relevant training

The FIU

951. The HFIU regularly organises trainings for its staff, having regarded the fact that the educational compound of the staff is relatively diversified and there are experts on all important areas in the field of combating money laundering such as lawyer, tax consultant, economist etc. Lectures given by the members of the HFIU are frequent, but no mandatory dates are determined. External experts are also invited to share their knowledge with the staff of the HFIU.

Prosecutors

952. The staff of the Prosecution Service of the Republic of Hungary acquires expertise in on all important areas in the field of combating ML and TF through participation in national and international conferences which are held frequently. The Prosecution Service supports advanced vocational training of its staff.

Courts

953. The requirement of assuring the appropriate training, drafted in section 32 of Act LXVII, is implemented within the frame of the central education of the Hungarian Judicial Academy.

954. The training with previously announced topics is available for judges, court secretaries and judicial employees engaged in the given domain.

955. Besides this, judiciaries also organise local trainings – first of all in the frame of professional divisions – for discussing current problems of the judiciaries.

Supervisors

HFSA

956. The staff of the HFSA regularly participates in trainings and seminars in relation of AML/CFT. The HFSA regularly organises internal and external AML/CFT trainings and presentations for its staff. The collaborators of the Financial Forensic Department and the European and International Affairs Department in cooperation with other competent authorities and organisations hold regular trainings for the HFSA staff. The staff of Financial Forensic Department continuously improve their professional, IT and lingual skills. The HFSA has its Supervisory and Coordination Centre for the purpose of organising trainings for the staff of the HFSA, other competent authorities and financial institutions as well. The curriculum of the Centre contains both AML/CFT and financial crime issues.

National Bank of Hungary

957. The employees of the MNB participated in several AML/CFT seminars and conferences organised by European central banks and international organisations etc. The supervisors participated in the AML/CFT consultation of the HFSA and they ordinary talk about AML/CFT matters with the colleagues who participate in the work of the AML Inter-ministerial Committee.

Notaries

958. Regional chambers and the Hungarian National Chamber of Civil Law Notaries regularly organise trainings which are held by the staff of the Hungarian National Chamber of Civil Law Notaries and the financial intelligence unit. Furthermore, notaries can obtain the necessary information regarding AML/CFT from the Model Rules for notaries, from the intranet and also, directly from the staff of the Hungarian National Chamber of Civil Law Notaries.

Chamber of Auditors

959. Only those may be registered as quality controllers who have participated in the training required for performing quality controller's activities. The Committee provides a one-hour training to prepare quality controllers for monitoring the prevention and combating of money laundering and terrorist financing in the framework of a 2-day professional training. In addition to providing information on the questions of the questionnaire developed for investigating the prevention and combating of money laundering and terrorist financing by the Chamber, the training provided in 2008 covered the interpretation of the questions and demonstrating practical examples of compliance and non-compliance. As part of their own competences, the regional branches of the Chamber organise lectures for auditors, which provide opportunities to earn credit points (as part of compulsory professional development).

Tax authority

960. Within the framework of preparation to targeted and overall controls, furthermore within professional meetings twice a year, casino supervisors partake current information about legal changes and actual questions related AML/CFT.

Trading Authority

961. In 2008 the supervisors participated in an AML/CFT seminar held by an expert with international experiences. During the consultation the international organisations and the historical background of AML/CFT were introduced.

962. In 2008 and 2009 HTLO consulted about application of the provisions of the Regulation and experiences of inspections with the HFIU.

Attorneys

963. The training on AML/CTF is part of the curriculum of the mandatory training for trainees registered with the bar which is a mandatory condition to become an attorney. The local bars are also organising training for members of the bar on AML/CTF. The Budapest Bar also maintains specific AML/CTF section on its website with information on the subject.

Additional elements

964. In accordance with the training scheme of the Hungarian Judicial Academy, the following special trainings and educational programmes were organised for judges and courts:

- Two-day training on 7-8 May 2009 about substantial law and procedural law issues of financial crimes;
- One-day training on 7 October 2009 about official and corruption crimes for penal judges;
- In the course of 2008-2010 (term-time) four three-day trainings were/are organised for judges who confer economic crimes;
- Two-day seminar on 13-14 May 2008 about Hungary's entire joining to Schengen;
- Two-day seminar on 2-3 December 2008 for judges about measures of financial character in penal laws. The next topics were debated: seizure, freezing, attachment;
- Two-day seminar organised for penal judges about issues bearing on national security cases;
- One-day conference on 16 April 2007 about foreign security guards;
- Two-day seminar on 11-12 June 2007 for judges who confer crimes against property.

- The recourses of the supervision of DNFBPs seem to be adequate – need data on the staff responsible for supervision of DNFBPs.

Recommendation 32

965. 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.

966. According to the AML/CFT Act the HFIU is required to maintain comprehensive statistics, by virtue of which the effectiveness of the system for the combating of money laundering and terrorist financing can be controlled. The HFIU is publishing aforesaid statistics on its official website annually. However, statistics provided to the evaluators was often contradictory or missing.

967. The General Prosecutor's Office and the court shall supply the relevant data (specified in Section (3) of the AML/CFT Act) to the HFIU by 1 July of each calendar year in connection with the previous calendar year.

968. Additionally, statistics on ML/TF cases are also kept by the General Prosecutor's Office and the competent courts.

969. The collection of data by the courts is managed according to the Act XLVI of 1993 on Statistics and the National Statistical Data Collection Programme (OSAP). The Office of National Council of Justice (OITH) provides the judicial data stipulated by law to the Hungarian Central Statistical Office in every year.

970. In order to keep more comprehensive statistical data, there was an important modification in 2009 in relation to the unified criminal statistical system of the investigative authorities and the prosecutor services. This system records the most typical data concerning the committed crime, the offender and the victim. It is also listed in the system which organisation or person in the course of action initiated the criminal procedure. From the 9 August 2009 onward it can be recorded in this system if the procedure was initiated by HFIU.

971. Money laundering can be committed intentionally or with negligence and all of these categories have a separate statistical code, so the committed crimes can be recorded exactly in the unified criminal statistical system. (Also the crime of failure to comply with the reporting obligation related to money laundering can be recorded with its separate code there.) The system also records the basic form of the crime, the exact manner of committing, as well as the country where the crime was committed.

972. During its supervisory activity the HFIU completed 206 on-site supervisions. Most of the on-site inspections were based on a pre-notifications toward the clients nevertheless from September 2009 the HFIU completed ad hoc on-site inspections in 24 cases. The supervisory activity of the HFIU for 2009 is set out in the following table.

Table 32: Supervisory activity of HFIU in 2009

month	scheduled on-site supervision	completed supervisions	Ad hoc supervisions	Measures					No measures taken
				Obligation	Notification	proposal	fine (cases)	Amount of fine (HUF)	
January	12	12	0	11	0	8	0	0	
February	5	5	0	5	0	3	0	0	
March	14	12	0	5	0	2	2	200,000	5
April	37	31	0	20	0	16	0	0	6
May	36	26	0	18	0	19	0	0	0
June	0	0	0	0	0	0	0	0	0
July	21	13	0	11	11	9	1	100,000	1
August	21	18	0	12	10	13	0	0	2
September	38	35	6	30	26	18	0	0	4
October	19	18	8	15	0	12	2	300,000	
November	36	29	6	23	0	18	3	400,000	4
December	7	7	4	1	2		1	100,000	3
TOTAL:	246	206	24	151	49	118	9	1 100,000	25

Effectiveness and efficiency

Recommendation 30

973. Overall, all supervisors and law enforcement agencies appeared to be adequately structured, resourced and trained.

Recommendation 32

974. Although Section 29 of the AML/CFT Act requires the HFIU to maintain statistics by virtue of which the effectiveness of the system for combating the money laundering can be controlled, the evaluators were concerned that insufficient attention had been applied to the maintenance of meaningful statistics by the Hungarian authorities. This particularly applied in the areas of analysis of the outcome of STRs, investigations, criminal proceedings, convictions, provisional measures and confiscations. As a result the evaluators were concerned that the Hungarian authorities would not be able to perform a regular overview of the effectiveness and efficiency of the AML/CFT system based on statistical analysis. Similar concerns applied to areas such as cross border declarations, MLA and international co-operation.

7.1.2 Recommendations and comments

Recommendation 30

975. Overall the evaluators considered that adequate resources had been applied by the Hungarian authorities to the AML/CFT regime.

Recommendation 32

976. The evaluation team is of the opinion that coordination on gathering of statistics is lacking which prevents the authorities from carrying out a comprehensive review of the effectiveness of the system on combating money laundering and terrorist financing. Moreover, it is unclear whether the Hungarian authorities perform the regular overview of the effectiveness and efficiency of the AML/CFT regime based on statistical analysis. Although the AML/CFT issues have been discussed during the meetings of the Anti-Money Laundering Inter-Ministerial Committee the evaluators were not provided with any material demonstrating the

effectiveness and efficiency of the statistical part of AML/CFT system. Therefore the evaluators urge Hungarian authorities to maintain more comprehensive statistics in order to be able to evaluate the effectiveness and efficiency of the AML/CFT system.

977. Notwithstanding the legal requirement of the HFIU to keep statistics, the HFIU lacks feedback from law enforcement authorities regarding the STRs disseminated for supporting ongoing investigations, for initiating covert investigation or supporting covert investigation. Although the statistics were eventually provided, the evaluators noted that these were collected solely for the purposes of the evaluation and not as a standard procedure for evaluating the overall effectiveness of the AML/CFT system. The evaluators urge the Hungarian authorities to make a collection of such statistics as a standard procedure in order to be able to evaluate the effectiveness and efficiency of the HFIU and law enforcement authorities.

978. Furthermore, the HFIU was unable to provide statistics regarding attempted transactions. It is recommended that the Hungarian authorities review the system of collection of statistics. Moreover, the commissioners of police, HCFG and HFIU should takes steps in order to make sure that the HFIU receives relevant feedback on the STRs disseminated

979. As stated above, the evaluators were concerned that insufficient attention had been applied to the maintenance of meaningful statistics by the Hungarian authorities. It is therefore recommended that:-

- Comprehensive statistics should be maintained on investigations, prosecutions and convictions relating to funds generating crimes;
- Precise statistics on amounts restrained and confiscated in each instance should be maintained so as to be able to establish an overview of the efficiency of the system;
- Comprehensive statistics on STRs should be prepared including details of predicate offences, attempted transactions and the outcome of STRs disseminated to law enforcement agencies. Moreover, the commissioners of police, the HCFG and the HFIU should take steps in order to make sure that the HFIU receives relevant feedback on the STRs disseminated ;
- Statistics on administrative penalties applied for persons making a false declaration under SR.IX, statistics on criminal investigations initiated for physical cross-border transportation of currency or bearer negotiable instruments that were suspected to be related to ML/TF and statistics on information exchange with foreign counterparts regarding SR.IX should be maintained;
- Comprehensive annual statistics on all MLA and extradition requests - including requests relating to freezing, seizing and confiscation - that are made or received, relating to ML, the predicate offences and TF, including the nature of the request, whether it was granted or refused and the time required to respond should be maintained;
- Procedures should be put in place to centrally record and monitor all international requests for co-operation on matters related to ML and TF.

980. Furthermore, it is recommended that all relevant statistics should be regularly reviewed by the Hungarian authorities in order to assess the effectiveness and efficiency of the AML/CFT system.

7.1.3 Compliance with Recommendation 30 and 32

	Rating	Summary of factors underlying rating
R.30	**C**	
R.32	**PC**	• Inadequate statistics on investigation and prosecution of funds generating crimes. • Coordination on gathering of statistics is lacking which prevents the authorities from undertaking a comprehensive review of the effectiveness of the system on combating ML and TF. • It is not clear whether the Hungarian authorities perform a regular overview of the effectiveness and efficiency of the AML/CFT system based on statistical analysis. • No statistics on the outcome of STRs forwarded to law enforcement agencies. • No statistics maintained about on-site examinations conducted by DNFBP supervisors relating to or including AML/CFT and any sanctions applied. • No detailed statistics related to MLA. • No statistics kept on MLA requests refused, grounds for refusal, on the time required to handle them and on predicate offences related to requests. • Statistics of MLA by MoJLE and the Prosecutor General's office not easily available. • No statistics on other forms of international co-operation.

7.2 Other Relevant AML/CFT Measures or Issues

981. N/A

7.3 General Framework for AML/CFT System (see also section 1.1)

982. N/A

IV. TABLES

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 Hungary. *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[26]
Legal systems		

1. Money laundering offence	**PC**	• The physical elements of money laundering offence do not fully correspond to the Vienna and Palermo Conventions:
		  • Conversion or transfer for the purpose of helping person who is involved in the commission of money laundering to evade consequences is not covered by Hungarian legislation;
		  • Conversion or transfer for the purpose of disguising the illicit origin of property is unclear;
		  • Unnecessary requirement of purpose element of concealing the true origin of the thing for the acts of concealment and suppress (disguise) of location, disposition or ownership of or rights with respect to property as well as for the act of "use in his economic activities".
		  • Concealment or disguise of the true nature, source and movement is not covered (Palermo A.6(1)(a)(ii)).
		  • Self laundering is only partly covered.
		• Not all designated categories of offences are fully covered as predicates, as incrimination of the financing of an individual terrorist for any purpose is not covered, and the collection of funds for a terrorist organisation' day-to-day activities is not clear.
		• Autonomous investigation and prosecution of the money laundering offence still constitute a challenge for the police and prosecutors. Given the level of proceeds generating offences in Hungary and the type and quality of the cases

[26] These factors are only required to be set out when the rating is less than Compliant.

		being brought (mainly self-laundering) the overall effectiveness of money laundering incrimination still needs to be enhanced.
2. ML offence – mental element and corporate liability	***C***	
3.Confiscation and provisional measures	**LC**	• Lack of detailed and meaningful statistics on all aspects of confiscation negatively affects the assessment of effectiveness of the system.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	
5. Customer due diligence	**LC**	• Anonymous savings passbooks issued before their prohibition in 2001 are still in circulation. • The definition of beneficial owner is not sufficiently broad as it appears not to comprise the mind and management of a legal person and it is unclear whether it covers the ultimate beneficial owner (respectively indirect ownership and control). • The legal provisions for the procedure to be applied for the verification of the beneficial owner are not clear. • Apart from the collection of the maximum set of data no enhanced due diligence measures are required for higher risk categories of customers, business relationships or transactions. • No explicit requirement to verify that person purporting to act on behalf of the customer is so authorized (except for services provided under the Payment Services Act) • No explicit requirement to consider making a STR where the financial institution is unable to carry out the customer due diligence measures.
6. Politically exposed persons	***LC***	• *A lack of explicit requirement regarding approval by senior management of continuing business relations with persons becoming PEPs after the establishment of a business relationship*
7. Correspondent banking	***C***	
8. New technologies and non face-to-face business	***C***	
9. Third parties and introducers	***C***	

10. Record keeping	**LC**	• No provision to ensure that the mandatory record-keeping period may be extended in specific cases upon request of the competent authorities • No requirement to maintain records of business correspondence.
11. Unusual transactions	***C***	
12. DNFBP – R.5, 6, 8-11[27]	**LC**	• The same concerns in the implementation of Recommendations 5 and 10 apply equally to DNFBPs. • Scope of the legal privilege for lawyers and notaries unclear. • Weakness in effective implementation of CDD requirements in particular as regards real estate agents and dealers in goods. • The activities of game rooms are not adequately limited in order to allow for a distinction from casinos and therefore exclude them from the scope of the AML/CFT Act.
13. Suspicious transaction reporting	**PC**	• Deficiencies in the incrimination of money laundering and terrorist financing could have an impact on the reporting of suspicious transactions. • No clear reporting obligation covering funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations. • Attempted transactions are not explicitly covered. • Declining number of STRs give rise to general concerns over the effectiveness of the system.
14. Protection & no tipping-off	***C***	
15. Internal controls, compliance and audit	***C***	
16. DNFBP – R.13-15 & 21[28]	**PC**	• Low number of STRs from DNFBPs (effectiveness issue). • The same shortcomings as identified under Recommendation 13 and Special Recommendation IV apply.

[27] The review of Recommendation 12 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 9 and 11.

17. Sanctions	**PC**	• Senior management not included in the sanctioning regime of the CIFE Act. • Range of sanctions under the Investment Act and the CIFE Act not broad enough. • Limited effectiveness.
18. Shell banks	***C***	
19. Other forms of reporting	***C***	
20. Other DNFBP & secure transaction techniques	***C***	
21. Special attention for higher risk countries	***C***	
22. Foreign branches and subsidiaries	***C***	
23. Regulation, supervision and monitoring	**LC**	• No assessment of criminal records regarding members of the supervisory board of financial institutions other than insurance companies. • No assessment of criminal records of persons holding a qualifying interest in investment fund management companies. • "fit & proper" requirements only applicable to directors/executive officers and not to the senior management of financial institutions (with the exception of investment fund management companies).
24. DNFBP - regulation, supervision and monitoring	***LC***	• *Supervision of DNFPBs without state or professional supervision understaffed*
25. Guidelines and Feedback	***LC***	• *No guidance on CFT for DNFBPs*
Institutional and other measures		
26. The FIU	**PC**	• There exist some deficiencies regarding the operational independence and autonomy of the HFIU. • The absence of a timeframe in legislation for indirect access to information on a timely basis in order to enable the HFIU to properly undertake

[28] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 14, 15 and 21.

		its functions, including the analysis of STR could undermine its operational effectiveness. • The low number of case reports submitted to law enforcement agencies for initiating common and organised crime related ML brings into question the effectiveness of the HFIU as well as the absence of indictments arising from the dissemination of STRs.
27. Law enforcement authorities	***LC***	• *Insufficient focus on potential ML offenses and relatively low number of prosecutions and convictions*
28. Powers of competent authorities	***C***	
29. Supervisors	***C***	
30. Resources, integrity and training	***C***	
31. National co-operation	***C***	
32. Statistics[29]	**PC**	• Inadequate statistics on investigation and prosecution of funds generating crimes • Coordination on gathering of statistics is lacking which prevents the authorities from undertaking a comprehensive review of the effectiveness of the system on combating money laundering and terrorist financing • It is not clear whether the Hungarian authorities perform a regular overview of the effectiveness and efficiency of the AML/CFT system based on statistical analysis. • No statistics on the outcome of STRs forwarded to law enforcement agencies. • No statistics maintained about on-site examinations conducted by DNFBP supervisors relating to or including AML/CFT and any sanctions applied. • No detailed statistics related to mutual legal assistance. • No statistics kept on MLA requests refused, grounds for refusal, on the time required to handle them and on predicate offences related to requests.

[29] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 38 and 39.

		• Statistics of MLA by MoJLE and the Prosecutor General's office not easily available. • No statistics on other forms of international co-operation.
33. Legal persons – beneficial owners	***C***	
34. Legal arrangements – beneficial owners	***N/A***	
International Co-operation		
35. Conventions	**PC**	• Reservations about certain aspects of the implementation of the Vienna Convention, Palermo Convention and the TF Convention. • Effectiveness of the implementing the standards in relation to ML and TF give rise to doubts. • There is no definition of "funds" in the Criminal Code. • Financing of certain aspects of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation have not been criminalised. • Legal persons do not appear to be liable in practice for TF offences as required by UN TF Convention.
36. Mutual legal assistance (MLA)[30]	**LC**	• No formal timeframes which would enable to determine whether requests are being dealt with timely, constructively and effectively. • The application of dual criminality may negatively impact Hungary's ability to provide assistance due to shortcomings identified in respect to the scope of the TF and ML offences. • Effectiveness cannot be demonstrated due to the absence of statistics on MLA requests relating to ML, predicate offences and TF.
37. Dual criminality	***C***	
38. MLA on confiscation and freezing	***C***	
39. Extradition	***C***	

[30] 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.

40. Other forms of co-operation	**LC**	• Lack of detailed statistics undermines the assessment of effectiveness
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Implementation of UNSCRs 1373 is not yet sufficient. • There is no definition of "funds" in the Criminal Code. • Financing of certain aspects of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation are not been criminalised.. • Legal persons do not appear to be liable in practice for TF offences as required by UN TF Convention.
SR.II Criminalise terrorist financing	**PC**	• The Criminal Code does not provide for an offence of terrorist financing in the form of provision or collection of funds with the unlawful intention that they should be used or in the knowledge that they are to be used by an individual terrorist for any purpose. • It is unclear whether the financing of terrorist organisations' day to day activities are incriminated, and collection of funds for terrorist organisations' day to day activities is not covered. • No definition of "funds" as defined in the Terrorist Financing Convention. • No explicit coverage of direct or indirect collection of funds/usage in full or in part, without the funds being used or linked to a specific terrorist act. • The financing of certain aspects of the Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation have not been criminalised.
SR.III Freeze and confiscate terrorist assets	**PC**	• Lack of awareness in the non-banking sector of the UN and EU lists gives rise to concerns of effectiveness of implementation. • Within the context of UNSCR 1373, there is no national mechanism for evaluation of requests to freeze the funds of EU internals (citizens or residents). • Hungary does not have an effective and publicly

		known national procedure for the purpose of delisting. • Hungary does not have effective national procedure for unfreezing, in a timely manner, requests upon verification that the person or entity is not designated person. • The scheme for communication of actions taken under freezing mechanisms appears to be fragmented and may not operate effectively. • Apart from the HFSA, there is no clear supervision by other regulators of compliance with SR.III and no clear capacity by them to sanction in the event of non-compliance. • The deadline for freezing transactions (assets) by the service providers is relatively short and that this is a significant gap in the system in terms of having effective procedures to freeze terrorist funds without delay.
SR.IV Suspicious transaction reporting	**PC**	• No clear reporting obligation covering funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations. • Deficiencies in the criminalisation of terrorist financing limit the reporting obligation. • Attempted transactions are not explicitly covered. • Low number of STRs gives rise to concerns over effectiveness of implementation.
SR.V. International co-operation[31]	**LC**	• No formal timeframes which would enable to determine whether requests are being dealt with timely, constructively and effectively. • The application of dual criminality may negatively impact Hungary's ability to provide assistance due to shortcomings identified in respect to the scope of the TF offences. • Effectiveness cannot be demonstrated due to the absence of statistics on MLA requests relating to ML, predicate offences and TF. • Lack of detailed statistics undermines the assessment of effectiveness
SR.VI. AML requirements for	***C***	

[31] The review of Special Recommendation V 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.

money/value transfer services		
SR.VII Wire transfer rules	**C**	
SR.VIII Non-profit organisations	**NC**	• No special review of the risks in the NPO sector undertaken. • Insufficient outreach to the NPO sector on FT risks. There is no formalised and efficient system in place that focuses on potential vulnerabilities. • No clear legal provisions in place to require and maintain information on NPOs purposes and objectives in relation to their activities. • No clear identification of those NPOs that account for a significant portion of financial resources under the control of the sector and a substantial share of the sector's international activities. • No specific meaningful measures or sanctioning capability for the most vulnerable parts of the sector.
SR.IX Cash Couriers	**PC**	• No administrative ability to stop/restrain or seize in the case of ML/FT. • Sanctions available are not effective, proportionate or dissuasive. • Deficiencies in the implementation of SR.III may have an impact on the effectiveness of the regime. • Lack of available statistics meant that the authorities could not fully demonstrate the effectiveness of the declaration system. • The system is limited to movements beyond the EU.(effectiveness issue)

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)	• Hungary should criminalise self-laundering fully in line with the Vienna and Palermo Conventions. • The Hungarian authorities should make legislative changes to the money laundering offence to bring legislation into full compliance with the Vienna and Palermo Conventions. • The offence of financing terrorism should be widened to cover all relevant issues as predicate offences to money laundering by incriminating the financing of an individual terrorist for any purpose and making the incrimination of collection of funds for a terrorist organisation's day-to-day activities clearer. • The Hungarian Authorities should consider more training for law enforcement authorities, particularly for police and prosecutors on the way in which money laundering cases should be efficiently investigated and prosecuted. • Case law should be established on autonomous ML cases in order to clarify the level of proof required where there has been no conviction for the predicate offence. • The Hungarian authorities should pursue more investigations and prosecutions of third party laundering.
2.2 Criminalisation of Terrorist Financing (SR.II)	• The financing of individual terrorists' day-to-day activities should be criminalised as required by SR II. • The incrimination of the financing of terrorist organisations' day-to-day activities should be clarified by further legislative change and by issuing appropriate guidance to law enforcement agencies and the collection of funds for terrorist organisations' day to day activities should be criminalised. • "Funds" should be defined. • Hungary should consider legislative changes to render legal persons liable for more effective prosecutions of TF offences in practice. • The legislation should be revised to ensure proper criminalisation of financing of the acts arising from the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation for placing or causing to place on an aircraft in service a device or substance which is

	likely to destroy that aircraft.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Consideration should be given to administrative suspension of transactions, granting the FIU a reasonable period of time to check the facts of the case in details, without immediately having to open a criminal investigation.
2.4 Freezing of funds used for terrorist financing (SR.III)	• The Hungarian authorities should provide more guidance to the private sector, especially the non banking financial industry and DNFBPs, on the freezing obligations stemming from the international standards. The mechanism on dissemination of the lists should also be improved. In particular, the proposed plan to examine the system of coordination and dissemination of lists should be implemented as soon as possible. • The sample rules should be reviewed and brought up to-date on a regular basis. • Apart from the HFSA, the competence of all supervisory authorities on monitoring effectively the compliance of reporting entities with the FRM Act and imposing civil, administrative or criminal sanctions for failure to comply with the Act should be made clear in the AML/CFT Act. • The Hungarian authorities should provide a procedure for making possible freezing of funds and assets held by EU-internals in all instances set forth by SR.III. • The Hungarian authorities should provide an effective and publicly known national procedure for the purpose of delisting. • The effective national procedure for the purpose of unfreezing requests in a timely manner upon verification that the person or entity is not a designated person should be established. • The deadline for freezing transactions (assets) by the service providers is relatively short and should be extended (especially in the case of international transactions) in order to be able to perform necessary checks.
2.5 The Financial Intelligence Unit and its functions (R.26)	• The HFIU should be provided by the Law direct (or timely indirect) access to all law enforcement information, including intelligence information as this would significantly improve its effectiveness to undertake its analytical function • The Hungarian authorities should consider increasing the suspension period and should introduce a timeframe to ensure that the HFIU has indirect access, on a timely basis, to the relevant financial, administrative and law enforcement information that requires to properly undertake its, functions, including the analysis of STR. • The HFIU should carry out a more in depth analysis of the

	reports, aimed at adding value to the STRs received, with the view of improving the quality of the information it disseminates. An enhanced analysis of the STRs aimed at selecting those worth investigating and at improving the quality of information that is disseminated to law enforcement for initiating new criminal investigations would make AML/CFT systems more effective and would, therefore make a more effective use of law enforcement resources and provide a more robust buffer between the reporting and investigation stages. • The Hungarian authorities should adopt clear legal provisions in order to assure the operational independence and autonomy of the HFIU and grant the head of HFIU with powers to decide on dissemination of STRs.
2.6 Cross Border Declaration & Disclosure (SR.IX)	• The HCFG should be given the administrative authority to immediately stop/restrain cash to ascertain whether evidence may be found for ML/FT. • The penalties for non-compliance with the obligation to declare are relatively low (€550). Therefore, sanctions should be more effective and dissuasive. • Hungarian authorities should take steps to heighten the awareness of arriving and departing travellers by making the signage at ports of entry and exit alerting travellers to the requirements much more visible (and perhaps in multiple languages). • In order to be able to evaluate the overall effectiveness of the system, the Hungarian authorities should maintain more detailed statistics on administrative penalties applied for persons making a false declaration under SR.IX, statistics on criminal investigations initiated for physical cross-border transportation of currency or bearer negotiable instruments that were suspected to be related to ML/TF and statistics on information exchange with foreign counterparts regarding SR.IX. • The EU Regulation does not affect the possibility for member states to apply controls on EU internal borders, in accordance with the existing provisions of the Treaty establishing the European Community. In order to comply with SR IX, Hungary should consider developing an appropriate domestic legal mechanism for cash control at the EU internal borders. • Specialised training activities related to SR.IX (ML and TF related cross-border transportation of cash and bearer negotiable instruments) for the staff of the HCFG should be continued.

3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	• A domestic ML/TF risk assessment should be conducted including an assessment of the adequacy of mandatory instances for enhanced due diligence.
3.2 Customer due diligence, including enhanced or reduced measures (R.5)	• It is recommended that all anonymous passbooks, regardless of the balance on the respective account, should be closed or converted to nominative accounts at the earliest opportunity and not later than 1 January 2013. • It remains unclear whether the definition of beneficial owner comprises indirect ownership and control and the mind and management of a company, it is therefore recommended that these definitions be reviewed and clarified. It is also recommended that the minimum identification requirements for beneficial owners should be aligned with those for other customers and that the sample template for the declaration of beneficial ownership declaration be clarified. • An explicit requirement for financial institutions to consider making a STR where they are unable to carry out the customer due diligence measures should be implemented. • An explicit requirement to verify that the person purporting to act on behalf of the customer is so authorised should be implemented. • In addition to the collection of the maximum set of identification data further enhanced due diligence measures should be required for higher risk categories of customers, business relationships or transactions (e.g. referring to commercial electronic databases, enhanced ongoing monitoring, etc.). • The extent to which the Data Protection Law is an obstacle to effective CDD measures should be assessed.
3.3 Financial institution secrecy or confidentiality (R.4)	
3.4 Record keeping and wire transfer rules (R.10 & SR.VII)	• A legal power for competent authorities to ensure that the mandatory record-keeping period may be extended in specific cases upon request should be implemented. • The obligation in the AML/CFT Act should be aligned with the record keeping obligation of the Accounting Act (i.e. the obligation to record the particulars of performance (place, time and mode) should be mandatory in all cases and not be restricted to cases specified according to the internal rules applying a risk-based approach).

	• Financial institutions should be specifically required to maintain records of the business correspondence.
3.5 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• There is no clear provision in the AML/CFT Act requiring reporting of predicate offences (including tax matters) to the HFIU. The evaluators consider that a clear provision requiring reporting for all predicate offences or a link in the preventive law to the definition of money laundering and terrorist financing would make the overall provisions in the Hungarian legislation more comprehensive. • There is no explicit mention in Section 23 of the AML/CFT Act and model rules that the reporting obligation also covers attempted transactions, therefore, the Hungarian Authorities are invited to adopt such explicit provisions. • The Hungarian Authorities are invited to review the new electronic reporting system in order to make sure it is not an obstacle for more active reporting and make it more user-friendliness in cooperation with reporting entities. Furthermore, as not all reporting entities might have an internet access (which could became an obstacle for fulfilling reporting obligations), the Hungarian authorities should implement alternative reporting options for such situations. • The small number of STRs related to terrorist financing raises concerns about effective implementation. More outreach and guidance to reporting sector is necessary in order to increase the number of STRs related to TF. • Not all designated categories of offences are fully covered as predicates, as incrimination of the financing of an individual terrorist or terrorist organisation is not fully covered. The Hungarian authorities should take legislative measures in order to ensure that there is a clear obligation to report to the FIU when a financial institution suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism

3.6 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17)	• With regard to Recommendation 23, the authorities should:
	  • Introduce requirements and procedures to prevent criminals from becoming members of the supervisory board of investment firms;
	  • Introduce requirements and procedures to prevent criminals from hold a qualifying interest in investment fund management companies;
	  • Extend binding “fit and proper” requirements to senior management of all financial institutions (besides investment.

	• With regard to Recommendation 17, the authorities should:
	  • Include senior management in the sanctioning regime of the CIFE Act;
	  • Extend the range of sanctions available for institutions covered by the Investment Act and include suspension of license and removal from office in the range of sanctions available with regard to the CIFE Act;
	  • Use the existing sanctioning regime to a broader extend respectively consider applying the full range of sanctions (including higher fines and removal of licences) with regard to identified breaches to increase the effectiveness and dissuasiveness of the system.

4. Preventive Measures – Non-Financial Businesses and Professions	

4.1 Customer due diligence and record-keeping (R.12)	• With regard to all DNFBPs the Hungarian authorities should:
	  • Recommendations and comments made under Recommendation 5 and 10 should also be applied to all DNFBPs;
	  • Review the relationship between record keeping obligation according to Accounting Act and respective obligations under the AML/CFT Act;
	  • Review the PEP definition as the scope differs slightly from the FATF standard;
	  • Require DNFBPs explicitly to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs;
	  • Require DNFBPs explicitly to conduct enhanced ongoing monitoring on a PEP customer;
	  • Require DNFBPs explicitly to have policies in place or to take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes
	  • Require DNFBPs to obtain immediately the necessary information from the third party;
	  • Require DNFBPs to pay special attention and to examine as far as possible the background and purpose of all complex and unusual transactions;
	  • Require DNFBPs to set forth their findings in writing and to keep such findings available for competent authorities and auditors for at least five years.
	• With regard to lawyers and notaries public the Hungarian

	authorities should: • Clarify the scope of the legal privilege for lawyers and notaries. • With regard to casinos the Hungarian authorities should: • Limit the possible winnings at game rooms in order to ensure that customers may not engage in financial transactions equal to or above EUR 3,000 and abolish the possibility of "certificates of winnings" being issued for winnings at game rooms. • With regard to real estate agents the Hungarian authorities should: • Clarify that CDD measures have to be applied with respect to both the purchaser and the vendor of the property • Strengthen effective implementation of CDD requirements. • With regard to dealers in goods accepting cash payments above HUF 3.6 m the Hungarian authorities should: • Strengthen effective implementation of CDD requirements. • With regard to auditors, accountants, tax advisors and tax consultants the Hungarian authorities should: • Clarify that the provisions regarding PEPs also have to be applied by auditors, accountants, and tax advisors/ consultants in cases where a PEP is the beneficial owner of a legal entity.
4.2 Suspicious transaction reporting (R.16)	• The HFIU and SROs should, in cooperation with the HFIU, review the reasons for the significant decrease in reports from lawyers and notaries. • Furthermore, the Hungarian authorities should take continued and enhanced measures (especially through improved feedback from the HFIU and trainings) in order to increase the number of STRs submitted.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Non-profit organisations (SR.VIII)	• The recommendation from the 3rd round MER to conduct a review of the sector in order to be fully compliant with the FATF Recommendations should be implemented. • The authorities should provide clear legal provisions to require and maintain information on NPOs purposes, activities and the identity of person(s) who own, control or direct their activities. • Steps should be taken to raise awareness in the NPO sector

	about the risks of terrorist abuse. In particular, the active steps should be taken to clearly identify those parts of the NPO sector that account for a significant portion of the financial resources of the sector and a substantial share of the sector's international activities, and ensure at a minimum in these areas that: • Publicly accessible information is available on the purposes and objectives of their stated activities, and on those who own, control or direct their activities; • Promotion of effective oversight measures (supervision and monitoring) of these parts of the sector should be undertaken; • Appropriate measures are in place to sanction violations of oversight measures.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Hungary has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. The legislation has been amended in order to implement the Conventions, but existing legislation does not cover the full scope of these Conventions as stated above and in the individual discussion on R. 1 and SR II. Therefore, it is recommended that Hungary amend its Criminal Code to fully cover ML and TF offences and thus fully implement the Vienna, Palermo and Terrorist Financing Convention. • Measures still need to be taken in order to properly implement UNSCRs 1267 and 1373. The Hungarian authorities should particularly introduce a procedure for making possible the freezing of funds and assets held by EU-internals in all instances set forth by SR.III.
6.3 Mutual Legal Assistance (R.36 & SR.V)	• The Hungarian authorities should put in place a system enabling them to monitor the quality and speed of executing requests. • The Hungarian authorities should maintain comprehensive annual statistics on all mutual legal assistance and extradition requests -including requests relating to freezing, seizing and confiscation- that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond. • Consideration should be given for review of the grounds for refusal, as to clarify its applicability. • Hungary should clarify whether the application of dual criminality may limit its ability to provide assistance in

	certain situations, particularly in the context of identified deficiencies with respect to the ML and TF offence as outlined under Recommendation 1 and Special Recommendation II. • Hungary should consider clear time limits for the central authorities to evaluate and forward the MLA requests for execution. • Consideration should be given to the adoption of asset sharing provisions with non-EU countries.
6.4 Other Forms of Co-operation (R.40 & SR.V)	• Due to the lack of statistics it was not possible to assess how effectively the Hungarian authorities were responding to international requests for cooperation and it is recommended that procedures are put in place to centrally record and monitor all international requests for cooperation on matters related to money laundering and the financing of terrorism.
7. Other Issues	

7.1 Resources and statistics (R.32)	• It is recommended that:
	  • Comprehensive statistics should be maintained on investigations, prosecutions and convictions relating to funds generating crimes;
	  • Precise statistics on amounts restrained and confiscated in each instance should be maintained so as to be able to establish an overview of the efficiency of the system;
	  • Comprehensive statistics on STRs should be prepared including details of predicate offences, attempted transactions and the outcome of STRs disseminated to law enforcement agencies. Moreover, the commissioners of police, HCFG and HFIU should takes steps in order to make sure that the HFIU receives relevant feedback on the STRs disseminated ;
	  • Statistics on administrative penalties applied for persons making a false declaration under SR.IX, statistics on criminal investigations initiated for physical cross-border transportation of currency or bearer negotiable instruments that were suspected to be related to ML/TF and statistics on information exchange with foreign counterparts regarding SR.IX should be maintained;
	  • Comprehensive annual statistics on all mutual legal assistance and extradition requests - including requests relating to freezing, seizing and confiscation - that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time

	required to respond should be maintained; • Procedures should be put in place to centrally record and monitor all international requests for cooperation on matters related to money laundering and the financing of terrorism • Furthermore, it is recommended that all relevant statistics should be regularly reviewed by the Hungarian authorities in order to assess the effectiveness and efficiency of the AML/CFT system

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS
Para 84-87, 107, R.1 Rating box (bullet point No.1)	Self-laundering The criminalisation of self-laundering was introduced because of the international standards and evaluations. No legal change in criminalisation of self-laundering was made in comparison to the 3rd round. In the 3rd evaluation report there was no critic and no recommendation of changing the system. The criminalisation of self-laundering is provided in the extent as the principles of our criminal law make it possible. The criminalisation of self-laundering in itself is a breakthrough of the principle of the "prohibition of double assessment". The breakthrough of the principle of the "prohibition of double assessment" is in line with the FATF requirements and there is no obligation to completely wipe out unpunishable post-activities from our criminal code. General international and national principles of criminal laws can not be changed and should be accepted also in evaluations. Furthermore, the evaluations are incoherent in this matter. In some countries the evaluators accepted any fundamental principle of the national law (prohibition of double assessment) required the exemption of persons who had committed the predicate offence, but in other countries they did not do so.
Para 118-120, 140, SR. II Rating box (bullet point No.2)	The criminalisation of the financing of terrorist organisations' day-to-day activities The Hungarian authorities consider that there is a big misunderstanding regarding the legislative framework for criminalisation of the financing of terrorists, especially the criminalisation of the financing of terrorist organisations' day-to-day activities**.** The criminalisation of the financing of terrorist organisations' day-to-day activities is covered under Subsection (5) of Section 261 by the phrase of "supporting the activity of the terrorist group in other ways". This term was drafted in a very general way so as to comprise any supportive act (e.g. provision, collection of funds). No legal change in criminalisation of the financing of terrorist organisations' day-to-day activities was made in comparison to the 3rd round, because there was no critic of changing the system in this respect. The Hungarian authorities consider that the legislative reasoning of Section 261 of the HCC supports their explanation: "the Act maintains the criminalisation of any form of supporting the activities of a terrorist group". Furthermore, the conclusions drawn from the legislative framework are confirmed neither by the text of the HCC (with no method of interpretation) nor by the explanation of the Hungarian authorities and therefore highlight no actual deficiency (Para 119.). According to the text of the HCC regarding the criminalisation of the financing of terrorists, the perpetrator of financing of terrorist is punishable regardless the fact whether he/she is within the terrorist

	group or he/she is outside.
Para 133, 143 **SR. II Rating box** (bullet point No.5)	<u>The criminalisation of the acts arising from the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation for placing or causing to place on an aircraft in service a device or substance which is likely to destroy that aircraft</u> The Hungarian authorities are of the opinion that Crimes against transportation safety [Section 184 of the HCC] covers the abovementioned act. The crime can be established if the act of the perpetrator violates the objects listed in Section 184 and this act can endanger transportation safety. "Placing a device or substance which is likely to destroy aircraft" is not expressly mentioned in the statutory definition; however the phrase "any person who endangers the safety of air by any other similar manner" covers this kind of act.
R.26 Rating box (bullet point No.2) (bullet point No.3)	<u>Indirect access to information on a timely basis</u> The HFIU has direct access to the two law enforcement databases: direct (online) not restricted access to customs law enforcement database and direct (online) restricted access to police law enforcement database. As regards articulating the competence of Hungarian Customs and Finance Guard in the field of law enforcement (which is not limited to customs and excise related offences), the value of having direct online not restricted access to customs law enforcement database is not evaluated from the aspect of effectiveness by the examiners. At the same time the restricted feature of the access to police law enforcement database is exposed as a negative peculiarity, which cannot be effectively supplemented with an indirect unrestricted access that has no timeframe in procedural terms. Hungarian authorities acknowledge the lack of timeframe as a deficiency, but they believe that the level of this certain deficiency is much less, than the level of benefit provided by the restricted direct access to police law enforcement database. <u>Low number of case reports</u> Hungarian authorities consider the issue presented by the last bullet point in the rating box as not a Hungary specific subject, but a phenomenon that applies to some of the jurisdictions of the region. A <u>recommendation</u> on enhancing the dissemination of case reports for initiating common and organised crime related money laundering would have been more appropriate and consistent.
Para 15 of Executive Summary (p. 10) **Para 353-357, 431** **CHAPTER V** **Box No.2** **Anonymous accounts (p. 202)**	<u>Savings passbooks</u> The procedure applied for the transformation of anonymous savings passbooks into nominative ones was accepted by the FATF Paris Plenary in 2002 as consistent with the relevant FATF Recommendations. In that year 99,1 % of all savings deposits were registered. The remaining 0,9 % is immobilized and may not be used in any way without full prior identification and verification of the holder of the passbook. The Hungarian Financial Supervisory Authority operates a monitoring system of this remaining stock and reports on it to every Moneyval Plenary Meeting. The European Union decided to transpose this arrangement developed by the Hungarian Authorities without modification into Article 6 of the 3rd Directive as the proper way for all EU Member States to dispose of this traditional European savings instrument: "*Member States shall in all cases require that the owners and beneficiaries of existing anonymous accounts or anonymous passbooks be made the subject of customer due diligence measures as soon as possible and in any event before such accounts or passbooks are used in any way.*"

Para 333, 339, SR.IX Rating box (bullet point No.5)	Cross border declaration – supranational approach for the EU The Hungarian authorities are of the opinion that the recognition of a supranational jurisdiction for the purposes of SR.IX in case of the EU by the FATF is not entirely reflected in the report. The critic that the limitation of cash movements beyond the EU is an effectiveness issue is not in line with the FATF methodology. As highlighted in some of the FATF evaluations physical cross-border transportations of currency/BNI within the borders of the EU are to be considered domestic when assessing SR.IX.
Para 486, 503, 507 R.13 Rating box	Impact on the reporting system In our opinion the service providers should only be aware of whether any data, fact or circumstance is somehow connected to money laundering or terrorist financing, and not of that whether the transaction constitutes money laundering or terrorist financing itself. It means that they do not need to know precisely the statutory definitions of ML or TF set out in the Criminal Code. Consequently, making a connection between the incrimination (or deficiencies in the incrimination) of ML and TF and the reporting obligation might be misleading in our opinion. Furthermore, the text of the English translation of the AML/CFT Act could also be misleading as it contains the word "indicating". The Hungarian version of the AML/CFT Act (which should be considered as the only authentic text) uses the phrase *"utaló"*, which besides of *"indicating"* also means *"implying"*, *"referring"*, *"suggesting"* in English, therefore it is obvious that the AML/CFT Act does not require noticing a concrete sign (indication) of ML or TF for applying the reporting obligation, consequently there is no need to know the precise legal definitions in this way, as well). For reporting (for having the reporting obligation) it is enough to notice any data, fact or circumstance which somehow indicate, imply, refer or suggest that criminal acts (namely ML or TF) might have been committed. This does not require service providers or their employees to have sound knowledge of the Criminal Code definitions of ML and TF, therefore it is irrelevant whether there are deficiencies in the incrimination of ML and TF or not. Despite the fact that there have been deficiencies identified under R.1 and SR.II by the evaluators, those, according to the above, may not have any negative impact on performing the reporting obligation.
Para 489, 509 R.13 Rating box (bullet point No.3) **Para 499 SR.IV Rating box** (bullet point No.2)	Attempted transactions The Hungarian authorities are of the opinion that the reporting requirement for attempted transactions is covered under Section 23 of the Hungarian AML/CFT Act as it is prescribed under the criteria 13.3. On the basis of Subsection (1) of Section 23, all of the service providers under the scope of the AML/CFT Act have to submit a report to the FIU "in the event of noticing any information, fact or circumstance indicating money laundering or terrorist financing". (So this obligation does not make difference between the executed and the attempted transactions, it covers both cases.) Furthermore, on the basis of Subsection (4) of Section 23 the service provider may not execute the transaction order until the suspicious transaction report is submitted. In our view these two subsections fully cover not only the executed transactions, but also the attempted transactions. Actually the reporting obligation is not based on "transactions", but on "facts, data or circumstances". The scope of this latter one is broader than the

	transaction. Subsection (4) of Section 23 is a new provision in the AML/CFT Act (which entered into force at the end of 2007), so the situation does not remain unchanged since the 3rd round evaluation and during the implementation process of the Third Directive the Hungarian authorities taken into consideration the relevant recommendation concerning attempted transactions of the 3rd round MER. This explanation is supported by the practice as well and the HFIU is receiving such STRs. However the HFIU does not collect statistics on STRs related to attempted transactions, but it is not an FATF requirement to do so and it would not contribute to the effectiveness or to assess the effectiveness of the reporting regime.
Para 491, 493, 504, 507, 223 **R.13 Rating box** (bullet point No.4)	<u>Declining number of STRs</u> The MER suggests that the introduction of the electronic reporting system is the primary reason of the declining number of STRs. Hungary introduced the electronic reporting system in 2009 in line with the recommendation set out by the Third Round MER. In the course of 2009 the number of incoming STRs started to decrease. This statistical alteration was recognised by the HFIU and as a consequence it conducted a research in order to identify the possible reasons behind this phenomenon. The output of the research identified variety of reasons as possible reasons such as the improvement of STRs' quality, one-off purification of client-base at certain service providers, new AML/CFT provisions, non-criminalisation of negligent form of failure to comply with the reporting obligation, economic and financial crisis and introduction of electronic reporting system.[32] The Hungarian authorities are of the opinion that suggesting that the primary reason of the declining number of STRs was the introduction of electronic reporting system without analysing the other (probable) contributing factors is misleading. In regard to justifying the overall effect of declining number of STRs Hungarian authorities believe that direct link cannot be established between the change in volume of STRs and the effectiveness.

[32] Extracts of the research document are available in the Biannual Report of HFIU (www.vam.gov.hu/pio)

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Hungary has been a member country of the European Union since 2004. 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	Natural and legal persons can be held liable for infringements of the national provision adopted pursuant to the Third Directive. On 11 December 2001, the Act CIV of 2001 on Criminal Measures Applicable against Legal Persons was adopted. Criminal measures may be taken if the legal person benefited from the money laundering, or if the benefit was destined to the legal person. According to Section 1 (1) 1 of the Act legal entities shall be understood as any organisation or organisational units thereof vested with rights of individual representation, which the governing rules of law recognise as legal entities, as well as organisations that can be subject to conditions of civil law in their own right and possess assets distinct from that of their members, including companies active prior to registration pursuant to the Act on Economic Associations. The conditions for applying the criminal measures against legal persons are: "*The measures are applicable to legal entities in the event of committing any intentional criminal act defined in the Criminal Code (HCC) if the perpetration of such an act was aimed at or has resulted in the legal entity gaining benefit, and the criminal act was committed by* *a) the legal entity's executive officer, member or employee entitled to represent it, its officer, its confidential clerk, its supervisory board member and/or their representatives, within the legal entity's scope of activity,* *b) its member or employee within the legal entity's scope of*

	activity, and it could have been prevented by the executive officer, the confidential clerk or the supervisory board member by fulfilling his supervisory or control obligations. *Other than the cases mentioned above the measures shall be applicable if committing the criminal act resulted in the legal entity gaining benefit, and the legal entity's executive officer, member or employee entitled to represent it, its officer, its confidential clerk, its supervisory board member, had a knowledge on the commission of the criminal act.* The available measures are: *If the court has imposed punishment on the person committing the criminal act defined in Section 2 or apply reprimand or probation against this person, it may take the following measures against the legal entity:* *a) winding up the legal entity,* *b) limiting the activity of the legal entity,* *c) imposing a fine.* *The above measures can be taken even if the criminal act has caused the legal entity to gain benefit, but the perpetrator is not punishable due to his mental illness or death or if the criminal proceedings has been suspended due to the perpetrator's metal illness occurred after the commission of the act.* In case of breach of the AML/CFT Act administrative liability applies to natural and legal persons.
Conclusion	Criminal liability for money laundering extends to legal persons.
Recommendations and Comments	

2.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Due to Law-Decree No. 2 of 1989 on Savings Deposits all saving deposit accounts must be registered under the holder's name (Sec 1 LDSD). Therefore is not only prohibited to open or keep anonymous account but also to open or keep passbooks or accounts on fictitious names. In addition all passbooks and accounts are subject to CDD measures (Sec 6 AML/CFT Act). Funds from existing bearer savings deposit may only be released after CDD measures have been completed. Further description under c.5.1.
Conclusion	Hungarian Law neither allows for anonymous passbooks/ accounts nor for passbooks/ accounts on fictitious names.
Recommendations and Comments	

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 €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 €15,000 covered?
Description and Analysis	In Hungary CDD measures have to be applied when executing transaction orders amounting to HUF 3.6 m (€13,333) or more, be it a single transaction or individual transaction orders linked in effect (Sec 6 (1) (b) of the AML/CFT Act). CDD has to be carried out at the time of acceptance of the transaction order the execution of which brings the combined value of the linked transactions to the threshold of HUF 3.6 m (Sec 6 (2) of the AML/CFT Act). For money exchange transactions an even lower threshold of HUF 500,000; (€1,850) applies (Sec 17 of the AML/CFT Act).
Conclusion	Transactions and linked transactions of €15,000 are covered.
Recommendations and Comments	

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	The definition of "beneficial owner" is stipulated in Sec 3 (r) AML/CFT Act and is largely modelled on the definition set out in the EU Directive but also refers to the FATF definition. While the EU Directive (Art. 3 (6) (a) (ii) of the Directive) refers to persons, who ultimately own or control a legal entity through direct or indirect ownership or control of more than 25%, the Hungarian definition of beneficial owner in Sec (r) AML/CFT Act neither uses the term "ultimately" (official Hungarian translation: "végső") nor "indirect ownership" (official Hungarian translation: "közvetett tulajdon"). For this reason evaluators had concerns whether indirect ownership and control is covered by the definition of beneficial owner contained in the AML/CFT Act. However Hungarian authorities assured evaluators that the common understanding of the word "tényleges tulajdonos" ("beneficial owner") covers the ultimate owner respectively indirect ownership.

	The Directive further refers to natural persons who otherwise exercise control over management of a legal entity (Art. 3 (6) (a) (ii) of the Directive) which corresponds to the FATF definition: "persons who exercise ultimate effective control". Those persons appear to be adequately covered by Section 3 (rb) of the AML/CFT Act. Section 3 (rb) of the AML/CFT Act covers any natural person who is a member or a shareholder of a legal entity or legal arrangement and entitled to elect or recall the majority of the members of senior management or of the supervisory board, or who has sole disposal rights over more than 50% of the votes on the basis of an agreement with other members or other shareholders ("dominant influence"). Additionally the AML/CFT Act refers to "natural person, on whose behalf a transaction order is executed", which is a literal implementation of the FATF definition.
Conclusion	The legal definition of beneficial owner as included in the AML/CFT Act corresponds to the definition of beneficial owner in the Third EU Directive, but also refers partially to the FATF definition (person on whose behalf a transaction is being conducted).
Recommendations and Comments	

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	Hungary has not made use of the option given under Art. 2 (2) of the Directive. Therefore the Hungarian AML/CFT Act does not provide exemptions for persons and entities who engage in a financial activity on an occasional or very limited basis and where there is little risk of ML or FT.
Conclusion	Hungary does not provide exemptions for such activities and therefore does not need to implement Art. 4 of Commission Directive.
Recommendations and Comments	

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	Section 12 (1) of the AML/CFT Act establishes instances (specific customers and products) where financial institutions or DNFBP are only required to conduct ongoing monitoring and are therefore not subject to the other CDD requirements (further described under c.5.9). Those circumstances are in line with the examples given in the FATF Methodology 2004 to c.5.9. In those instances the customer due diligence measures are to be carried out only if some data, facts or circumstances emerge that indicate money laundering or terrorist financing. Nevertheless, financial institutions are always required to perform continuous monitoring of the business relationship. Simplified due diligence may not be applied in the mandatory cases for enhanced due diligence stipulated by the AML/CFT Act even if customer can be classified according to any of the categories for simplified due diligence under Section 12 of the AML/CFT Act. The HFSA Recommendation emphasises that financial institution shall in all cases verify the required form of the due diligence obligation applicable to the specific customer. If the details of the respective customer on its face would result in simplified due diligence, but the service provider has doubts as to the justification for the procedure on the basis of the data, then the service provider should carry out normal or enhanced due diligence measures. Simplified due diligence can neither be applied by notaries public as they are required by Section 122 (5) of the Act on Notaries Public to always check the full range of customer data which corresponds to the maximum set of data specified in the AML/CFT Act (Sec 7-10).
Conclusion	The implementation of Art. 3 of the Commission Directive 2006/70/EC does not go beyond the FATF Methodology 2004 regarding criterion 5.9.
Recommendations and Comments	

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive (see Annex)	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive

	2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	The definition of PEP is to be found in Sec 4 AML/CFT Act and is modelled on the definition set out in the EU Directive (further described under c.12.2.) Therefore, PEPs are defined as natural persons residing in another member state or third country whereas the standard refers to persons entrusted with prominent public functions in a foreign country irrespective of the residence. Hungary implemented Art. 2 of the Commission Directive 2006/70/EC, consequently only persons that are or have been entrusted with prominent public functions within one year before the carrying out of CDD measures are to be considered as PEPs. Art. 13 (4) of the Directive has been broadly implemented (Sec 16 AML/CFT Act). However there seems to be no explicit requirement to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs and no explicit requirement to conduct enhanced ongoing monitoring on a PEP customer. Furthermore the Hungarian definition of PEPs does not fully cover "senior politicians", "senior government officials" and "important political party officials" which are listed as an example under the standard (see definition of PEPs in the Glossary to the FATF Recommendations). However some of those persons are usually captured due to their participation in either government or Parliament. Hungarian authorities also emphasise that non-political heads of ministries are partially covered by the category "secretaries of state" contained in the AML/CFT Act.
Conclusion	Art 2 of Commission Directive 2006/70/EC has been implemented. Art. 13 (4) of the Directive is not fully implemented.
Recommendations and Comments	The authorities need to consider implementing all requirements set out in Art. 13 (4) of the Directive.

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. 13 (3) of the Directive has been implemented into Sec 15 AML Act. The details are further described under c.5.8. In accordance with Art 13 (3) the application of enhanced CDD is limited to correspondent banking relationships with respondent institutions from Non-EEA member countries. However, Sec 15 AML Act does not include all the requirements of the Directive. Namely, there are no indications for an obligation to document the respective responsibilities of each institution as well as for obligations concerning payable-through accounts.

Conclusion	The requirements included in the AML/CFT Act are not fully in line with the Article 13(3) of the Directive.
Recommendations and Comments	The authorities need to consider implementing additional requirements in the AML/CFT Act.

9.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favour anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity [...].
Key elements	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	According to the Ministerial Decree on the Compulsory Elements of Internal Rules those rules shall contain aspects that are to be borne in mind when considering any information, fact or circumstance indicating ML or TF for each profession which can be used in the everyday of business. Model Rules provided for each specific financial sector contain examples for such aspects, which include inter alia products and transactions that might favour anonymity or threats from new or developing technologies. Furthermore, HFSA Recommendation No. 3/2008 advises that internal regulations should specify the business relationships, transactions, transaction orders, products and cases that represent enhanced risks and may be suitable for money laundering and terrorist financing, and which therefore require special consideration, while the same should also specify cases and products of low risk." However, there is no clear enforceable obligation that requires financial institutions to pay special attention to those aspects.
Conclusion	The AML/CFT Act does not contain a provision that requires financial institutions to pay special attention to any ML or TF threats that may arise from products or transactions that might favour anonymity and to take measures, if needed, to prevent their use for money laundering and terrorist financing purposes.
Recommendations and Comments	The authorities need to consider implementing such a requirement for financial institutions.

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	All service providers under the scope of the AML/CFT Act are entitled to accept the outcome of CDD procedures carried out by a financial

	institution (with the exception of service providers carrying on money transmission and currency exchange activities) within the territory of the Republic of Hungary, another EU member state or a third country that meets equivalent requirements to those stipulated in the AML/CFT Act (Sec 18 (1)-(2)). Auditors, accountants, tax consultants, tax advisors, notaries and lawyers are entitled to accept the outcome of CDD procedures carried out by other auditors, accountants, tax consultants, tax advisors, notaries and lawyers within the territory of the Republic of Hungary, another EU member state or a third country that meets equivalent requirements to those stipulated in the AML/CFT Act (Sec 18 (3)-(4)). In addition to the abovementioned conditions the outcome of CDD procedures may only be accepted (Sec 18 (6) of the AML/CFT Act), if the service provider relied on: • is included in the mandatory professional register; and • applies CDD procedures and record keeping requirements as laid down or equivalent to those laid down in the AML/CFT Act and its supervision is executed in accordance with equivalent requirements, or the registered office in a third country applies equivalent requirements. In all the above-mentioned cases of third party reliance the service provider that has carried out the CDD measures is allowed to make available, at the written request of the service provider accepting the outcome of CDD procedures, data and information obtained for the purposes of identification and verification of identity of the customer and the beneficial owner, and copies of other relevant documentation on the identity of the customer or the beneficial owner to other service providers subject to the prior consent of the customer affected (Section 19 (2) of the AML/CFT Act). Authorities confirmed to the evaluators that third party reliance is not permissible if such consent is not given by the customer. (Section 19 (1)-(2) of the AML/CFT Act). Responsibility is always to be borne by the service provider accepting the outcome of the CDD procedures carried out by another service provider (Section 20 of the AML/CFT Act). Service providers, like real estate agents, casinos, traders in precious metals, traders in goods cannot qualify as third parties at all. But they are allowed to accept the results of CDD of financial institutions with the exception of service providers carrying on money transmission and currency exchange activities, as mentioned above.
Conclusion	The AML/CFT Act permits reliance on professional, qualified third parties from EU Member States or equivalent third countries for the performance of CDD, under certain conditions
Recommendations and Comments	

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	The scope of the AML/CFT Act covers auditors, tax advisors, tax consultants and accountants (Section 1 (1) (g) and (h)). They are subject to the same CDD, record keeping and reporting requirements like financial institutions and other DNFBPs as described under Rec. 5 and 10. As regards the activities of accountants the scope of accounting services covered by the AML/CFT Act is defined in Section 150 of the Accounting Act. Are to be considered as accounting services all duties to be performed in connection with bookkeeping, accounting and reporting obligations prescribed by the Accounting Act and related government decrees, and auditing activities. Authorities state that accountants do not prepare for or carry out transaction for their clients concerning the activities mentioned under criterion 12.1 (d). Like all service providers under the scope of the AML/CFT Act they are required to carry out CDD when entering into business relationship, when executing a transaction or single transactions linked reaching and 3,600,000 HUF (€13,333), when any data, fact, circumstance indicating money laundering or terrorist financing occurs (where the due diligence measures have not been carried out yet), or when there are doubts about the veracity or adequacy of previously obtained customer identification data (Section 6 (1) of the AML/CFT Act).
Conclusion	In line with the 3rd EU Directive the AML/CFT Act also covers auditors, tax advisors and tax consultants in addition to accountants. CDD and reporting obligations are the same as for all service providers under the scope of the AML/CFT Act.
Recommendations and Comments	

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 €15,000 or more.

FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	The scope of the AML/CFT Act covers traders in precious metals or articles made of precious metals (Section 1(1)(j)) as well as dealers in goods accepting cash payments above HUF 3.6 m during their everyday business dealers (Section 1(1)(k)). Due to the potential risk of ML/TF as well as the experience of supervisors the threshold for dealers in precious metals provided by the standard (cash transaction with a customer equal to or above USD/€ 15,000) has not been made use of.
Conclusion	The AML/CFT Act adopted the broader approach of the Directive.
Recommendations and Comments	

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 €2,000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above €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	The AML/CFT Act specifies that as regards casinos or electronic casinos, a business relationship is created when first entering the casino or electronic casino (Section 3 (vc) of the AML/CFT Act). For this reason CDD procedures have to be applied at the entrance of the casino, regardless of the amount of gambling chips purchased. There is no transaction threshold. Authorities and casino operators met stated that CDD is applied irrespective of whether the customer will engage in financial transactions. The identification does not have to be repeated, if the costumer was already identified at a previous entry by the casino provider (customer badge).
Conclusion	The AML/CFT Act requires CDD procedures to be applied at the entrance of the casino, regardless of the amount of gambling chips purchased.
Recommendations and Comments	

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	Criteria 16.2 states "Where countries allow lawyers, notaries, other independent legal professionals and accountants to send their STR to their appropriate self-regulatory organisations (SRO), there should be appropriate forms of co-operation between these organisations and the FIU. Each country should determine the details of how the SRO

	could co-operate with the FIU. *(Amendment to the original remark included in the MEQ template!)*
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	In Hungary notaries and attorneys are allowed to forward STRs to the HFIU through the self-regulatory bodies, in case of lawyers through the regional bar association, in case of notaries through regional chamber of notaries public without delay (Section 37 of the AML/CFT Act). The designated person who is obliged to forward STRs is not allowed to get to know the content of the STR sent. Accountants, auditors, tax consultants and tax advisors are required to report directly to HFIU (fulfilled through the designated person) when noticing any information, fact or circumstance indicating money laundering or terrorist financing. (Section 23 of the AML/CFT Act).
Conclusion	Compliant
Recommendations and Comments	

15.	**Reporting obligations**
Arts. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	According to Section 24 of the AML/CFT Act, the service provider shall suspend the execution of a transaction order, if any information, fact or circumstance indicating money laundering or terrorist financing in connection with the transaction order is emerged and the service provider considers the immediate action of the authority operating as the financial intelligence unit to be necessary for checking the data, fact or circumstance indicating money laundering or terrorist financing. In this case the service provider is required to submit a report without delay to the authority operating as the financial intelligence unit. The authority operating as the financial intelligence unit shall examine the report: *a)* in the case of domestic transaction orders within one working day after the report is submitted; *b)* in the case of foreign transaction orders within two working days after the report is submitted.
Conclusion	Compliant
Recommendations and Comments	

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	Section 23 (9) of the AML/CFT Act protects "reporting persons" ("designated person" for reporting, executive officers, employees and their contributing family members), in the case of good faith from any liability, if the report ultimately proves to be unsubstantiated. Additionally, Section 38 (4) of the AML/CFT Act stipulates that the fulfilment of the reporting obligations by attorneys and notaries public shall not constitute a violation of the confidentiality requirements prescribed in specific other legislation. Article 23 (2) of the AML/CFT Act requires service providers to designate one ore more persons ("designated person") to forward STRs to the HFIU. Therefore, the name or other personal data of the person who initially noticed the suspicious information is kept anonym. In case of notaries and lawyers, the system is similar: STRs are transmitted through designated persons of the self-regulatory bodies (regional chambers). Information regarding the reporting lawyers or notaries shall not be disclosed to the HFIU. In addition, the Hungarian Criminal Code (HCC) provides for with some more general provisions which grant protection to persons. First, there is Section 174 HCC (Coercion), which determines that any person who compels another person by applying violence or duress to do, not to do, or to endure something, and thereby causes a considerable injury of interest, is guilty of a felony punishable by imprisonment of up to three years, if there is no other criminal act involved. Secondly, *Violence against public officials* (Section 229 of the HCC) and *Violence against a person performing public duties* (Section 230 of the HCC) are applicable if the victim is a public official (e. g. notary) or a person performing public duties (e. g. employee of a postal service provider). Moreover, there is Section 176/A (2) of the HCC (*Harassment*), which determines that any person who, for the purpose of intimidation: a) conveys the threat of force or public endangerment intended to inflict harm upon another person, or upon a relative of this person, or b) purports to make believe another person, or a relative of this person to put that person in fear that any threat to his life or health, or to the life or health of a relative of this person is imminent, is guilty of a misdemeanour punishable by imprisonment for up to two years. Finally, Sections 62 to 64 on the Criminal Procedure Code (ACP) comprises provisions to protect witnesses (including reporting employees) during criminal procedures. Such measures include inter alia keeping personal data (including the name) of witnesses separately as

	well as permitting lawyers and other legal representatives of the obliged institutions to bear witness on suspicious transactions instead of the reporting employee in order to protect his or her identity.
Conclusion	Article 27 has been implemented by Section 23 of the AML/CFT Act, Section 174, 176/A, 229 and 230 of the HCC and Sections 62 to 64 of the Criminal Procedure Code.
Recommendations and Comments	

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 Section 27 (1) of the AML/CFT Act, the reporting persons and the authority operating as the financial intelligence unit shall not provide information to the customer concerned or to other third persons on the fact that information has been transmitted in accordance with Section 23, on the contents of such information, on the fact that the transaction order has been suspended under Section 24, on the name of the reporting persons, or on whether a money laundering or terrorist financing investigation is being or may be carried out on the customer, and is required to ensure that the filing of the report, the contents thereof, and the identity of the reporting persons remain confidential. The provisions cover in a comprehensive way the requirements of c. 14.2. as well as the requirements of Article 28 of the Directive. The exceptions, which are established under Art. 27 (2) to (7) of the AML/CFT Act are in line with the exceptions of the directive.
Conclusion	Article 28 of the Directive has been implemented by Section 27 of the AML/CFT Act.
Recommendations and Comments	

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	In line with Art. 34 (4) of the Directive financial institutions are required to keep their branches and subsidiaries located in third countries informed concerning their internal control and information system and the content of internal rule (based on the recommendations of the supervisory body

	and the requirements of the Ministerial Decree on the compulsory elements of internal rules and the Ministerial Decree on the equivalent third countries) (Sec 30 (2) AML/CFT Act)
Conclusion	The obligation stipulated in Art. 34 (2) of the Directive has been implemented into the AML/CFT Act.
Recommendations and Comments	The authorities need to consider implementing a requirement for financial institutions to take additional measures to effectively handle such risks

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	Where the legislation of a third country does not permit application of equivalent AML/CFT measures, financial institutions are required to prepare a comprehensive assessment on their branches and subsidiaries located in third countries. Furthermore financial institutions are required to inform the HFSA or the MNB with respect to cash processing operation, which shall forward that information to the Minister of Finance without delay (Sec 30 (3) AML/CFT Act).
Conclusion	Compliant
Recommendations and Comments	

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	In line with the directive all supervisory bodies determined in the AML/CFT Act are required to inform the HFIU without delay, in case of obtaining any information, fact or circumstance indicating reporting while carrying out supervision. (Art. 25 AML/CFT Act).
Conclusion	Art. 25(1) of the Directive has been implemented.
Recommendations and Comments	

20.	**Systems to respond to competent authorities**
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.

Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Sector specific laws require financial institutions to install data storage system capable of frequent retrieval of records specified by law to provide sufficient facilities to ensure that archived materials that they can be retrieved and restored any time (e.g. Section 13/C (6) (f) of the CIFE Act). In addition the AML/CFT Act requires financial institutions to have adequate and appropriate internal control and information systems to support CDD, record keeping and reporting. Furthermore according to the Ministerial Decree on the Compulsory Elements of Internal AML/CFT Rules internal rules have to comprise amongst others the rules regarding data processing and data storage obtained during CDD and a description of the internal controlling and information system which supports the carrying out of record keeping obligations. Data and information recorded when carrying out CDD or reporting by the financial institution has to be kept for 8 years (Section 28 of the AML/CFT Act).
Conclusion	Though credit and financial institutions are not specifically required to have such systems in place there is set of provisions in the law and other legislative acts that can be considered sufficient for this purpose.
Recommendations and Comments	

21.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in Art. 2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	The provisions of the AML/CFT Act have been extended to other professionals and categories of undertakings than those referred to in Article 2(1) of the Directive, namely persons: • providing commodity exchange services; • accepting and delivering domestic and international postal money orders; (those services seem to be covered by the definition "financial institution and therefore included in Art. 2(1) of the Directive); • persons engaged in trading with precious metals or articles made of precious metals (no threshold); • operating as a voluntary mutual insurance fund (seems to be covered by the definition "insurance company" and therefore included in Art. 2(1) of the Directive). The extension of the scope of the AML/CFT Act to those service providers is due to the potential risk of ML/TF and based on the experience of the different supervisory bodies. However no formal risk assessment has been carried out.
Conclusion	The mandatory requirement in Art. 4 of the Directive has been

	implemented. However, no formal risk assessment has been undertaken in this regard.
Recommendations and Comments	Hungarian authorities should consider undertaking a formal risk assessment of the professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes.

22.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	Based on Section 43 (1) of the AML/CFT Act the Minister of Finance is authorised to publish – by way of a decree – a list of third countries which impose equivalent requirements. The respective Ministerial Decree No. 28/2008 entered into force on 11th October 2008. The list provided in the Decree corresponds to what was agreed upon between the EU Member States in June 2008. The list has been drawn upon information available on whether those countries adequately apply the FATF Recommendations.
Conclusion	The provisions in the AML/CFT Act on equivalent third countries (including the list of those countries) correspond to the requirements specified in the 3rd Directive.
Recommendations and Comments	

APPENDIX I

Relevant EU texts

Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

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;

Excerpt from 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.

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. ANNEXES

See MONEYVAL(2010)26 ANN