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

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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

LITHUANIA

5 December 2012

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LIST OF ACRONYMS USED

AML/CFT	Anti-money laundering and combating the financing of terrorism
AML Law	The Law on the Prevention of Money Laundering and Terrorist Financing of Lithuania of 1997, as subsequently amended
C	Compliant
CETS	Council of Europe Treaty Series
CC	Criminal Code
CCP	Code of Criminal Procedure
CDD	Customer Due Diligence
DNFBPs	Designated non-financial businesses and professions
FATF	Financial Action Task Force
FCIS	Financial Crime Investigation Service
FT	Financing of terrorism
FIU	Financial Intelligence Unit (the Financial Crime Investigation Service – FCIS – according to law, in practice the MLPU)
IMF	International Monetary Fund
IN	Interpretative Note
IT	Information technologies
LC	Largely compliant
LFCIS	Law on the Financial Crime Investigation Service
MoU	Memorandum of understanding
ML	money laundering
MLA	Mutual legal assistance
MLPD	Money Laundering Prevention Division
NA (or N/A)	Not applicable
NC	Non-compliant
OCG	Organised Crime Groups
PC	Partially compliant
PEP	Politically exposed persons
STR	Suspicious transaction report
UTR	Unusual transaction report
TFC	Terrorist financing convention (the UN International Convention for the suppression of the financing of terrorism of 1999)
WCO	World Customs Organisation

I.PREFACE

1. This is the thirteenth report in MONEYVAL's fourth round of mutual evaluations, principally following up the recommendations made in the third round. This evaluation of Lithuania follows the current version of the 2004 AML/CFT Methodology,[1] but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations[2]. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the 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 SR I, SR II, SR III, SR IV and SR V), whatever the rating achieved in the 3rd round.

2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the 3rd round. Furthermore, the report also covers in a separate annex issues related to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). No ratings have been assigned to the assessment of these issues.

3. The evaluation was based on the laws, regulations and other materials supplied by the Lithuanian authorities, and information obtained by the evaluation team before, during and after the on-site visit to Vilnius from 23 to 28 April 2012. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Lithuania. 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 MONEYVAL experts in criminal law, law enforcement and financial issues and comprised: Mr Sorin TANASE (Legal Adiser to the Ministry of Justice, National Office for Crime Prevention and Cooperation for the Assets Recovery, Romania), evaluator for the legal aspects, Mrs Zsofia PAPP (Senior legal expert, Ministry for National Economy, Hungary) and Mrs Katia SATARIANO (Compliance Officer, Malta Financial Services Authority), both evaluators for the financial aspects, Mr Evgeni EVGENIEV (Head of International Information Exchange Sector - Financial Intelligence Unit, State Agency for National Security of Bulgaria), evaluator for the law enforcement aspects. The team was accompanied by Ms Cristina MARIN, Mr Fatih ONDER and Mr Christophe SPECKBACHER of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

[1] As updated in February 2009.

[2] It should be pointed out that the FATF Recommendations were revised in 2012, i.e. after the launch of MONEYVAL's fourth evaluation round. There have been various changes, including in respect of their numbering. Therefore, all references to FATF Recommendations in the present report concern the version of these standards before their revision in 2012.

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 co-operation
   7. Statistics and resources
   8. Annex (implementation of EU standards).
   9. Appendices (relevant new laws and regulations)

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 21st Plenary meeting – 28 to 30 November 2006), which is published on MONEYVAL's website[3]. 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 at the time of the 4th round, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2012 or shortly thereafter.

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

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 Lithuania at the time of the 4th on-site visit (23 to 28 April 2012) and immediately thereafter. It describes and analyses these measures offering 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 Recommendations in the FATF Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 have been re-assessed, as well as all those for which Lithuania 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 Forty Recommendations 2003 and the 9 Special Recommendations on Terrorist Financing 2001 but is intended to update readers on major issues in the Lithuanian AML/CFT system. It should be underlined that revised FATF Recommendations were adopted in February 2012; since MONEYVAL's 4th cycle of evaluations was launched in October 2009, the present assessment of Lithuania is still based on the former version of the 40+9 Recommendations.

Key findings

2. Since 1999, an interagency working group, which also includes representatives from the business sector, has been responsible for anti-money laundering and countering terrorist financing (AML/CFT) policies. The working group is responsible for, among other things, the analysis of trends, the elaboration of legislative and other proposals and the coordination of activities related to international organisations such as the EU and MONEYVAL.

3. The authorities consider the risk of terrorist financing to be low, even though no formal risk assessment was conducted to shore up this conclusion. A report issued by Europol in 2011on terrorism seems to corroborate the authorities' view since it indicates that there is no evidence of terrorist activity in or from Lithuania. With respect to the risk of ML, no description of the general situation of money laundering and profit-generating crimes was made available. Although the interagency working group is responsible for the analysis of trends, it appears that no such analysis was ever undertaken. Information obtained by the evaluators from open sources indicates that criminal activities have increased in recent years, possibly as a result of the financial crisis. The crisis brought about an expansion of the underground economy, although official figures appear to downplay the significance of this phenomenon. According to publicly-available information, the major proceeds-generating crimes, especially with respect to criminal organisations, are drug and human trafficking, smuggling and fraud schemes committed both domestically and on a cross-border level. Corruption also appears to be widely entrenched within the system. Proceeds are generally laundered through the integration of funds into financial and construction businesses and the acquisition of economic entities made insolvent by the financial crisis. According to information from open sources, flows of dirty money generated in foreign jurisdictions are introduced into the Lithuanian financial system through the use of shell companies and other entities, including non-profit organisations.

4. Since the Third Round Evaluation, Lithuania has introduced new provisions criminalising unlawful enrichment and allowing for extended confiscation. These provisions usefully complement the existing regime on confiscation and temporary measures. Nevertheless, certain key elements relating to the criminalisation of ML, as provided for under the Vienna and Palermo

Conventions, are still missing. There has been no real progress in terms of ML convictions. Certain initiatives were undertaken in 2011 to encourage a broader use of financial investigations with a view to targeting proceeds of crime. However, results in this area remain modest both in terms of ML convictions and confiscation of proceeds, especially when considering the high incidence of proceeds-generating crime in Lithuania.

5. The criminalisation of TF has remained virtually unchanged since the last evaluation, with all the attendant deficiencies identified by the evaluators in the Third Round. A draft law, which is intended to address those deficiencies, was sent to parliament at the end of 2010. However, no developments have occurred since then. The only notable improvement was the amendment to the definition of TF which is now aligned to EU standards in this area. A TF conviction concerning support to the Irish Republican Army was obtained in 2011 on the basis of the present legislation. An appeal from the judgement of the court of first instance is currently pending before the court of appeal.

6. The legislative framework dealing with the freezing of terrorist funds appears to be largely in place. Nevertheless, further clarification is required regarding the mechanism which is to be resorted to when challenging domestic and EU freezing orders. Further awareness and guidance on the implementation of the relevant UNSCRs would also be a welcome development. Additionally, the supervisory process to enforce the application of resolutions needs to be strengthened.

7. Notwithstanding the fact that the Financial Crime Investigation Service (FCIS) is the entity designated as the financial intelligence unit (FIU) of Lithuania, the Money Laundering Prevention Department, which is situated within the FCIS, is effectively responsible for the all the core functions of a FIU. The situation could present legal difficulties, which may potentially impair the effectiveness of the FIU. In addition to various other legal deficiencies within the legal framework regulating the FIU, it was noted that the analytical work undertaken by the FIU has not had a major tangible impact on the overall effectiveness of the AML/CFT regime in Lithuania. The same applies to the law enforcement authorities responsible for the investigation of ML/FT, although an improvement was registered since the last evaluation. The number of ML investigations initiated by law enforcement authorities is still considered to be low by the evaluators. Additionally, the approach to money laundering investigations in a significant number of investigations of predicate offences is not sufficiently proactive. The preventive AML/CFT measures are not being implemented effectively by the financial sector and DNFBPs. Although to some extent the required CDD measures are in place, some financial institutions and most DNFBPs do not appear to be sufficiently familiar with the full extent of their obligations. In particular, awareness of the requirements dealing with the identification of beneficial ownership and PEPs appears to be rather scant. With the notable exception of the banking sector, a large majority of financial institutions and DNFBPs have never submitted a STR to the FIU. Although supervision is exercised on all sectors, except for company service providers, it appears to be weak in practice and insufficiently focused on AML/CFT-related issues.

8. In principle, a number of measures guarantee the transparency of legal persons and arrangements. For instance, the existence of a central register of legal persons ensures that information on such entities is easily accessible. Nevertheless, certain information is still not available in electronic format. Additionally, it is debatable whether information on all the beneficial owners of legal persons is contained within the central register. The evaluators also noted that the authorities have still not reviewed the suitability of the legal and supervisory framework regulating non-profit organisations as recommended in the Third Round.

9. Lithuania has ratified all the relevant international conventions and it can provide a broad range of assistance to foreign countries, provided that cooperation is not technically hindered by the

shortcomings identified, for instance, with respect to the criminalisation of ML, FT and temporary measures.

10. Overall, the many deficiencies identified with respect to the implementation of the AML/CFT regime puts into question the effectiveness of the existing coordination mechanisms between the various competent authorities involved in the prevention of ML/FT.

Legal Systems and Related Institutional Measures

11. Lithuania has still not amended the criminalisation of ML (article 216 of the Penal Code) and the provisions used for the prosecution of terrorist financing ("terrorist acts" under article 250 PC) along the lines recommended in the 3rd round report of 2006. The former misses several elements such as the acquisition, possession or use of assets which must therefore be prosecuted under the offence of possession. Discussions showed that this situation is not satisfactory and that no effective use is made of the provisions on criminalisation.

12. Likewise, the scope of article 250 is still limited and it misses most of the elements contained in international standards (including the financing of individual terrorists and terrorist activities or organisations). Lithuania has adequate tools for the confiscation of criminal assets and instrumentalities. As for temporary measures, it was noted that these are subject to time limits in case of proceeds generated by lesser offences: Lithuania would need to carry out a review of current practice in order to determine the extent to which this impacts negatively on the overall efforts for the targeting of proceeds from crime, and to take any remedial measures.

13. Measures have been taken in recent years to encourage the broader use of temporary measures and confiscation, but these have not yet translated into convincing results in practice. Likewise, with respect to the mechanism for the freezing of terrorist assets, certain questions remain open, including as regards the mechanisms actually applicable to challenge domestic and EU freezing decisions, the level of public information and awareness of the mechanisms in place, supervision and coordination.

14. The FCIS has the overall responsibility for AML/CFT matters. A division within FCIS performs the actual functions of a FIU and receives from the business sectors concerned a variety of reports on suspicious, unusual and above-threshold cash transactions.

15. The Lithuanian FIU model was discussed at length again and it appears that all the weaknesses identified in the 3rd round remain. These include: lack of autonomy and leadership of the competent division; lack of resources of the division although it is entrusted with analytical, supervisory and awareness-raising tasks as well as support and information to other FCIS and law enforcement agencies, weaknesses in the actual ML analytical work etc. The overall consequence of the position of the above division is that the FIU tasks and responsibilities are diluted within those of the FCIS – which leads to the diversion of AML focus and efforts on other objectives and to a very limited number of prosecutions initiated for ML. This situation and the institutional arrangements in place are not in line with the FATF requirements.

16. As far as investigative and prosecutorial authorities are concerned, Lithuania has managed to establish a high degree of specialisation despite the country's limited size and these authorities generally seem to have the necessary legal tools to perform well. However, as indicated above, the targeting of criminal assets is still neglected. The authorities also still don't keep consolidated statistics on proceedings and the application of temporary and final measures.

17. As an EU member, Lithuania applies EU regulations concerning cross-border movements of funds with third (non-EU countries), i.e. where Lithuania constitutes an external border for the EU. It has nevertheless retained an intra-EU control of such cross-border movements (based on random checks). The current rules regulating this matter make use of specific administrative rules

and criminal law provisions on smuggling. These need to be more consistent and Lithuania needs to ensure the various requirements of SR.IX are covered. The Customs department, responsible for these controls is still not sufficiently involved in, and committed to the AML/CFT efforts.

18. The State Security Department (SSD) was recently deprived of its investigative powers although it is the main body responsible for dealing with terrorist and FT issues. Investigations would therefore need to be conducted by the unit responsible within the criminal police for organised crime and terrorism.

Preventive Measures – financial institutions

19. Preventive measures applicable to the financial sector are contained in the Law on Prevention of Money Laundering and Terrorist Financing (the AML Law) of 1997. It takes into account the requirements of the 3rd EU directive on ML and was amended last in December 2011.

20. All relevant financial institutions are subject to the AML Law and no particular banking or financial secrecy rules prevent access to customer information and financial records. The expected record-keeping requirements and wire-transfer rules are provided for in legislation, and the Customer Due Diligence (CDD) requirements were revised in 2008 to address certain deficiencies identified in the 3rd round evaluation.

21. However, these CDD requirements are still not entirely in line with international standards (e.g. there is no explicit requirement to understand the ownership and control structure where the customer is a legal person, the rules on the timing of verification and on failure to complete the CDD process before entering a business relationship need clarification). The definition of politically exposed persons still differs from the standard. Overall, the full implications of CDD measures are not well understood in practice and there is a lack of effectiveness of these measures.

22. Supervision for the financial sector as a whole was consolidated in the end of 2011 under the responsibility of the Bank of Lithuania, which is a positive initiative. Although the financial sector is traditionally subjected also to the general supervision of FCIS, it appears that supervision remains weak as regards several parts of the non-bank financial sector and the reporting of transactions by the institutions concerned (in particular insurance businesses and securities market intermediaries) is almost non-existent in practice. In this respect, the reporting mechanism – which makes use of general and additional sector-specific lists of mandatory and optional criteria (sometimes with several sub-criteria) – appears unnecessarily complex and in the light of the current reporting practice but also information gathered on-site, the reporting duties are not always well understood and with the notable exception of the banking sector, the effectiveness of the mechanism is questionable.

23. The attention of supervisors to the AML/CFT issues remains overall insufficient and the relatively satisfactory situation as regards the banking sector should not hide the fact that at the time of the on-site visit, two of the eight Lithuanian commercial banks had been the subject of severe controversies for alleged involvement in criminal activities such as fraud and embezzlement.

24. The system of sanctions for non-compliance also needs to be reviewed since the explicit sanctions for non-compliance with the AML Law, contained in the Code of Administrative Law Violations, can be applied only by the administrative courts, upon the initiative of the FCIS drawing a protocol of violations. Financial supervisors – now under the Bank of Lithuania – theoretically have at their disposal, in accordance with the sector specific regulations, a broad range of sanctions for non-compliance with legal and other requirements in general but they have exclusively applied warnings to date. The evaluators regret the lack of autonomous sanctioning power of the FCIS.

Preventive Measures – Designated Non-Financial Businesses and Professions

25. The AML/CFT Law applies also to a series of designated non-financial businesses and professions (DNFBPs): auditors; bailiffs; undertakings providing accounting or tax advisory services; notaries (and persons performing similar functions); advocates and their assistants (in a specific number of situations including when assisting the customer in the planning or execution of certain transactions, when managing assets or providing company or trust services including the management of their assets, when managing bank or securities accounts); trust service providers; business organising gaming. The Law also applies to any person engaged in economic and commercial activities involving trade in immovable property items, precious stones, precious metals, items of movable cultural property, antiques or other property where the value of items exceeds EUR 15 000 (or the equivalent in a foreign currency), to the extent that payments are made in cash.

26. The way casinos and real estate agents are subjected to the AML Law is not satisfactory. There is a also need to clarify the scope of the legal privilege for advocates and the situation in practice of company service providers is a major source of concern. Weaknesses have been identified in the effective implementation of CDD requirements by a variety of businesses, and as regards PEPs generally. Explicit and clear requirements are missing in various areas including for the professions and businesses concerned to ensure that the third party is supervised (and not just regulated), and as regards the ultimate responsibility for CDD (R.8 and 9). Weaknesses have also been identified in respect of the effective implementation of record-keeping requirements and vigilance for unusual and complex transactions.

27. Company service providers, as a distinct category of professionals, are a particular source of concern especially since this category of professionals and the actual services they provide, as well as just the number of entities concerned, is unknown. The broad privileges enjoyed by advocates, and the absence of requirements for internal AML/CFT procedures adds to the risks to which Lithuania is currently exposed that these various professions are misused for shielding the activities of criminals. The evaluators have gathered several concrete illustrations on site showing that these risks are real. At the same time, official risk assessments have not been carried out in Lithuania concerning risks associated with certain sectors and/or the evolution of services.

28. The reporting regime as regards DNFBPs is such that it requires urgent measures by the supervisors to make it effective. Several supervisors exist for the various DNFBPs and the FCIS retains overall responsibility in this area. However, supervision is weak and supervisors themselves – especially self-regulatory bodies - sometimes are not aware of their responsibilities and duties in this area.

Legal Persons and Arrangements & Non-Profit Organisations

29. The Lithuanian market is progressively adjusting to take into account services, legal constructions and entities known abroad but which are not part of the Lithuanian legal/business tradition. The AML/CFT Law now recognises trust arrangements but these do not exist in the sense of the FATF methodology and definitions (there is no transfer of property between the settlor and the trustee). Likewise, the Lithuanian authorities have assured the evaluators that shares and other financial products can only be issued in nominative and registered form. On the other hand, company service providers, offering a broad range of services including formation and domiciliation, seem to pose new risks, as seen above.

30. As indicated in the third round, Lithuania has a central register where information must be kept on all incorporated business entities, foundations, non-profit organisations etc. Since registration can

now be done on-line and within 3 days, the number of legal entities created every year (currently, about 10,000) is increasing rapidly. The total number of entities registered at the time of the visit (195,000) was about the same as in 2006. The register is publicly accessible on-line for basic data. More specific information (e.g. on shareholder structure) can be consulted on-site but the information is not loaded in a database and investigators thus need to process manually paper copies of documents containing ownership information, which could obviously be cumbersome. Lithuania needs to finalise the computerisation of the databases.

31. Drawing an accurate situation of legal communication obligations appeared to be difficult given contradictions between the information gathered on-site by the evaluators and the official position of the Lithuanian authorities. The former were told for instance that only four categories of entities must submit the list of shareholders to the Register and that in case where a proxy is involved in the creation of an entity, the information on shareholders is normally obtainable from him/her, but not systematically communicated to the Register. The authorities, on the other side, emphasise that a much higher number of business structures (if not all) are required to submit the information on the shareholding structure and that this applies whether or not a proxy is acting on behalf of the legal entity. The Lithuanian authorities also disagree with the alleged existence of company service providers who would be selling ready-made companies. All this of course needs reviewing and clarification by the authorities of the country.

32. There is no obligation for a newly created entity to start operations within a given period of time or to actually carry out an activity. The Lithuanian authorities are planning a reform to accelerate the liquidation procedure which is quite lengthy and currently concerns 23,000 entities. This is mostly welcome.

33. Lithuania has not carried out a formal review of legislation and supervisory arrangements applicable to non-profit organisation. Instead, it relies on the general supervision exerted by the tax authorities (over those which meet the turnover and other criteria that subject them to taxation). But this cannot be seen as a real alternative to the above formal review as regards the status and situation of the various forms of non-profit organisations, whether or not they qualify as charities. Lithuania thus needs to carry out such an overall review and to take additional measures as provided for under SR VIII, for instance awareness raising measures for the NPO sector.

National and International Co-operation

34. An interagency working group involving representatives of the various relevant authorities and supervisors is in place to coordinate the AML/CFT policies. Agreements also exist between the FCIS and other supervisors. Various deficiencies observed above put at question the effectiveness of the existing national coordination mechanisms (for instance the lack of consolidated statistics on seizure and confiscation, open questions concerning the mechanisms for the implementation of international sanctions on FT, the lack of focus of financial and DNFBP supervisors and of the Customs authorities on AML/CFT mechanisms, the lack of actual involvement of various DNFBPs in the AML/CFT efforts).

35. Lithuania is a party to all relevant conventions at UN level, as well as to a variety of instruments at European level. It is in a position to provide a wide range of assistance and in the light of feedback received from other MONEYVAL and FATF countries consulted before the on-site visit, the country enjoys a good reputation in practice. The main insufficiencies in the implementation of international legal instruments, and possible obstacles to Lithuania's ability to cooperate effectively are connected with the important gaps identified in particular in respect of the incriminations of ML and FT and the practical use of provisions on ML.

Resources and statistics

36. There are great disparities as regards resources of, and statistics kept by Lithuanian authorities and supervisors responsible for AML/CFT. For instance, the (MLPD within) FCIS, which plays an essential role as FIU, policy-maker, supervisor, coordinator and trainer, lacks the necessary resources to perform these various tasks (only about half of positions have been filled).

37. Statistics are generally available, albeit with some difficulty since various bodies do not keep them on an on-going basis for the assessment of their own contribution to the AML/CFT efforts and the deprivation of criminal assets more generally.

III. MUTUAL EVALUATION REPORT

1 GENERAL INFORMATION

1. This section updates the factual information set out in the 3rd round mutual evaluation report concerning Lithuania, its economy, its constitutional, administrative and judicial systems, its anti-corruption measures, the general situation regarding money laundering and the financing of terrorism, developments in the financial sector and regarding DNFPBs, the legislation and measures applicable to legal persons and arrangements, and so on.

1.1 General information on Lithuania

2. Lithuania, one of three Baltic States, covers approximately 65,000 km^2. In 2011, the country had an estimated population of about 3 million.

3. The country completed its accession to the EU in 2004. Lithuania has not adopted the Euro to date. Reforms implemented in Lithuania and accession to, and integration in, the EU have had a positive impact on the economic development of the country. Between 2004 and 2007, Lithuania's average annual GDP growth rate was 8.3 per cent. During this period, domestic demand accelerated rapidly, primarily due to increased access to credit, and was the primary driver of economic growth.

4. In the second half of 2007 and the first half of 2008, there was a severe and sudden deterioration of the global economy, accompanied by a major disruption in global capital markets and a global banking liquidity crisis in the third and fourth quarter of 2008. The deep and protracted global economic slowdown resulted in a significant reduction in exports and foreign investment, as well as falling consumer confidence, which led to a steep decline in domestic demand. These factors had a significant effect on the Lithuanian economy and resulted in GDP declining 14.8 per cent in 2009 as compared to 2008. GDP grew by 1.4 per cent in 2010 as compared to 2009. GDP in 2010 amounted to LTL 95.1 billion at current prices. The export sector was the main driver of economic growth in 2010, although sectors related to domestic demand also began to stabilise during 2010. Recently the economic situation has further improved. According to preliminary estimates, in the first nine months of 2011, GDP increased by 6.4 per cent as compared to the same period in 2010 and amounted to LTL 78.3 billion at current prices. The Lithuanian labour market was particularly impacted by the global financial crisis. The unemployment rate increased from 5.8 per cent in 2008 to 13.7 per cent in 2009 and to 17.8 per cent in 2010. In the third quarter of 2011 unemployment was 14.8 per cent, a decrease of 3.0 percentage points as compared to the same period in 2010.

5. Historically, Lithuania has had a large current account deficit. However, the current account deficit narrowed significantly beginning in the second half of 2008 as a result of global economic slowdown and, in 2009, Lithuania recorded a current account surplus of LTL 4.1 billion or 4.4 per cent of GDP in 2009, primarily as a result of a significant decrease in the merchandise trade deficit. The current account surplus in 2010 amounted to only 1.5 per cent of GDP. Lithuania has taken a number of measures in order to stabilise its public finances, restore investor confidence, enhance financing opportunities for businesses and build the foundations for economic recovery, including measures intended to reduce expenditures, improve labour efficiency and tax administration, encourage investment, create a more favourable business environment and ensure effective use of public funds allocated for investment ("Crisis

Management Plan" in December 2008, Economic Stimulus Package" in the beginning of 2009 etc.).

6. As a result of the recent global financial crisis, the Bank of Lithuania has taken measures to improve supervision of the domestic banking sector to avoid a liquidity crisis. These measures include requiring banks to provide daily reports with respect to changes in the composition of their assets and liabilities.

7. Currently, the Government's primary fiscal policy objective is to keep the general government sector deficit at a level which can be financed and subsequently to reduce it to a level which meets the relevant Maastricht criteria.

8. The Service industries accounts for the largest percentage of the GDP (about 71 per cent in 2011, mainly construction, wholesale and retail trade, repair of motor vehicles and motorcycles, transportation and storage, accommodation and food service activities, information and communication, financial and insurance activities, real estate activities, professional, scientific and technical activities, administrative and support service activities, public administration and defence, compulsory social security, education, human health and social work activities, arts, entertainment and recreation, repair of household goods and other services).

9. The informal/shadow economy would currently represent about 30 % of the GDP, according to interlocutors of the evaluators during the visit who referred to private sector estimates; the official figure would be lower (one of the official figures cited hereinafter for the years 2004 and 2008 is 15%).

Political, constitutional, administrative and judicial systems and hierarchy of law

10. No major change was reported compared with the information on Lithuania's political, administrative, constitutional and judicial systems set out in the 3rd round report.

Measures relating to transparency, ethics and the fight against corruption

11. Lithuania has been a party to the Council of Europe Criminal Law Convention on Corruption since 2002 and the Civil Law Convention on Corruption since 2003. The country was also a founding member of the Group of States against Corruption and it has always taken measures to ensure the implementation of the largest possible number of recommendations for improvement contained in the evaluation reports (no particular incident has been reported up to now). Lithuania has over the years adopted a number of legal, institutional and other measures, including action plans, to address corruption, an important criminal activity in the country[4].

12. In the Third Round Report, it was noted that the incriminations were globally sound and consistent but that the number of cases taken to court was quite low compared to the overall number of cases reported or alleged (this could be due to an excessively high standard of evidence needed to obtain a conviction and practitioners not using more broadly evidence based on objective factual circumstances). The situation of political financing appeared to be quite problematic in practice and the arrangements in place needed to be reviewed to ensure an adequate level of transparency, supervision and sanctions. Progress is currently monitored through GRECO's specific compliance procedure.

[4] See http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp

13. Lithuania has also been a party to the UN Convention against Corruption since December 2006 and evaluation documents have been released recently in the summer of 2012[5].

14. Lithuania is still confronted with important domestic corruption and bodies with AML/CFT responsibilities are considered to be equally affected by the phenomenon. According to the corruption map 2011 for Lithuania, released in November 2011, it would appear that "*Both entrepreneurs and public servants think that corruption is most often encountered in completing customs formalities and pursuing public contracts, financial support from the EU funds and permits for construction and reconstruction. Also, corruption often manifests itself in court trials, recruitment to public service and obtaining healthcare services*." (source: news published on the website of the Special Investigation Service, Lithuania's specialised institution dealing with the overall coordination of anti-corruption efforts, including preventive aspects and investigations into the more sensitive and complex cases). According to the above study "*the number of population who have given a bribe over the past 12 months was subject to a slight decrease from 24% in 2008 to 22% in 2011, whereas the number of entrepreneurs who have given a bribe has risen from 12% in 2008 to 17% in 2011*".

1.2 General situation regarding money laundering and the financing of terrorism

15. Lithuania has not submitted any overview or description in this respect. The replies to the questionnaire only contained the following table which provides a partial compilation of various offences against property and economic and other crimes registered by Lithuanian law enforcement bodies:

	2005	2006	2007	2008	2009	2010
CRIMINAL OFFENCES AGAINST PROPERTY						
Theft (Art. 178 LR CC)	37361	33759	30087	34370	35256	33029
Burglary						
Fraud (Art.182 LR CC)	3614	3422	3147	3053	4536	4396
Robbery (Art. 180 LR CC)	5206	4343	3802	3452	3363	2727
Theft of vehicles (Art. 178 LR CC)	6112	4693	3869	4052	4310	4018
Concealment						
Other CO against property (Art. 179, 181, 183, 184, 185, 186, 187, 188, 189, 189-1 LR CC)	5708	5397	5716	6838	7244	6644
CRIMINAL OFFENCES of ECONOMIC NATURE						
(Business) Credit fraud (Art. 207 LR CC)	26	100	26	44	118	38
(Fraud) Fraudulent management of accounts (Art. 222 LR CC)	300	343	295	409	561	487
Issuing of an uncovered cheque, misuse of a credit card						

[5] See http://www.unodc.org/unodc/treaties/CAC/country-profile/profiles/LTU.html

Tax evasion (Art. 219 LR CC)	34	27	44	42	93	62
Forgery						
Abuse of authority or rights (Art. 228 LR CC)	356	326	275	356	413	384
Embezzlement						
Usury						
Abuse of Insider Information (Art. 206 LR CC)	4	7	0	4	8	8
Abuse of Financial Instruments Market						
Unauthorised Use of Another's Mark or Model (Art. 204 LR CC)	5	3	34	34	36	68
Other CO of economic nature						
OTHER CRIMINAL OFFENCES						
Production and trafficking with drugs (Art. 259, 260, 261 LR CC)	1785	1644	1701	1803	2160	2155
Illegal migration (Art. 293 LR CC)	24	27	1	0	17	1
Production and trafficking with arms (Art. 253 LR CC)	389	321	266	284	350	366
Falsification of money (Art. 213 LR CC)	1170	1298	852	806	1430	648
Corruption (Art. 225, 226, 227 LR CC)	124	470	452	378	506	554
Extortion						
Smuggling (Art. 199 LR CC)	93	79	122	108	138	179
Murder (intentional) (Art. 129, 130, 131 LR CC)	390	294	280	301	259	217
Grievous bodily harm (Art. 135, 136 LR CC)	356	311	250	229	196	213
Prohibited Crossing of State Border or Territory (Art. 291, 292 LR CC)	629	641	367	337	335	366
Trafficking in Human Beings (Art. 147, 157 LR CC)	32	29	63	20	23	15
Violation of Material Copyright (Art. 191 LR CC)	1	2	1	0	2	0
Kidnapping (Art. 252 LR CC)	0	0	0	0	0	0
False Imprisonment						
Burdening and Destruction of Environment (Art. 270, 271, 272, 273, 274 LR CC)	47	36	38	56	95	125
Unlawful Acquisition or Use of Radioactive or Other Dangerous Substances (Art. 267, 267-1 LR CC)	7	2	0	3	1	3
Pollution of Drinking Water						
Tainting of Foodstuffs or Fodder						
TOTAL						
OTHER CRIMINAL OFFENCES (NOT INCLUDED ABOVE) against life and limb, human rights, honour, sexual integrity, public health, etc.						
NUMBER OF ALL CRIMINAL OFFENCES	**89815**	**82155**	**73741**	**78060**	**83203**	**77669**
Approximate economic loss or damage of all criminal offences						

16. As indicated above, the replies to the questionnaire did not contain an analytical overview of the crime situation including money laundering trends. Nor was such consolidated information made otherwise available. The evaluators therefore took from open sources of information, which have made use of police reports, a series of elements that may give an overall picture. The following paragraphs are excerpts of a summary of an academic report dealing with the recent evolution of organised crime in Lithuania, which was published on-line[6]. Although it does not constitute official information, the report in question took into account police reports and official data, and the evaluators have largely confirmed its findings with interviews on-site with the Criminal Police Bureau and other authorities. It should also be stressed that the Lithuanian authorities have endorsed this description (with the exception of references to the situation of corruption, for which it was agreed to draft a separate paragraph on the basis of other sources).

17. "The statistical data analysis has shown that during the economic decline the crime rate increased while unemployment rose and household income decreased. Since 2008, the number of recorded criminal offences has been increasing by 6 to 7 per cent annually and reached 83,200 in 2009. In 2009, the number of recorded criminal offences against the financial system increased by 47 %, and criminal offences related to the possession of narcotic or psychotropic substances increased by 19 %. The production of counterfeit currency and securities increased by 258.6 % (from 237 to 613 cases) and cases of fraud grew by 59.1 % (from 915 to 1456 cases). Furthermore, the unlawful production of alcoholic beverages and the number of crimes committed by intoxicated persons nearly doubled in 2009. Based on Lithuanian and foreign experience, an increase in crime is expected to continue until 2012–2013 as restraints on economic crimes take longer to implement and are related to a rise in the standard of living in the country.

18. The economic downturn has resulted in an increasing number of businesses experiencing financial difficulties, and some of them turn to the shadow economy as a means of salvation. This is particularly the case in the area of labor relations and in regard to failure to pay taxes (such as income and social insurance taxes). According to official Lithuanian statistics from 2004 and 2008, the shadow economy in Lithuania accounted for about 15 per cent of the GDP. The declining profitability of business entities, the rise in tax rates, and the worsening macroeconomic environment may increase the scope of the shadow economy to 20-22% by 2015.

19. The most significant trend within the Lithuanian organized crime community is the shift in power between the older and younger generations. The younger generations are gaining ground and seeking to increase their influence at the expense of older members. Lithuanian OCGs (organized criminal groups) are also aiming to become more interregional within Lithuania. Smuggling and distribution of drugs and excise good are the most important means for OCGs to gain power. These groups have created an infrastructure in the drug trade and developed channels of supply, as well as networks of distributors, in almost all regions of Lithuania. Even group members who are in prison remain in the drug trade and control it. Smuggling is a strong factor encouraging the creation of new OCGs that specialize in this function.

20. Free movement of people and commodities inside the EU facilitates the shipment of illegal cargoes, and flawed external border security allows smuggling. The increasing trade in used

[6] http://vilnews.com/?p=6312 citing the academic report "Economic Crisis and Organized Crime in Lithuania", by Associate Professor Aurelijus Gutauskas (Mykolas Romeris University, Law Faculty, Criminal Law and Criminology Department, Head of the Department), also available *in extenso* on-line.

vehicles in Lithuania has become a factor in the infrastructure for handling stolen property, with vehicles stolen in Western countries being exchanged for drugs. This made it possible for Lithuanian OCGs to play an influential, international role in heroin smuggling from the East to the West. The proceeds of crime are laundered through businesses in the financial and construction sectors [underlined by the evaluation team].

21. In Russia in 2009 and 2010, Lithuanian OCGs used opportunities related to the acquisition of excise goods to engage in smuggling goods into the West, and then into the Netherlands. The goods smuggled included cocaine, hashish, cannabis, amphetamines, methamphetamines and ecstasy (MDMA), heroin (in the region of Kaliningrad), stolen vehicles.

22. In 2010, there were 23 active organized criminal groups (OCGs) in Lithuania. Over the last two years, the number has remained much the same. Higher level OCGs are characterized by long-term activity or are recomposed from the members of broken or dismantled OCGs. The leadership is constantly renewed by young, new members or criminals who have already served prison sentences. The geographical location of Lithuania encourages the international activity of OCGs. Lithuania is located at the crossroads of illicit commodities traffic in both internal and external directions. The locality of OCGs preconditioned their specialization when it came to control of regions of the external European Union border. Some of them use their influence at the Belarusian border, others at the Russian border.

23. Smuggling and distribution of drugs and excise good are the most important means for OCGs to gain power. These groups have created an infrastructure in the drug trade and developed channels of supply, as well as networks of distributors, in almost all regions of Lithuania. Even group members who are in prison remain in the drug trade and control it. Smuggling is a strong factor encouraging the creation of new OCGs that specialize in this function.

24. Human trafficking has taken a new form as some victims agree to travel to countries with higher standards of living and engage in voluntary prostitution. The women's social vulnerability (unemployment, absence of income) and absence of other information results in their allowing others to take half of their income. Human trafficking is organized and committed not only by OCGs but also, in some regions of Lithuania, by individuals with no direct connections with OCGs.
    Human trafficking involves recruiting people (by deception or telling the truth), organizing transportation (by finding ways to forge documents and arrange transport), and searching for locations in which to sell and receive profit. Payment is sometimes extracted from the person's earnings. Victims of human trafficking are usually women aged 18 to 24. They are recruited through modelling agencies, radio shows, online dating, social networks such as Facebook and other websites, and often voluntarily leave their home countries. Cases are known in which women are offered legal jobs (as waitresses and dancers), but once transported abroad they are forced to provide sexual services. Violence is also often used to make them work and to intimidate others. Search and recruitment is conducted by low-level members of the OCGs. Women are not only recruited by procurers but also by working prostitutes who receive rewards of up to 600 Euros for a new woman.

25. In 2009, 4229 cases of fraud were registered by law enforcement agencies, and 2494 more were registered between January and July 2010. In comparison with 2008 (when there were 2773 cases of fraud), there is an obvious increase in the commission of this kind of crime.

26. The economic crisis has affected many fields of business. Payments among the participants in an economy in disarray and a massive increase in mutual debts raise the probability of an increase

in fraud crimes. Business difficulties stimulate the rise of new ways of perpetrating fraud, manipulation, shady financial transactions, and other forms of misappropriation. An increase of insurance fraud is also predicted. Companies that are going bankrupt, receiving no bank loans, and short of liquid assets will easily be attracted by offers of financial assistance or investment and will not investigate the source of the money. Analysis of investigations shows a trend of OCGs working to create favourable environment for acquiring legal businesses. By taking over insolvent companies and using them to launder the proceeds of crime, criminal groups would more easily be able to control a legal business.[underlined by the evaluation team] There has also been an increase in the number of fraud cases among legal entities. Companies are established or purchased in order to commit fraud, and commodities are purchased on the grounds of consignation. There are also cases of fraud in the recovery of VAT. Companies of this kind later go bankrupt or are illicitly sold to other persons, and further activity is undertaken. The persons who acquire them are usually antisocial, and trade is conducted using lost or stolen identity documents. (…)

27. "In order to launder money, foreign companies transfer their money to the accounts of fake foreign or Lithuanian companies that are usually established in Lithuanian banks by foreign citizens. Money is then transferred from one country to another through Lithuania financial institutions using the accounts of these fake companies. The proceeds of crime acquired in Lithuania may be transferred to foreign states, or the proceeds of crime in foreign countries may be transferred to Lithuania. Lithuanian companies transfer money to the fake company or non-profit (usually fitness clubs), and the money is cashed immediately after it has been transferred. After the money has been cashed, fake accounts are opened and managed by antisocial citizens of both Lithuania and foreign countries who often have connections with criminal groups. It is assumed that the major reason for transferring assets to Lithuania is to conceal the illegal origin of the assets. Nevertheless, cases have been discovered in which Lithuanian nationals used accounts in foreign countries while engaging in similar criminal activity. Lithuanian companies increasingly use companies registered in foreign countries and foreign nationals to transfer money to the accounts of fake companies or offshore companies in foreign banks. More cases occur in which money is cashed in neighbouring countries and in which the citizens of that particular country are involved."

28. The summary also contains critical statements on the impact of corruption on the criminal justice system (law enforcement services, prosecutorial authorities, lawyers). It also points out that corruption affects particularly tendering procedures. The evaluators recall the figures provided in the beginning of the present Chapter on the number of criminal offences registered for the years 2005 – 2010, which varies between more than 100 to more than 500 depending on the year considered. Other official data, for instance in the annual report of the Special Investigation Service, refer to more than 900 registered corruption offences for certain years (2009 and 2010)[7]. In the Eubarometer survey on corruption published in February 2012[8], Lithuania is the eighth EU country where the perception of corruption is the strongest: 89% of Lithuanian respondents considered that corruption is a major problem in their country – the EU average is 74% - with 64% believing that it is more widespread in Lithuania than in other EU countries. 56% of respondents consider that bribery and abuse of position for personal gain is widespread within the police (EU average: 34%); the figure is 58% when it comes to Customs services (EU average: 31%). The figure is even higher (64%) as regards the perception of corruption for persons working in judicial services (EU average: 32%). The figures are similar

[7] http://www.stt.lt/documents/planavimo_dokumenatai/STT_report__2011_EN.pdf , page 5; this report refers to official data compiled by the Information Technology and Communications Department under the Ministry of the Interior.

[8] http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf

(and partly above but also partly below EU average) for the perception of corruption among elected officials. For a series of other selected categories of public officials (those awarding public tenders and building permits, public health, education and inspection services), the figures vary between 29 and 64% and they all are above EU average percentages. Among the EU countries, Lithuania also had a particularly high percentage of respondents (27%) who acknowledged that they had been asked or expected to pay at least once a bribe in the past 12 months (EU average: 8%).

29. As far as terrorist financing is concerned, there is still no evidence for terrorist presence or terrorist activity in Lithuania. This seems to be confirmed in Europol's *Terrorism situation and trends report* for 2011[9].

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

Financial Sector

30. Lithuania has reformed its financial sector supervision since the 3rd round evaluation report, through a merger of its Financial Sector Supervisory institutions. At the end of 2011, the Law on Financial Institutions (Law No IX-1068 of 10 September 2002) was amended by the Seimas (Parliament) and supervision of banking, insurance and security sectors was consolidated under, and delegated to the Bank of Lithuania. Part of the staff of the former Lithuanian Securities Commission and the Insurance Supervisory Commission was rehired by the Bank of Lithuania. As from 1 January 2012, the Bank of Lithuania is the competent authority for licensing, regulating and supervising banking, insurance and securities market sectors.

31. A new unit, the Supervision Service, began functioning at the Bank of Lithuania, which is entitled to cover two different areas: prudential supervision and business conduct. The main focus of the supervision remains on the monitoring and control of major operating risks (credit liquidity, market and operational risk), as well as on the supervision of systemically important financial sector enterprises.

32. The Law on Financial Institutions, as amended, specifies activities which are considered as 'financial services' under Article 3(1):

1) receipt of deposits and other repayable funds;
2) lending (including mortgage loans);
3) financial lease (leasing);
4) payment services;
5) issuing and administering travellers' cheques, bankers' drafts and other means of payment, insofar as this activity is not covered by the services indicated in subparagraph 4 of paragraph 1 of this Article;
6) provision of financial assurances and financial guarantees;
7) conclusion of transactions, at one's own or a client's expense, on the money market instruments (cheques, bills, deposit certificates, etc.), a foreign currency, financial future and option transactions, the establishment of a currency exchange rate and interest rate, public securities and precious metals;
8) investment services;

[9] https://www.europol.europa.eu/sites/default/files/publications/te-sat2011_0.pdf

9) financial mediation (activities of an agent);
10) administering of money;
11) credit rating services;
12) lease of safes;
13) currency exchange (in cash);
14) settlement of payments between credit institutions (clearing);
15) storage and administering of monetary funds;
16) provision of advice to undertakings on the capital structure, production strategy and related issues as well as the advice and services related to reorganisation, restructuring and purchase of the undertakings;
17) provision of the services related to securities emissions;
18) issuance of electronic money;
19) administration of investment funds, closed-end investment companies, pension funds or investment companies with variable capital;
20) safekeeping, accounting and administration of financial instruments for the account of clients, including custodianship and related services such as cash or collateral management.

33. It further spells out the requirements set for the founders, participants and heads of financial undertakings and credit institutions engaged in the provision of financial services, the rights and duties thereof, conditions of, procedure for and peculiarities of the establishment, pursuit of business, termination and restructuring of financial institutions, as well as condition of, procedure for and peculiarities of supervision of the activities of the financial institutions providing licensed financial services.

34. The Law on Financial Institutions applies both to Lithuanian entities and to the branches of foreign financial institutions which provide, in Lithuania, financial services in accordance with article 3 (unless international treaties of Lithuania provide otherwise).

35. This Law also prohibits the providing of certain financial services without a licence and, in accordance with article 3(4), only credit institutions are entitled to: 1) receive deposits and other repayable funds from non-professional participants of the market; 2) borrow from non-professional participants of the market in excess of the size of the equity capital. Moreover, in accordance with article 3(5), financial institutions may provide financial services in a foreign currency, where provided for by laws of Lithuania.

36. On the basis of the relevant EU Directives on the right of establishment and the right to provide services (referred to as the passporting rights) as an EU Member State, the Bank of Lithuania has received 258 notifications from the financial services supervisory authorities of various other EU Member States informing about the intention of credit institutions supervised by them to exercise the freedom to provide services in Lithuania without establishing a branch.

37. As at 1 January 2012, the Lithuanian banking system is governed by the Law on Banks (Law No IX-2085 of 30 March 2004) which was further amended in December 2011 (amended Law No XI-1883 of 22 December 2011).

38. The banking sector continues to dominate the financial sector. As at 1 January 2012 the assets of banks comprised LTL 79 billion (EUR 22.9 billion). The annual growth of banking assets during 2011 was negative (3.3 per cent) due to the bankruptcy of the fifth largest bank at the end of 2011. In the beginning of 2012 the Nordic banks' operations in Lithuania reached almost 90 per cent of the local banking system's assets. There are 8 commercial banks in Lithuania.

39. In 2011, serious incidents affected the fifth largest bank (AB Bankas SNORAS). A significant proportion of the bank's assets were transferred abroad upon the initiative of its main manager who has fled to the United Kingdom. Money laundering was suspected, as well as mismanagement in the financial reporting. The bank was recognised as insolvent, it was temporarily nationalised and bankruptcy proceedings were initiated in the last quarter of the year after the withdrawal of the banking licence by the Bank of Lithuania. This intervention had no perceptible impact on the banking system, remaining stable. According to media information, the Belgian authorities have reported another Lithuanian bank as allegedly involved in ML and other irregularities a few years ago.

40. According to the Law on Payment Institutions (Law No XI-549 of 10 December 2009), payment services may be provided by licensed payment institutions. A payment institution may provide solely the payment services indicated in the licence issued by the Bank of Lithuania as the supervisory authority. Postal service providers are now required to obtain a payment services licence to be able to provide domestic and international postal order services.

41. On the 1 January 2012 the Law on Electronic Money and Electronic Money Institutions (Law No XI-1868 of 22 December 2011) came into force. Licensed electronic money institutions may now issue electronic money and provide payment services.

42. The Central Credit Union, which is governed by the Law on Central Credit Union, can undertake all activities listed under Article 3 of the Law on Financial Institutions but such activities are only performed with its members (credit unions, trade union organisations and other financial institutions). The activities of credit unions are governed by Article 4 of the Law on Credit Unions but such activities are restricted to the members, other credit unions, Central Credit Union and other named entities such as public organisations and institutions authorised by the Government of Lithuania. There are currently 74 authorised credit unions with assets exceeding LTL 1 633.4 million (EUR 473.1 million), representing 2.07 per cent of the banking sector assets.

43. The insurance sector consists of life and non-life insurance undertakings, insurance broker companies (independent intermediaries) and insurance agents (dependent intermediaries). The activities of the insurance sector are governed by the Law on Insurance (Law No IX-1737b of 18 September 2003). Insurance undertakings are not captured under the definition of a financial institution under the Law on Financial Institutions and hence the provisions of this law do not apply. Indeed, insurance undertakings may not engage in any other commercial economic activity other than insurances, reinsurance and related activities. In terms of the Law on Prevention of Money Laundering (Law No VIII-275 of June 1997) as amended in November 2003 (Amending Law No IX-1842), life assurance undertakings and insurance brokers are subject to the AML/CFT regime. There are however also several thousands of insurance agents (dependent intermediaries) not directly subject to the AML/CFT regulations.

44. The Law on Markets in Financial Instruments (thereinafter the LMiFI) (Law No X-1024 of 18 January 2007) governs the activities of financial brokerage firms which are defined as legal persons whose regular occupation or business is the provision of one or more investment services to third persons and/or the performance of one or more investment activities on a professional basis.

45. According to the Law on the Amendment of the Law on Collective Investment Undertakings (Law No X-1303 of 25 October 2007), a management company is any company the regular

business of which is management of investment funds and investment companies. The above mentioned law requires that the assets of the collective investment undertaking shall be entrusted to a depository for custody. The depository shall be a bank which has a right to render investment services in a Member State and having the registered office or a division in Lithuania.

46. The Law on Prevention of Money Laundering and Terrorist Financing (the "AML Law" - Law No VIII-1537 of 19 June 1997) was last amended in December 2011 (by Law No XI-1885 of 22 December 2011). It includes a list of competent supervisory authorities responsible for their respective sectors and their duties in this regard. With regards to financial institutions, the Bank of Lithuania is the supervisory authority for credit institutions, electronic money institutions, payment institutions, insurance undertakings engaged in life insurance activities and insurance brokerage firms engaged in insurance mediation related to life insurance, financial brokerage firms, management companies, investment companies and depository.

47. Guidelines intended for the prevention of money laundering and/or terrorist financing for credit, electronic money and payment institutions were issued by the Bank of Lithuania in May 2008. Prior to their dissolution, the Lithuanian Securities Commission and the Insurance Supervisory Commission had also issued guidelines for their respective sectors in March 2009 and May 2009 respectively.

48. The Financial Crime Investigation Service (FCIS) has overall responsibility for the AML/CFT supervision of all businesses and professions subjected to the AML Law (in practice, it focuses on businesses which are not supervised by a specific body or authority). It issued guidelines for postal services and leasing companies in January 2009.

49. The AML Law stipulates that the supervisory authorities are to co-operate with the FCIS and exchange information on the results of the inspections carried out in relation to the prevention of ML/FT on entities falling within their remit. In this regard, the FCIS entered into an agreement with the Lithuanian Securities Commission on the 16 September 2009, with the Insurance Supervisory Commission on the 21 October 2009 and with the Bank of Lithuania on the 24 November 2009.

50. The table below outlines the number of financial institutions present in Lithuania as at the time of the evaluation:

Financial Institutions	**2012**
Credit Institutions	8
Foreign Bank Branches	12
Credit Unions	74
Central Credit Unions	1
Payment Institutions	21
Financial Brokerage Companies	21
Management Companies	14
Insurance Broker Companies	105
Life Assurance Companies	5

Designated Non-Financial Businesses and Professions (DNFBPS)

51. Article 2(10) of the AML Law provides the list of obliged entities that should be considered as DNFBPs:

- auditors;
- bailiffs or the persons entitled to perform the actions of bailiffs;
- undertakings providing accounting or tax advisory services;
- notaries and other persons entitled to perform notarial actions, as well as
- lawyers and assistant lawyers, when acting on behalf of and for the customer and when assisting the customer in the planning or execution of transactions for their customer concerning the purchase or sale of real property or business entities, management of customer money, securities or other property, opening or management of bank or securities accounts, organisation of contributions necessary for the establishment, operation or management of legal entities or other organisations, emergence or creation, operation or management of trust and company forming and administration service providers and/or related transactions;
- providers of trust or company formation services or administration thereof not already covered under the above categories;
- persons engaged in economic and commercial activities covering trade in immovable property items, precious stones, precious metals, items of movable cultural property, antiques or other property the value whereof exceeds EUR 15 000 or the corresponding sum in a foreign currency, to the extent that payments are made in cash;
- companies organising gaming.

52. The 'State Gaming Control Commission' recently became the 'Gaming Control Authority'; it is still the competent authority responsible to licence, regulate and supervise the gaming sector which is governed by the Law on Gaming (Law No IX-325 of 17 May 2001) – as further amended in September 2011 (amended Law No XI-1578 of 15 September 2011).

53. The AML Law, as amended in December 2011, includes a list of competent authorities responsible for the supervision of their respective sectors, and their duties in this regard:

- the Department of Cultural Heritage Protection which supervises persons trading in movable cultural properties and/or antiques;
- the Gaming Control Authority which supervises gaming companies;
- the Lithuanian Bar Association which supervises advocates and advocate's assistants;
- the Chamber of Notaries which supervises notaries;
- the Chamber of Auditors which supervises auditors;
- the Chamber of Bailiffs which supervises bailiffs or the persons authorised to perform the actions of bailiffs;
- the Lithuanian Assay Office which supervises persons trading in precious stones and/or precious metals; and
- the Financial Crime Investigation Service, which has the general supervisory authority.

54. After the adoption of the AML Law, guidelines intended for the prevention of money laundering and/or terrorist financing for DNFBPs were issued by the relevant competent authorities in relation to their sector of competence and dated as follows:

- the Department of Cultural Heritage Protection – 9 February 2010;
- the Gaming Control Authority – 28 February 2009;
- the Lithuanian Bar Association – 2 July 2009;
- the Chamber of Notaries – 23 June 2009;
- the Chamber of Auditors – 26 October 2009;
- the Chamber of Bailiffs – 10 June 2009;
- the Lithuanian Assay Office – 15 May 2009; and
- the Financial Crime Investigation Service – 27 January 2009, in relation to the following sectors: accounting services and tax advising, intermediation in real estate transactions and dealers in property over a value of EUR 15 000 in cash. After the visit, in June 2012, guidelines were also adopted for providers of the services of trust or company formation or administration.

55. The AML Law stipulates that all supervisory authorities have to co-operate with the FCIS and exchange information on the results of the inspections carried out in relation to the prevention of ML/FT on entities falling within their remit. In this regard, the FCIS entered into agreements with the following supervisory authorities:

- the Department of Cultural Heritage Protection – 26 October 2009;
- the Gaming Control Authority – 16 June 2009;
- the Chamber of Notaries – 10 February 2010;
- the Chamber of Auditors – 14 September 2009;
- the Chamber of Bailiffs – 23 July 2009; and
- the Lithuanian Assay Office – 14 September 2009.

56. The table below outlines the number of DNFBPs present in Lithuania as at the time of the evaluation:

DNFBPs	**2012**
Casinos, games, betting	12 companies licensed: 2 for casinos, 2 for casinos and arcades, 4 for arcades, 4 for betting (1 of which also for arcades) Total number of business locations: 15 casinos, 113 gaming halls, 187 betting stations
Auditors	407
Advocates	1 799
Notaries	266
Bailiffs	115
Persons trading in movable cultural properties and/or antiques	60 (approximately)
Providers of accounting services and tax advising	593
Providers of the services of trust or company formation or administration	The number of company services providers is unknown It would appear that trusts – according to the FATF definition – do not exist in Lithuania
"Persons engaged in economic and commercial activities covering trade in immovable property	1 150 (dealers in precious metals and stones)

items, precious stones, precious metals, items of movable cultural property, antiques or other property the value whereof exceeds EUR 15 000 or the corresponding sum in a foreign currency, to the extent that payments are made in cash"	20 (Car dealers) 23 (Intermediation in real estate transactions)

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

57. The legal and regulatory framework applicable to legal persons has reportedly not changed much since the previous evaluation. The main piece of legislation is the Law on Companies (No. XI-654).

58. On 15 December 2009, the Parliament adopted the Law supplementing Article 41 (1) of the Law on Companies. This law (with some exceptions) entered into force on 1 March 2010. According to the revised article 41 (1) of the Law on Companies, private limited liability companies are now required to draw the list of their shareholders and to submit it to the Register of Legal Persons within 5 days from the date of the drawing up of the list. Private limited liability companies, incorporated prior to 1 March 2010, will have to submit their shareholders' list to the Register of Legal Persons not later than 1 October 2010. Whenever data included in the shareholders' list changes, the whole new list has to be submitted to the Register of Legal Persons (within 5 days from the date of the drawing up of the new list).

59. No detailed figures were made available as to the number of legal entities registered in Lithuania. At the time of the visit, there was a total of 195,000 entities recorded in the central national Register of Legal Persons (which is almost 30 000 more than at the time of the 3rd round visit). The register also gives an indication of companies engaged in a liquidation procedure and at the time of the visit there were more than 23 000 of such entities.

60. It was indicated that since registration can now be done on-line and in maximum 3 working days (sometimes it is much faster), the number is increasing rapidly and there would be about 10,000 new entities created every year.

61. To date, Lithuania has not been considered, at international level, as an off-shore financial centre. However, representatives of the Centre of Registers pointed out that they are increasingly confronted with businesses offering company service providers which do establish companies and sell their shares to clients interested in the acquisition of companies. This was confirmed by one of the businesses met by the evaluators whose clientele comprises persons who see Lithuania as a safe heaven. The Centre of Registers had reportedly raised this as a serious issue.

62. Trust service providers are listed in the AML Law as a category of professionals/entities subjected to the law. The Lithuanian authorities take the view that there are actually no such professionals in Lithuania and that their designation in the above law was primarily the result of efforts in favour of EU harmonisation in the context of the 3rd EU Directive (see also chapter 7.2).

1.5 Overview of the strategy to prevent money laundering and terrorist financing

a) AML/CFT strategy and priorities

63. In September 2009, the "joint steering committee" responsible for AML/CFT policy-making (established in 1999) was replaced by a "working group". The latter, which consists of representatives of various state institutions and professional associations, took over the various functions of its predecessor: to submit suggestions for FCIS' consideration regarding AML/CFT policies; to prepare summaries of ML techniques occurring in Lithuania and submit proposals for addressing these to state institutions, financial institutions and other subjected entities; to prepare legislative proposals. The group meets regularly and it discusses also matters related to MONEYVAL evaluations, the EU committees and groups activities etc.

64. It remains unclear whether any specific ML or TF trend has been discussed and whether any particular strategy or policy-making aspects have been discussed as a result of this.

65. The Lithuanian authorities refer to various measures including the elaboration in December 2007 of the Strategy for Strengthening Prosecution of Fraud in Lithuania (in the context of an EU twinning project with the United Kingdom), and the adoption in September 2009 of an implementing action plan for the years 2009-2012. It was agreed in this context that a) FCIS would take the main responsibility for investigating ML offences under article 216 CC, but that all other pre-trial investigation institutions, as well as prosecutors, should also investigate the presence of any ML component in their own cases of fraud; b) in all cases where the offender has obtained a profit out of robbery or his/her other crimes, proceeds would need to be confiscated and for such purposes, that the efficiency of asset recovery would need to be increased. The Lithuanian authorities stress that this was in fact the first time when a definition of financial investigations was given. A measure "To prepare recommendations on financial investigations stating what procedural and other actions should be performed during financial investigation " was included in clause 3.2 of the Fraud Plan.

66. In the context of the above anti-fraud plan and the accession to the United Nations Convention against Corruption in December 2006, work was initiated that eventually materialised with the adoption, in December 2010, of new provisions under article 72 CC (property confiscation) providing for extended confiscation of property under article $72^{3.}$ CC (it was recognised that the concept of criminal acts was not sufficiently wide, that the list of property subject to confiscation needed clarification and extending beyond money and other things having a material value, and that possibilities to confiscate property owned by third persons were limited). Also, a new article 189^{1} on illegal enrichment was introduced. In December 2010 also, a new article 170^{1} of the Code of Criminal Procedure became effective, which enables the prosecutor to secure the future confiscation of property at the pre-trial investigation stage.

67. In the context of the implementation of 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, a series of decisions were taken by the Government and the Lithuanian Criminal Police Bureau in 2009 and 2010 to establish a national assets recovery office (for communication and cooperation with foreign counterparts in the detection of criminal assets). Implementing measures were pending at the time of the visit.

68. Measures have also been taken to address the phenomenon of tax evasion and smuggling and to make the authorities' response more (cost-) effective: a) in August 2010, the FCIS, the Customs Department, the State Boarder Guard Service and the Police Department signed a cooperation agreement. The parties committed themselves to exchange the information on counteracting crimes, their prevention and other matters and coordinating the actions at central, county and regional level; b) implementing this agreement, the Criminal Information Analysis Centre (CIAC) was established in August 2010 to facilitate on a permanent basis inter-institutional cooperation including during operations and investigations, the analysis of information related to the (social, legal, economic and other) causes of certain crimes and violations. The CIAC can also make recommendations including on the priorities for operational and pre-trial investigation activities of the institutions involved in the agreement.

69. The Prosecutor General's Office, in support of the above initiatives, has set among the priorities for the years 2010-2011 the strengthening of criminal prosecution in respect of VAT fraud, smuggling and Customs fraud, acts detrimental to the State social insurance funds and fraud in respect of the EU structural funds.

70. The Government has also agreed to associate the State Tax Inspectorate (STI) to those efforts in order to secure civil suits, property confiscation or taxation of property and proceeds related to crime. The STI was therefore asked to contribute to the financial investigations of the FCIS - including into ML cases – (an objective of 3% was set for the annual increase in the identification of criminal assets in the pre-trial phase). The STI was also asked to support the prosecution services' effective use of the new provisions on confiscation, in particular article 189^1 on illicit enrichment (the STI county branches are committed to inform law enforcement institutions every time tax inspectors come across a situation where the tax payer's property exceeds his/her official income by at least 500 minimum standard of living (approx. EUR 18 000).

b) The AML/CFT institutions

71. The AML/CFT institutions are described in detail in the 3rd round mutual evaluation report and an update is available above (e.g. consolidation of the financial supervision under the Bank of Lithuania, preliminary decision to establish a Criminal Assets Office). There have not been significant changes since then. The Financial Crime Investigation Service, which is the authority designated as the FIU and main AML/CFT actor for coordination and supervision in those areas, underwent a reorganisation in 2010 without real practical consequences for the purposes of this report.

c) Approach concerning risk

72. Despite the existence of a coordination body for AML/CFT purposes, and a variety of institutions tasked with research and analysis functions, the evaluators were not advised of any formal national risk assessment focusing on potential ML/TF risk in Lithuania since the last evaluation.

73. An important development however, is that the new AML Law (implementing the requirements of the Third EU AML/CFT Directive and its implementing Directive) introduced the concept of the risk-based approach into the Lithuanian AML/CFT regime, which focuses primarily on simplified / enhanced customer due diligence (CDD).

74. Details of the current Lithuanian approach concerning risk are set out in section 3.1.

75. The supervisory authorities stated that supervision is conducted on a risk-sensitive basis. However, none of these has actually carried out an analysis of risks in the meaning of the international standards (whether global or sector-specific) that would assist in focusing supervisory efforts on areas identified as problematic due to higher risks.

d) Progress since the last MONEYVAL mutual evaluation

76. The 3rd round detailed assessment report on Lithuania was discussed in the Working group on coordination of activities to fight against money laundering and terrorist financing established by the Prime Minister. The competent state institutions were informed about the MONEYVAL report and asked to take into account and implement recommendations contained in the report. It was agreed that recommendations of the MONEYVAL experts will be implemented together with the implementation of provisions of the 3rd EU money laundering directive.

Legal Acts and Government Resolutions

77. The Law on the Prevention of Money Laundering and Terrorist Financing (hereinafter – the AML Law) was amended on several occasions since the 3rd round evaluation: in 2008 (to take into account the recommendations from the 3rd round and several legal EU instruments[10]), in 2009, and 2011.

78. The AML Law provides at present for (new) definitions of shell banks, politically exposed persons, family members, close associates, company service providers and third parties. It also lists some newly competent (supervisory) authorities:

- the Lithuanian Assay Office
  the Chamber of Auditors
- the Chamber of Notaries
- the Department of Heritage of Culture under the Ministry of Culture
- the Chamber of Bailiffs

79. New obligations were included for financial institutions and other businesses and professions :

- to identify not only the customer, but the beneficial owner as well
- to obtain information on the purpose and intended nature of the business relationship;
- to identify the customer and verify the customer's identity on the basis of documents, data or information obtained from a reliable and independent source
- to conduct ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relations;
- to keep information about the customer up-to-date.

[10] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on prevention of the use of the financial system for the purpose of money laundering (OL L 309, 2005, p. 15). 2. Directive 2005/60/EC of the European 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 technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ L 214, 2006, p. 29). 3. 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 (OJ L 345, 2005 p. 1). 4. 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 (OJ L 309, 2005, p. 9).

80. A new CDD procedure was introduced: a) simplified customer due diligence (in cases of minor threat of money laundering or financing of terrorism); b) enhanced customer due diligence (in cases of major threat of money laundering or financing of terrorism).

81. The AML Law extends the period of suspension of suspicious and unusual transactions from 48 hours till 5 working days and subjected entities cannot be held liable for the disclosure of information to the FCIS in accordance with the AML Law.

82. If the subjected entity is unable to identify the customer and the latter does not provide the information requested about the source of the money or property, or other additional documents as appropriate, the entity shall terminate the transaction or the business relationship, and shall consider making a report to the FIU - the Financial Crime Investigation Service (hereafter – the FCIS).

83. New obligations have been introduced to ensure the effectiveness of internal AML/CFT procedures and access to information by the FIU:

- to ensure participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases;
- to establish adequate and appropriate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication in order to forestall and prevent operations related to money laundering or terrorist financing;
- to communicate relevant policies and procedures and other requirements of the AML Law where applicable to branches and majority owned subsidiaries in third countries;
- to establish adequate internal systems, allowing to react to the inquiries of the FCIS concerning the information provided in the AML Law immediately.

84. The Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds entered into force from the beginning of 2007 in Lithuania. This Regulation implements requirements of the Special Recommendation VII on wire transfers (SR VII) of the FATF and it's provisions are applicable directly in all the EU member states. Implementing Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, in December 2009 Law of the Republic of Lithuania on Payment Institutions was adopted. The purpose of this law is to establish legal conditions for a newly licensed and supervised category of economic entities, namely payment institutions, to provide payment services in the Republic of Lithuania. The Law on Payment Institutions stipulates that supervision of payment institutions is performed by the Bank of Lithuania, and it regulates the activities, licensing, supervision, reorganization, liquidation and bankruptcy procedures and other peculiarities of payment institutions. The Law on Payment Institutions provides for obligations of payment institutions to apply measures of prevention of money laundering and/or terrorist financing.

85. The AML Law was amended accordingly and included payment institutions to the list of financial institutions. The provisions of the AML Law concerning financial institutions are applied for payment institutions accordingly. The AML Law as well provides that the Bank of Lithuania shall approve guidelines for payment institutions aimed at prevention of money laundering and/or terrorist financing, shall supervise the activities of payment institutions on the

prevention of money laundering and/of terrorist financing as well as shall consult payment institutions on the implementation of the guidelines.

86. The AML Law amendments of 21 April 2011 clarified the expressions "suspicious transaction", "unusual transaction", the obligation to report STRs of possible terrorist financing, the obligation to report to the FIU also attempted transactions; they also eliminated exemptions for lawyers, bailiffs and notaries to suspend suspicious transactions.

87. Article 18-1 of the AML Law was amended on 4 June 2011 with the supervision of cross-border movements of cash between Lithuania and EU countries (with subsequent information of the FCIS about inspections/searches conducted by the Customs); the Customs Department prepared "Regulations of cash money carrying control from the EU states to Lithuania, from Lithuania to the EU states and through Lithuania to other the EU states".

88. After the AML Law came into force, four implementing Government Resolutions were drafted by FCIS and were adopted by the Government:

- Resolution of the Government of the Republic of Lithuania *On the Approval of the Rules of Keeping the Registers of Monetary Operations Conducted by the Customer as Well as Suspicious and Unusual Operations and Transactions and on Establishing the Criterion Characterizing Major Continuous and Regular Monetary Operations Typical of Customer Activities* (Resolution No 562 of the Government of the Republic of Lithuania of 5 June 2008, hereinafter referred to as "Government Resolution No 562")

- Resolution of the Government of the Republic of Lithuania Amending Resolution No 527 of the Government of the Republic of Lithuania of 1 June 2006 *On the Approval of the Rules of Providing the Law Enforcement Agencies and other State Institutions of the Republic of Lithuania with Information Regarding Customers' Monetary Operations at the Disposal of the Financial Crime Investigation Service under The Ministry of the Interior* (Resolution No 527 of the Government of the Republic of Lithuania of 1 June 2007 (as amended by Resolution No 680 of the Government of the Republic of Lithuania of 9 July 2008, hereinafter referred to as "Government Resolution No 680")

- Resolution of the Government of the Republic of Lithuania *On Approving the List of Criteria on the Basis Whereof a Monetary Operation or Transaction is to be Regarded as Suspicious or Unusual and the Description of the Procedure of Suspending Suspicious Monetary Operation and Transaction and Reporting the Information about Suspicious or Unusual Monetary Operations or Transactions to the Financial Crime Investigation Service* (Resolution No 677 of the Government of the Republic of Lithuania of 9 July 2008, hereinafter referred to as "Government Resolution No 677")

- Resolution of the Government of the Republic of Lithuania *On the List of Criteria for Considering a Customer to Pose a Small Threat of Money Laundering and/or Terrorist Financing and Criteria Based on which a Threat of Money Laundering and/or Terrorist Financing is Considered to be Great, On the Approval of the Rules of Customer and Beneficial Owner identification as well as Detection of Several Interrelated Monetary Operations, and On the Establishment of the Procedure of Presenting Information on the Noticed Indications of Possible Money Laundering and/or Terrorist Financing and Violations of the Law of the Republic of Lithuania on Prevention of Money Laundering and Terrorist Financing as well as the Measures Taken against the Violators* (Resolution No 942 of the Government of the Republic of Lithuania of 24 September 2008, hereinafter referred to as "Government Resolution No 942")

89. Pursuant to the *Common Understanding of 18 April 2008 between the EU Member States on third countries equivalence under 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*, the Government has resolved to approve the List of states, dependencies and regions that are not members of the European Union but are recognized as applying the requirements equivalent to those set out in the AML Law. It was approved by Government Resolution No 1149 of 23 September 2009.

AML/CFT Guidelines

90. After the adoption of the AML Law, as well as the above-mentioned implementing regulations, the following initiatives were taken :

- on 15 May 2008, the Board of the Bank of Lithuania approved guidelines, intended for prevention of money laundering and/or terrorist financing for credit institutions;
- on 27 January 2009 the FCIS approved guidelines, intended for prevention of money laundering and/or terrorist financing for: a) providers of postal services who provide services of domestic and international money transfers, b) leasing companies, c) persons engaged in economic-commercial activities related to trade in real estate other property the value of which is in excess of EUR 15 000 or an equivalent sum in foreign currency where payment is made in cash, d) accounting undertakings or undertakings providing tax advice services. On 1 June 2012, after the on-site visit, the FCIS approved guidelines for company service providers.
- on 28 February 2009 the State Gaming Supervisory Commission approved guidelines, intended for prevention of money laundering and/or terrorist financing, for gaming companies.
- on 13 March 2009 the Lithuanian Securities Commission approved guidelines, intended for prevention of money laundering and/or terrorist financing for financial broker, investment companies with variable capital, management companies and the depository;
- on 15 May 2009 the Lithuanian Assay Office approved guidelines, intended for prevention of money laundering and/or terrorist financing, for persons engaged in trade in precious stones and/or precious metals;
- on 19 May 2009 the Insurance Supervisory Commission approved guidelines, intended for prevention of money laundering and/or terrorist financing, for insurance undertakings and insurance broking undertakings;
- on 10 June 2009 the Chamber of Bailiffs approved guidelines, intended for prevention of money laundering and/or terrorist financing, for bailiffs or persons authorised to perform bailiff's activities;
- on 23 of June 2009 the Chamber of Notaries approved guidelines, intended for prevention of money laundering and/or terrorist financing, for notaries;
- on 02 of July 2009 the Lithuanian Bar Association approved guidelines, intended for prevention of money laundering and/or terrorist financing, for advocates and their assistants
- on 26 of October 2009 the Chamber of Auditors approved guidelines, intended for prevention of money laundering and/or terrorist financing for auditors;
- on 30 of December 2009 the Bank of Lithuania approved guidelines, intended for prevention of money laundering and/or terrorist financing for payment institutions; on 12 of January 2012 the Bank of Lithuania also approved guidelines for electronic money institutions.
- on 9 of February 2010 the Culture Heritage Department under the Ministry of Culture of the Republic of Lithuania approved guidelines, intended for prevention of money laundering

and/or terrorist financing for persons, who conduct economy commercial activity, related to the trade of movable culture values and/or antiquities.

- on 10 March 2009 the Insurance Supervisory Commission has also adopted an "On-site inspection guide" on AML/CFT rules.

Mutual Agreements

91. Taking into account the MONEYVAL recommendations concerning the lack of supervision and coordination, article 4 (para.14) AML Law now requires from supervisory institutions to cooperate and exchange information about the results of AML/CFT inspections. Agreements to this effect were also concluded between 2009 and 2010 between FCIS and the State Gaming Supervisory Commission; the Chamber of Bailiffs; the Chamber of Auditors; the Lithuanian Assay Office; the Lithuanian Securities Commission; the Insurance Supervisory Commission; the Culture Heritage Department under the Ministry of Culture of the Republic of Lithuania; the Bank of Lithuania; the Chamber of Notaries. The aim is to avoid duplication of inspection activities through planning.

92. A collaboration agreement between the State Gaming Control Commission and the State Tax Inspectorate was signed in July 2009 (to limit tax avoidance/evasion in those sectors).

93. In order to optimize the efficient exchange of information on natural and legal person's accounts in Lithuania and foreign banks as well as information about natural and legal person's returns, using the PHP program, the FCIS electronically receives data from the State Tax Inspectorate databases under rules of mutual agreement.

International cooperation

94. The FCIS has further enhanced its co-operation with the European bodies, such as Europol (FCIS became associated with Europol Analysis Work File on carousel fraud – MTIC) and Eurojust. Contacts are further encouraged at operational level with counterparts of the neighbouring countries (e.g. Latvia in 2009 to discuss the progress of joint objectives). One of FCIS' priorities remains the strengthening of relations with countries outside the European Union. In 2009 and 2010, agreements were signed with the FIUs of the Russian Federation, the United Arab Emirates and Serbia.

95. FCIS is now connected to FIU.NET.

Training for obliged entities

96. During 2009-2011 special AML/CFT training program to all banks and auditors was conducted by the FCIS, as in earlier years. The main topics of the training programs: legal AML/CFT basis; latest AML/CFT trends and typologies; new technologies involvement to ML schemes; ML indicators; TF indicators; international sanctions list. UN Resolutions, EU Common Positions; E-money; CDD process. Record keeping. STR reporting requirements; PEP's; the FCIS as Lithuania FIU; international organizations to combat ML and TF.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Legislation and regulations

2.1 Offence of money laundering (R.1 & R.2)

2.1.1 Description and Analysis

Recommendation 1 (rated PC in the third round evaluation report)

Summary of reasons for the 2006 compliance rating

97. The third round report rated Lithuania partially compliant with R. 1, since the criminalisation of ML in article 216 CC, entitled "Money or property laundering" (literally: *Legalisation of dirty money or property*), did not comprise the various components of the international definitions and was limited to "concealment" and "legalisation" (of money or property). The position of Lithuania was that other components were provided for in article 189 on "Acquisition or handling of property obtained by criminal means" (the latter being in fact more akin to the offence of "receiving" of property).

98. This approach was not satisfactory as it led to inconsistencies in the legal regime applicable to money laundering offences, including the significantly lower sanctions applicable under article 189 CC. The existence of a third definition of money laundering in the AML/CFT legislation, different from the above criminal offences, and which was far more in line with international definitions was an additional source of concern from the perspective of a coherent treatment of cases from their detection to their adjudication. The report also pointed to the lack of effectiveness: despite the importance of major criminal activity, corruption and organised crime in Lithuania, most proceedings for ML had been dismissed or processed as tax/VAT fraud cases at that time. One conviction for ML had been obtained in 2005 in a case of stolen mobile phones (which involved a particularly cooperative foreign offender who was afraid of returning to his country) and the conviction for ML was passed together with a conviction for tax fraud.

General – legal framework

99. In 2010, draft legislation (draft law N°XIP-2562) was prepared by the Ministry of Justice to amend several provisions of the CC. The package implied many amendments to various provisions including in respect of article 216 CC so as to align the ML definition with international standards. In 2011, the Lithuanian parliament did not manage to adopt the whole legal package and left out the amendments concerning article 216. Instead, it suggested to merge the criminalisation of money laundering in article 216 CC and the offence of possession in article 189 CC.

100. Consultations have since then been going on, on the basis of a new draft aiming i.a. at abolishing article 189 CC and incorporating its elements into article 216 CC. From a legal standpoint, the situation has thus remained unchanged since the Third Round evaluation. The new draft also foresees the introduction of a new Article 224-1, which would define the term "property" (proceeds).

Offence of money laundering on the basis of the Vienna and Palermo conventions (C.1.1)

101. It is recalled that money laundering is defined and criminalised under article 216 CC as follows:

> ***Article 216. Legalisation of dirty money or property ("Nusikalstamu būdu įgytų pinigų ar turto legalizavimas")***
> *1. A person who, seeking to conceal or legalise the money or property of his own or another person while being aware that they have been obtained by criminal means, performs financial operations with this property or money or a part thereof, enters into transactions or uses them in economic, commercial activities or makes a false declaration that they have been obtained lawfully*
> *shall be punished by imprisonment for a term of up to seven years.*
> *2. A legal entity shall also be held liable for the acts provided for in this Article*

102. Paragraph 1 of the article requires that the offender a) seeks to conceal or legalise the money or property of criminal origin, b) performs for such purposes financial transactions, economic or commercial activities with those assets or makes false declarations about their real origin and c) knows that such money or property was obtained by criminal means.

103. It was recommended in the third Evaluation Round report that "money laundering should be criminalised more strictly and the criminalisation should follow Article 3(1)(b)&(c) Vienna Convention and Article 6(1) Palermo Convention, so as to cover also conversion, transfer of property or concealment, disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, if such conduct is carried out outside of a financial operation, conclusion of an agreement, an economic or commercial activity, or by means of a fraudulent declaration".

104. The Lithuanian authorities recall that, in their opinion, article 189 CC is meant to fill certain gaps and to cover the acquisition, possession or use of property:

> *"**Article 189. Acquisition or Handling of Property Obtained by Criminal Means***
> *1. A person who acquires, uses or handles* [disposes of] *a property while being aware that this property has been obtained by criminal means*
> *shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years.*
> *2. A person who acquires, uses or handles* [disposes of] *a property of a high value* [Note: about 250x 36€= approx. 9.000€] *or the valuables of a considerable scientific, historical or cultural significance while being aware that that property or the valuable properties have been obtained by criminal means*
> *shall be punished by a fine or by arrest or by imprisonment for a term of up to four years.*
> *3. A person who acquires, uses or handles* [disposes of] *a property of a low value while being aware that this property has been obtained by criminal means shall be considered to have committed a misdemeanour and*
> *shall be punished by community service or by a fine or by arrest.*
> *4. A legal entity shall also be held liable for an act provided for in paragraphs 1 and 2 of this Article."*

105. However, as already pointed out in the previous evaluation, article 189 CC – which was not originally meant to address the various forms of money laundering – misses all the other elements of the international ML definitions. On paper, it also diverges from article 216 in that it refers only to "property", whereas the latter refers to "money and property" (the Lithuanian authorities point out that it makes no difference).

106. In contrast with articles 216 and 189 CC, the ML definition contained in article 2 item 17 of the AML Law is almost word for word a transposition of the international definitions (the words "of legal status", which do not appear in the Palermo Convention for instance, were added in the first paragraph):

> ***"17. Money laundering shall mean:***
>
> *1) the conversion of legal status or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;*
>
> *2) the concealment or disguise of the true nature, origin, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;*
>
> *3) the acquisition, possession or use of property, knowing, at the time of receipt/transfer, that such property was derived from criminal activity or from an act of participation in such activity;*
>
> *4) preparation, attempts to commit and complicity in the commission of any of the activities mentioned in subparagraphs 1-3 of this paragraph."*

107. The Lithuanian authorities have always stressed that the AML Law definition had a purpose different from that of the criminal law; the evaluators of course agree with this, but as also already pointed out in the third round, it is the definition of the AML Law which is used for determining that a transaction is suspicious and needs to be reported to the FIU by the designated businesses and professions – and subsequently investigated/prosecuted if suspicions turn out to be grounded.

108. The on-site discussions confirmed that a number of practitioners continue to consider the offence of possession of article 189 CC as pursuing a specific objective; in their opinion, it should not be used to handle money laundering cases. In fact, this article is the (only) provision meant to implement the designated category of offences entitled "Illicit trafficking in stolen and other goods" (see infra the discussion on C.1.3, C.1.4). Nor is it(reportedly) considered as a serious crime by academics[11] and as indicated below (see C.1.2.1 on the autonomous character

[11] From a strict legal point of view, acts incriminated under article 189 PC are either misdemeanours (para.3) minor crimes (para.1) or serious crimes (para.2), according to the categorisation of criminal offences provided for in article 11 PC:

Article 11. Crimes
1. A crime shall be a dangerous act (act or omission) forbidden under this Code and punishable with a custodial sentence.
2. Crimes shall be committed with intent and through negligence. Premeditated crimes are divided into minor, less serious, serious and grave crimes.
3. A minor crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration of three years.
4. A less serious crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of three years, but not exceeding six years of imprisonment.
5. A serious [major] *crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the duration in excess of three years, but not exceeding ten years of imprisonment.*
6. A grave [very serious] *crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of ten years."*

of the ML offence), legal doctrine sometimes refers only to article 216 CC when analysing legal aspects of the ML offence. As can be taken from information below under C.1.8, article 189 CP is not among the list of offences for which Lithuania assumes universal jurisdiction (contrary to article 216).

109. However, since article 216 CC misses several elements of the international definitions, article 189 CC is still considered to have added value in Lithuanian AML practice. Supreme Court judges and prosecutors met on site gave several illustrations of the efforts of the criminal justice system to determine which one to invoke in a concrete case. According to practice, for instance, article 216 CC is applicable instead of article 189 CC where there has been a transfer of property or the assets have gone into the legitimate public circuit, in line with the concept of "receiving". Article 189 CC (or the criminalisation of the underlying crime) is to be applied, on the contrary, where a person is using criminal assets to continue financing illegal activities without having formally converted those assets or operated a transfer in ownership. A consequence of this seems to be that with reference to the theoretical ML model (placement, layering and integration), article 216 CC covers mostly "integration", whereas the international ML definitions are designed in such a way as to ensure that placement and layering are already prosecutable.

110. In the evaluators' view, it is clear that the above situation is not satisfactory, especially since prosecutions/convictions under article 189 CC do not entail the full consequences expected from international standards, for instance as regards sanctions, but also the application of temporary measures - which are limited in time as regards offences which are not "serious" or "particularly serious (grave)" crimes - see infra.

111. All the international elements of the ML offence would need to be included in article 216 CC. The evaluators noted that several practitioners met on site pointed to the fact that the criminal conduct referred to in article 189 CC should be retained as a separate, specific offence.

112. Otherwise, criminals prosecuted for possession of stolen goods of relatively low value could face disproportionally high sanctions. Some Lithuanian interlocutors also pointed out that merging the two offences (instead of just the main ML components under a single article) could dilute the specific nature and objective of the criminalisation of ML: convictions for possession (or other acts like fraud and theft) would possibly appear as ML convictions and thus ultimately alter the reality of prosecutorial and adjudication efforts in respect of genuine ML acts. This phenomenon can already be observed in Lithuania (see infra under "effectiveness").

113. The evaluators also noted that there seems to be an additional condition for liability under article 216 CC, namely that the offender (or a third person) has obtained an advantage or property through their acts. It could not be ascertained to what extent this could affect the liability of the offender who has spent or gratuitously disposed of the benefit of his/her crimes, or organised his insolvency. The Lithuanian authorities take the view that this is mostly a theoretical consideration.

The offence of ML should extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime (c.1.2)

114. Article 216 CC refers to the expression "money or property" which, according to the Lithuanian authorities, designates any type of property regardless of its value and which was "acquired in a criminal way". The criminalisation does not make explicit reference to the effect

that the laundered property can represent directly or indirectly the proceeds of crime. The on-site discussions did not entirely confirm the earlier findings in the third round, i.e. that article 216 CC would be broadly understood as covering both elements. During the on-site discussions (especially with judges), it appeared that in the quest for jurisprudential criteria allowing to make a distinction between articles 216 and 189 CC, the existence of a change in ownership plays an important role (for the applicability of article 216), in accordance with the Lithuanian concept of "legalisation". In the evaluators' view, such a change in ownership would normally imply a conversion of proceeds (sale) and it clearly shows the deficiencies of article 216 CC regarding the coverage of the mere "acquisition, possession or use of property".

115. For the sake of clarity, and as advised in the third round, the new draft legislation prepared by the Ministry of Justice also aims at introducing a new article 224-1, which would define the term "property" as "any property whatever its form that was directly or indirectly derived from a criminal act". The evaluators consider that this is timely, looking at the path taken by practitioners as a result of the dilemmas apparently raised by the respective scopes of articles 216 and 189 CC.

116. The new definition of article 224-1 would also be applicable in connection with article 189 CC which refers only to property, as indicated earlier.

117. As already underlined in the 3rd round report, there is another difference between article 216 and article 189 CC: whereas the former makes no distinction based on the value of assets, the latter applies only in cases where the value of the property exceeds a threshold of LIT 125 or approximately EUR 36 at the time of the visit (note: "high value" in paragraph 2 corresponds to 250 MSL i.e. about EUR 9 000). Although this would probably bear no real practical consequences, it is strictly speaking not in compliance with C.1.2 (which foresees no threshold) and it shows, again, the limits of article 189 CC for the purpose of criminalising ML.

It is not necessary for a person to be convicted of a predicate offence to be able to prove that an asset constitutes the proceed of an offence (C.1.2.1)

118. There is no element in article 216 (or 189) CC which would imply that any prior conviction of the perpetrator for the predicate offence is needed. In the 3rd evaluation round report (para.83), it was indicated that there was unanimity about the autonomous character of the ML offence following the first ML conviction obtained in 2005 (an Estonian citizen who had also been convicted in his country for trafficking stolen mobile phones). Although the conviction for ML was obtained almost concomitantly with the conviction in Estonia for the predicate offence, the court had made it clear in its argumentation that evidence for the existence of an underlying offence (and thus the criminal origin of assets) can be brought by means other than a conviction.

119. In the replies to the questionnaire for the present round, Lithuania pointed out that the amendments of 2004 would facilitate the prosecution of ML, since a stronger emphasis is made on the mental element (the offender's knowledge of the criminal origin of assets) within article 216 CC rather than on the material elements.. They also point to recent legal theory supporting the autonomous character of article 216 CC[12].

[12] For instance, section 8 of "the Commentary on the Criminal Code" ((Part III, articles 213-330) by A. Abramavicius et al, Registru centras, 2010, pages 44-45) states that the application of article 216 is not dependant on the fact as to whether a person was convicted for a predicate offence. The court is obliged only to establish whether money or property was derived from a criminal act.

120. However, seven years after the above decision of 2005, discussions with practitioners confirmed that it was still very difficult to convict an offender without hard evidence in the form of a conviction for the predicate offence. It appears that for all the cases leading to a final ML conviction in the period of 2006-2011 (6 cases, involving 11 persons convicted), the offenders were also convicted for the predicate offence in the same trial.

121. During the present visit reference was sometimes made to a recent case (from 2011 or so) involving an Estonian citizen and stolen mobile phones where there was no conviction for the predicate offence, but it would appear this was in fact the case from 2005 discussed in the 3rd round.

122. The evaluators underline that the working methods of the FIU contribute to the present situation since the first test applied to an STR in the context of the analysis is whether or not the customer has already a criminal record. If this is not the case, the file is usually not processed any further (see infra R.26 on the FIU).

The predicate offences of money laundering must cover all serious offences (C.1.3) - Definition of predicate offences using a threshold method (C.1.4)

123. Lithuania applies an all-crimes approach, which means that that acts incriminated in accordance with the Criminal Code are predicate offences for the purpose of money laundering. From this point of view, Lithuania exceeds the requirements of C.1.3.

124. *Designated categories of offence defined by the FATF*. These designated categories are criminalised in Lithuanian law as follows:

Designated categories of offences based on the FATF Methodology	**Offence in domestic legislation**
Participation in an organised criminal group and racketeering;	Art. 249 CC on "criminal association", art. 181 on "extortion".
Terrorism, including terrorist financing	Art. 250 CC on "act of terrorism"
Trafficking in human beings and migrant smuggling	Art. 147 CC on "trafficking in human beings"; art 157 CC on "child buying or selling";
Sexual exploitation, including sexual exploitation of children;	Art. 149-153 CC on "rape", on "sexual assault", on "sexual coercion" etc. ; art 157 CC on "child buying or selling"
Illicit trafficking in narcotic drugs and psychotropic substances;	Art. 259-269 CC on "unlawful possession of narcotics or psychotropic substances without the purpose of dissemination", "possession with the aim of dissemination", "trafficking in drugs among juveniles"; "trafficking in narcotic drugs and substances", "manufacturing or sale of equipment for the production of drugs and narcotics" etc.
Illicit arms trafficking	Art. 253-258 CC on "illegal possession of firearms, ammunitions, explosives", "illicit brokering of military equipment", "unlawful possession of firearms, ammunition and explosives" etc.

Illicit trafficking in stolen and other goods	Art. 189 CC on "Acquisition or Handling of Property Obtained by Criminal Means"
Corruption and bribery	Art. 225 CC on passive "bribery", 226 CC on "trading in influence", 227 CC on "active bribery"
Fraud	Art. 182 CC on "fraud", art.199(1) CC on customs fraud
Counterfeiting currency	Art. 213 CC on "counterfeiting, storage or disposal of money or securities"
Counterfeiting and piracy of products	Art. 191-195 CC (see below under "piracy")
Environmental crime	Art. 270-277 CC on the "use and storage of hazardous substances and equipment", "illegal waste disposal", "illegal waste transport", "destruction of protected areas", "misuse of protected species" etc.
Murder, grievous bodily injury	Art. 129-134 CC on "murder", "infanticide", "negligent homicide", incitement to or assistance in suicide etc.; Art. 135 -141 CC on "grievous body harm", "serious body injuries", "infliction of physical pain" etc.
Kidnapping, illegal restraint and hostage-taking	Art. 156 CC on "child abduction and child swapping", art. 152 CC on sexual harassment", art. 146-148 on "unlawful imprisonment", "trafficking in human beings", "exploitation of labor", "illegal restraint of action" etc.
Robbery or theft;	Art. 178 CC on "theft", art. 180 CC on "robbery"
Smuggling	Art. 199 CC on "smuggling"
Extortion	Art. 181 CC on "extortion"
Forgery	Art. 300 CC on "forgery and possession of forged documents"
Piracy	Article 251. Hijacking of an Aircraft, Ship or Fixed Platform on a Continental Shelf Article 252. Hostage Taking Article 180. Robbery (which can also be used in piracy cases)
Insider trading and market manipulation	Art. 217 CC on "insider dealing on the occasion of trading in securities", art. 218 CC on "manipulation of security prices"

125. As can be taken from the above, the Lithuanian Criminal Code provides for one or several provisions corresponding to the various FATF designated categories of offences, which is in line with C.1.3 (C.1.4 is not applicable).

Predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically (C.1.5)

126. It is not expressly stated whether laundering can take place in Lithuania, even if the predicate offence was committed outside the Lithuanian jurisdiction. However, the reference to property "acquired in a criminal way", included in articles 216 (and 189) CC, is to be understood broadly, irrespective of the place of commission of the offence. This is confirmed in court practice (see supra the ML conviction pronounced in 2005 against an Estonian citizen who had been sentenced for trafficking with stolen mobile phones in his country).

The offence of money laundering should apply to persons who commit the predicate offence (C.1.6)

127. There is no exclusion of self-laundering in the legal provisions (at least concerning article 216). The 2005 case mentioned above confirms that self-laundering is covered and as the discussions showed on-site, it would appear that the ML convictions obtained until the date of the on-site visit were mostly cases where the offender was convicted both for ML and the predicate offence. In fact, it would appear that obtaining a conviction of a third person, only on account of ML, is the real challenge for Lithuanian practitioners.

Ancillary offences applicable in relation to ML, including association with or conspiracy to commit, attempt, aiding and abetting, facilitating and counselling the commission (C.1.7)

128. Articles 22, 24 and 26 CC cover a broad range of ancillary offences including attempt and complicity. The latter refers to the involvement of a person in a criminal offence as a perpetrator, organiser, abettor and accessory, and through incitement and counselling, protection, shielding or removal of obstacles etc. These mechanisms are all applicable in relation to the ML offence (articles 216 and 189 CC). However, conspiracy is covered under another provision, namely article 21 CC (on preparation of crimes including in the context of a group). This provision was mentioned in the Lithuanian replies to the questionnaire in connection with SR.II on the criminalisation of FT (see *infra*), but not in connection with R.1. The evaluators understood that since article 21 CC is applicable only in connection with serious and very serious offences, this applies to article 216 CC but only to a limited extent to article 189 CC (paragraph 2), i.e. where the assets are worth approx. EUR 9 000 or more. This situation is problematic from the perspective of C.1.7 and it shows – once again – the limits of article 189 CC for the prosecution of ML.

Additional element (C.1.8)

129. The dual criminality principle is provided for in article 8 para. 1 CC, except for certain internationally recognised crimes, which are listed in article 7 CC:

"***Article 7. Criminal Liability for the Crimes Provided for in Treaties***
Persons shall be liable under this Code regardless of their citizenship and place of residence, also of the place of commission of a crime and whether the act committed is subject to punishment under laws of the place of commission of the crime where they commit the following crimes subject to liability under treaties:
1) crimes against humanity and war crimes (Articles 99 - 113(1));
2) trafficking in human beings (Article 147);
3) purchase or sale of a child (Article 157);
4) production, storage or handling of counterfeit currency or securities (Article 213);
5) money or property laundering (Article 216);
6) passive bribery (Article 225);
7) trading in influence (Article 226);
8) active bribery (Article 227);
9) act of terrorism (Article 250);
10) hijacking of an aircraft, ship or fixed platform on a continental shelf (Article 251);
11) hostage taking (Article 252);
12) unlawful handling of nuclear or radioactive materials or other sources of ionising radiation (Articles 256, 256(1) and 257);
13) the crimes related to possession of narcotic or psychotropic, toxic or highly active substances (Articles 259-269);
14) crimes against the environment (Articles 270, 270(1), 270(2), 271, 272, 274)."

130. It is recalled that article 216 (and 189) CC refer to property acquired in a criminal way. As a result of this, the ML offence is constituted under Lithuanian law where the predicate offence, when committed abroad, constitutes an offence both in that country and in Lithuania, with the exception of the above categories of offences. The evaluators therefore concluded that for the purposes of the criminalisation of money laundering a restriction exists in this respect. On the other hand, they welcome the existence of such exceptions and note that several of these offences are connected with organised crime activities, corruption and other major proceeds-generating offences.

Recommendation 32 (statistics relating to Recommendation 1)

131. The following statistics include the results of investigations, prosecutions and convictions for the offence of money laundering, under article 216 CC, since 2005:

2005												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	8	10	4	8	1	1			4	645 835	1	12 000 (1)
FT	0	0	0	0	0	0						

2006												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	23	21	1	1	0	0			8	13 367 430	0	0
FT	0	0	0	0	0	0						

2007												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	7	10	2	5	2	5			2	148 409	0	0
FT	0	0	0	0	0	0						

2008												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	11	8	2	2	1	1			3	2 289 036	1	(2)
FT	1	2	0	0	0	0						

2009												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	14	30	2	2	1	1			3	177 980	1	(3)
FT	1	1	0	0	0	0						

2010												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	37	47	2	2	1	1			5	20 495 637	1	46 258
FT	0	0	1	1	0	0					0	0

2011												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	34	43	7	13	3	4			8	60 853 854	2	13 043
FT	0	0	0	0	0	0					0	0

Notes: (1) one luxury car; (2) two yachts and real estate; (3) one luxury car and real estate

Additional information (C.32.3.b)

132. It is unclear whether an obligation exists for any relevant authority to collect and keep statistics on convictions. The evaluators noted that there is still no system for the centralisation of statistics in place and different sets of figures where provided, which were sometimes inconsistent or had to be checked and corrected on-site or after the visit. The above table and information is a corrected version supplied after the visit, which emanates from the Ministry of the Interior. It includes in principle also the investigations/proceedings handled by the police. It shows that Lithuania is in a position to supply consolidated statistics on proceedings and convictions for ML albeit with some difficulty.

Implementation and assessment of effectiveness

133. In the light of the above figures and the information collected on site, one cannot conclude that the country is deploying significant efforts to deal with ML. Although the number of investigations is not insignificant in absolute figures, they remain at a low level in comparison with the level of criminal activities acknowledged to exist in Lithuania, including as concerns major proceeds-generating offences.

134. The number of prosecutions and convictions is almost negligible with approximately three cases prosecuted and one conviction per year, on average, over the last 7 years. These cases are of minor relevance overall and they concern self-laundering of proceeds from offences such as swindle, theft or fraud involving relatively simple modus operandi. Also, the assets concerned could have been confiscated just on the basis of a conviction for the predicate offence.

135. In the opinion of the evaluators, this confirms the difficulties that the Lithuanian criminal justice system and AML authorities are still facing, year after year, and after four evaluation rounds, with this offence. It clearly puts at question the effectiveness of the criminalisation of ML.

2.1.2 Recommendations and Comments

136. There may be a variety of reasons for the limited number of cases initiated and of subsequent convictions for ML. The insignificant number of ML cases initiated by the FIU could be one factor. The deficiencies related to the legal framework could be another one. Practitioners are still not at ease with the way the criminalisation is construed. The evaluators have pointed out that the ML offence of article 216 CC is not fully adequate and misses several elements of the international definitions, especially the more objective acts of laundering (acquisition, possession or use of assets), and it is limited to the context of financial transactions, economic or commercial activities or false declarations about the origin of assets. To compensate for these gaps, the offence of possession of article 189 CC is used in practice but this raises additional difficulties. Discussions have clearly shown that the various elements should be included in article 216 CC, and that article 189 CC should be left out of the ML scope because of its particular purpose. In order to distinguish the scope of each offence, reference is made in judicial practice to the existence of transfer of ownership or property in a way that raises questions: it has become unclear whether both direct and indirect proceeds still fall under article 216 CC.

137. The on-site discussions confirmed the persistent reluctance of prosecutorial authorities to take ML cases to court if they do not have the means also to obtain a conviction for the predicate offence at the same time. Judges themselves confirmed that without a prior or simultaneous conviction for the predicate offence, it is difficult to consider a person guilty despite the reform of 2004 and the favourable position of academics on the autonomous character of the ML offence. The evaluators observed that practitioners (at least those met on-site) do not see the real benefits of an autonomous ML offence. The modest importance of cases which have been taken to court to date (for the laundering of proceeds from theft, fraud etc.) and of the assets confiscated following a ML conviction (half of which are material goods) also point to the fact that the potential of the offence is neither really perceived nor fully used.

138. The evaluators also noted that all official documents referring to the offence of money laundering only quote article 216 CC. This shows clearly that article 189 CC is not considered relevant in the context of AML policy-making.

Recommendation 1

139. Given the above deficiencies, article 216 CC should be modified and supplemented to cover all aspects of money laundering referred to in the Palermo and Vienna conventions. In particular, it should cover the mere acquisition, possession or use of criminal assets. Moreover, the criminal conduct should not be limited to situations involving financial transactions, economic or commercial activities or false declarations about the origin of assets.

140. Also, measures need to be taken to ensure that article 216 CC addresses in future the laundering of both direct and indirect assets and that all relevant ancillary offences are applicable.

141. Additional measures should also be taken to make investigators and prosecutors more aware of the full potential and benefits of the money laundering offence, so that greater use is made of the criminalisation of money laundering (both in situations where a criminal case is initiated for a predicate offence and in situations where the prosecution of ML should/could be initiated independently).

Recommendation 32

142. This recommendation is fully complied with.

2.1.3 Compliance with Recommendations 1 & 32

	Rating	Summary of reasons for the rating
R.1	**PC**	• the offence of laundering does not cover the acquisition, possession or use of criminal assets; there is also an excessive limitation generated by the fact that ML is constituted only where it involves financial transactions, economic or commercial activities or false declarations about the origin of assets • Uncertainties as to whether the laundering offence actually extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime • Although the law does not specify that a conviction is needed for a predicate offence, case-law has not confirmed this as yet • Preparation (conspiracy) of ML is provided in connection with article 189 CC only where assets are worth more than EUR 9 000. • Effectiveness: (1) weak proactive approach; (2) modest results with regard to prosecutions, particularly in view of the disparities between the extent of criminal activity on the one hand, and the numbers of proceedings and convictions on the other hand.

2.2 Criminalising the financing of terrorism (SR.II)

2.2.1 Description and Analysis

Special Recommendation II (rated PC in the third round evaluation report)

Summary of reasons for the 2006 compliance rating

143. The third round report rated Lithuania partially compliant with SRII. At that time, the criminalisation of FT resulted from a combination of article 250 CC on the commission and preparation of a terrorist act and of ancillary offences such as article 21 CC on the arrangement to commit a crime. The report pointed i.a. to the fact that this approach was, *per se*, contrary to the methodology and the FATF's Interpretative Note to SR.II, to the excessively narrow definition of a terrorist act (mostly defined by reference to the use of explosives), to the absence of a clear reference to the "financing" and to several other elements missing in the Lithuanian criminalisation.

General – legal framework

144. At the time of the fourth round on-site visit, the situation had remained unchanged since 2006. Reference was nonetheless made to draft legislation which had been sent to parliament at the end of 2010 (draft law XIP N°892(2)). The draft aims at introducing a new article 250-4 CC providing for a specific terrorist financing offence, in line with the MONEYVAL recommendations. It also aims at preparing for the ratification of the Council of Europe Convention on the Prevention of Terrorism (CETS 196).

145. Pending the above-mentioned amendments, the relevant provisions and the situation described in the third round report, including the analysis, remain applicable. Article 250 and article 21 CC, which must be considered together, read as follows:

Article 250. Act of Terrorism
1. A person who places explosives in a place of people's residence, work or gathering or in a public place with the intent to cause an explosion, causes an explosion or sets on fire
shall be punished by imprisonment for a term of up to ten years.
2. A person who carries out the actions provided for in paragraph 1 of this Article, where this results in impairment to the victim's health or destruction of or damage to a vehicle or a structure or the equipment located in the structure,
shall be punished by imprisonment for a term of three up to twelve years.
3. A person who causes an explosion, sets on fire or otherwise destroys or damages a building or an installation, where this poses a threat to the life or health of a large number of people, or who spreads radioactive, biological or harmful chemical substances, products or micro organisms
shall be punished by imprisonment for a term of three up to fifteen years.
4. A person who carries out the actions provided for in paragraph 3 of this Article, where they are directed against a strategic object or cause serious consequences,
shall be punished by imprisonment for a period of ten up to twenty years or by life imprisonment.
5. A person who forms a group of accomplices or an organised group for the carrying out of the actions provided for in this Article or participates in the activities thereof, also finances or provides material assistance or other support to such a group
shall be punished by imprisonment for a term of four up to ten years.
6. A person who forms a terrorist group whose purpose is, by carrying out of the actions provided for in this Article, to intimidate people or to unlawfully demand that the State, institutions thereof or international organisations carry out certain actions or refrain from them or participates in the activities thereof, also finances or provides material assistance or other support to such a group
shall be punished by imprisonment for a term of ten up to twenty years.
7. A legal entity shall also be held liable for the acts provided for in this Article."

Article 21. Preparation for Commission of a Crime
1. Preparation for the commission of a crime shall be a search for or adaptation of means and instruments, development of an action plan, engagement of accomplices or other intentional creation of the conditions facilitating the commission of the crime. A person shall be held liable solely for preparation to commit a serious or grave crime.
2. A person shall be held liable for preparation to commit a crime according to paragraph 1 of this Article and an article of this Code providing for an appropriate completed crime. A penalty imposed upon such a person may be commuted under Article 62 of this Code.

146. The evaluators also recall that the AML Law contains a separate definition of TF, which has been amended since the third evaluation round and now makes a cross reference to the EU standards:

Article 2 (definitions) of the Law on the prevention of money laundering and terrorist financing

*21. **Terrorist financing** shall mean the provision or collection of funds, by any means, with the intention that they should be used (or in the knowledge that they are to be used) in full or in part, in order to carry out any of the offences within the meaning of Articles 1-4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ 2004 special edition, chapter 19, volume 6, p. 18)*

The financing of terrorism as a criminal offence in accordance with Article 2 of the Convention on the Financing of Terrorism (C.II.1)

147. Lithuania has been a party to the TFC convention of 1999 since 2003 but it has not amended article 250 CC to reflect the various requirements of article 2 of the convention. As a result, the criminalisation is affected by many loopholes, such as: a) terrorist acts are defined essentially by reference to the threat to use, or to the actual use of explosive devices (and not to the various forms of violence used in practice or likely to be used by terrorists such as for instance where it involves biological or other hazardous material, hijacking of aircrafts and other vessels, taking of hostages etc.); b) the notion of financial support is present to some extent in article 250 paragraph 5 CC in connection with a group involved in the use of explosive devices but the financing of terrorist activities does not cover more systematically and more broadly any other acts, especially acts intended to cause death or serious bodily injury to a civilian, c) the financing of individual terrorists or terrorist organisations (that would be designated as such) is not covered; d) the concept and modalities of financial support are not defined systematically (collecting funds by any means, directly or indirectly, assets of any kind, whether tangible or intangible, movable or immovable, however acquired including documents and titles in any form etc.; d) it is not spelled out clearly that it is irrelevant that the funds are linked to a specific act (in fact, article 250 requires on the contrary a specific action).

148. The Lithuanian authorities have traditionally taken the view that elements of the international definitions of the FATF or TFC as regards terrorist actions, which are not covered under article 250 CC, would be captured by other provisions of the Criminal Code and that the financing of such conduct would fall under the ancillary offense of preparation of a crime of article 21 CC, the text of which appears above. But it is clear at present that this is not a satisfactory alternative and that this is a problematic matter from the viewpoint of C.II.1.

Terrorist financing offences should be predicate offences for money laundering (C.II.2)

149. Since Lithuania follows an all-crime approach, offences under article 250 are predicate offences for money laundering, which is in line with this criterion.

Terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur (C.II.3)

150. Under article 7 CC, Lithuania assumes universal jurisdiction for a series of crimes. Article 250 is included in the list of offences provided by article 7. The evaluators noted with satisfaction that, as a consequence, a person who commits any act criminalised in accordance with article 250 is prosecutable in Lithuania regardless of his citizenship, his place of residence, the place of commission of the crime, or the punishability of the committed act under the laws of the place where the crime was committed (no dual criminality requirement).

Application of criteria 2.2 of Recommendation 2 to the offence of terrorism financing (C.II.4)

151. There is no explicit provision in the CC or CCP stating that knowledge can be inferred from objective factual circumstances. As it was already taken note of in the 3rd round, the Lithuanian authorities stress that this is a common practice among practitioners and there is no need for an express provision in this respect. The essence of the inference is the person's real knowledge that money or property is rendered to the terrorist group as a support to their activities. This

knowledge can be proved from all evidences of the case as well as from objective factual circumstances – the mental state (intentional element of the offence of ML/FT) may be inferred from objective factual circumstances. The evaluators note that in the absence of a final court decision to date, this cannot be analysed further.

152. They also stress that discussions on this same issue in relation to the ML offence under article 216 showed that in reality the standard of proof for the mental element is rather high, which explains why ML convictions obtained to date always involve a prior or concomitant conviction for the predicate offence, and that it is often (if not exclusively) a self-laundering case. It is thus difficult to reach a positive conclusion. Additionally, it shows that the implementation of C.2.2 in connection with C.II.4 is an issue.

Application of criteria 2.3, 2.4 and 2.5 of Recommendation 2 to the offence of terrorism financing (C.II.4)

153. Paragraph 7 of article 250 provides explicitly that a legal person can be held liable for offences falling under this article, including those which refer to the financing (paragraphs 5 and 6).

154. The sanctions applicable are the following: temporary restriction of activities (including closure of a branch), liquidation of a legal person or a fine (articles 43, 47, 52 and 53 CC). For legal persons fines are not determined by reference to the category of the offence but to a single amount in all cases: up to 50 000 minimum standards of living (1 MSL=EUR 35 at the time of the visit), i.e. EUR 1 800 000. This range of sanctions appears effective, proportionate and dissuasive in the Lithuanian context.

155. A legal person cannot be punished twice under different laws (*ne bis in idem*) but the criminal sanctions can be applied in respect of the natural persons involved (imprisonment for a term of 4 to 10 years, or 10 to 20 years under paragraphs 5 and 6, for instance). C.2.3, C.2.4 and C.2.5 are met in connection with C.II.4.

Recommendation 32 statistics (in relation to SR II)

156. The relevant statistics on investigations, prosecutions and convictions are available in the table shown under R.32 in relation to R.1. It should be pointed out that one (non-final) conviction was obtained in 2011, on the basis of article 250 para.5, in connection with support to the activities of the Irish Republican Army (IRA). At the time of the visit, an appeal had been lodged against the first instance court decision (which is the reason why it does not appear in the table).

Implementation and effectiveness

157. Since 2005 three persons have been subject to an investigation into suspected terrorism financing and, as indicated above, there was one case involving a non-final conviction. The prosecution service and the police seemed well aware that although Lithuania is reportedly not directly affected by terrorist activities, this does not exempt them from this problem when it comes to the financial dimension of such activities. From the limited practice and the Lithuanian context, it is difficult to draw particular conclusions.

2.2.2 Recommendations and Comments

Special Recommendation II

158. It is recommended to criminalise the financing of terrorism, terrorist acts and terrorist organisations in accordance with the international standards, thus including such elements as the collection of funds and support to individual terrorists, and also situations where funds have not actually been used for committing a terrorist acts or linked to a specific terrorist act).

Recommendation 32

159. Statistics are available but not kept systematically and there was a reliability issue.

2.2.3 Compliance with Special Recommendation II

	Compliance rating	Summary of reasons for the rating
SR.II	**PC**	• No offence as such of terrorist financing, as provided for in the CFT treaties and many gaps in the incrimination including a) the fact that terrorist acts are defined narrowly (essentially by reference to the threat to use, or to the actual use of explosive devices), b) the financing of individual terrorists or terrorist organisations is not covered; c) the concept and modalities of financial support are not defined systematically etc. • It is doubtful whether objective factual circumstances are actually applicable in connection with FT (and ML)

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

2.3.1 Description and Analysis

Recommendation 3 (rated LC in the third round evaluation report)

Summary of reasons for the 2006 compliance rating

160. Lithuania was rated largely compliant under Recommendation 3 in the third round report. The reasons for the rating were the impossibility to apply confiscation to indirect proceeds such as income, profits or other benefits from proceeds of crime; the impossibility to apply temporary measures without a time limit in the case of article 189; lack of information demonstrating that sufficient attention is paid to proceeds by investigative bodies other than FCIS.

General – legislative framework

161. As indicated in the introductory section of this report, the provisions on confiscation were amended in December 2010. Article 72 was amended due to the following deficiencies: the concept of criminal acts was not sufficiently wide; the list of property subject to confiscation was not clear; unreasonably narrow identification of the property subject to confiscation only with money and other things having a material value; especially limited possibilities to confiscate property owned by third persons. A new offence of illicit enrichment was introduced

(art.189^1); b) a new provision on extended confiscation was introduced under article 72^3 ; c) a new article 170^1 was introduced in the Code of Criminal Procedure (granting clear powers to a prosecutor to trace and secure the confiscation of property during the pre-trial investigation).

Confiscation of laundered and other assets (C.3.1)

162. The general arrangements for confiscation are laid down in article 72 CC:

Article 72 – confiscation of assets
1. Confiscation of property shall be the compulsory uncompensated transfer into State ownership of any form of property held by the offender or another person.
2. Confiscation is applicable in respect of property used as an instrument or a means to commit a crime or as the result of a criminal act prohibited by this Code. Any form of property received directly or indirectly from a criminal act prohibited by this Code shall be considered as a result of this criminal act
3. The property which is subject to confiscation and belongs to the offender shall be confiscated in all cases.
4. Property subject to confiscation which belongs to other natural or legal person shall be confiscated regardless of the fact whether or not this persons has been convicted for the commission of the criminal act in the following cases:
1) where such natural or legal person was or must have been and could have been aware – at the moment of transferring the property to the offender or any other persons – of the fact that this property would be used to commit acts prohibited by this Code;
2) where the property has been transferred to that person on the grounds of a bogus transaction;
3) where the property has been transferred to that person as a family member or close relative of the offender;
4) where the property has been transferred to a legal person whose director, member of an managing body or participants controlling at least 50 per cent of shares (stocks, contributions etc.) of such legal person are the offender, his family members of close relatives;
5) when acquiring the property, this person or other persons, while holding an executive position in the legal person and entitled to represent it, to take decisions on behalf of the legal person or to control the activities of the legal person, were aware, or must have been aware and could have been aware that this property was used as an instrument or a means to commit a crime or as a result of a criminal act prohibited by this Code.
5. When the property which is subject to the confiscation is concealed, consumed, owned by third parties or if it cannot be taken away for other reasons, or it would be inappropriate for the court to confiscate the property, the court shall recover from the offender or other persons indicated in paragraph 4 of this Article a sum of money equivalent to the value of the property subject to confiscation.
6. When imposing the confiscation of property, a court must specify the items subject to confiscation or the monetary value of the property subject to confiscation.

Article 72^3. Extended confiscation of property
1. Extended confiscation of property is the transfer into the State ownership of the offender's property or part thereof that is disproportionate to his/her legitimate income where there are grounds to assume that this property has been obtained through criminal means.
2. The extended confiscation of property shall be applicable in the presence of all of these conditions:
1) the offender has been found guilty of having committed a less serious, serious or particularly serious (grave) intentional crime wherefrom s/he had or might have had a material benefit;
2) the offender holds property acquired at the time of commission of such crime, after the crime was committed or in a 5-year span until the commission of the crime, value of such property is disproportionate to his legitimate income and the difference exceeds the sum of 250 Minimum Subsistence Levels (MSLs), or has transferred such property to other persons during the period as stipulated in this subparagraph;
3) the offender fails to substantiate the legitimacy of acquisition of such property during the criminal proceedings.
3. The property indicated in Paragraph 2 of this Article which is subject to confiscation and has been

transferred to another natural or legal person, shall be confiscated in the presence of all of these conditions:
1) the property has been transferred to that person on the grounds of a bogus transaction;
2) the property has been transferred to the family member or close relative of the offender;
3) where the property has been transferred to a legal person whose director, member of an managing body or participants controlling at least 50 per cent of shares (stocks, contributions etc.) of such legal person are the offender, his family members of close relatives;
4) the person to whom the property was transferred or other persons, while holding an executive position in the legal person and were entitled to represent it, to take decisions on behalf of the legal person or to control the activities of the legal person, were aware, or must have been aware and could have been aware that this property has been obtained by criminal means or by using unlawful income of the offender.
4. Extended confiscation of property indicated in this Article shall not be applicable to the property or a part thereof which is held by the offender or third persons and cannot be recovered under the provisions of the international treaties of the Republic of Lithuania, Code of Civil Procedure of the Republic of Lithuania, other laws.
5. When the property which is subject to the confiscation is concealed, consumed, owned by third parties or if it cannot be taken away for other reasons, or it would be inappropriate for the court to confiscate the property, the court shall recover from the offender or other persons indicated in paragraph 3 of this Article a sum of money equivalent to the value of the property subject to confiscation.
6. When imposing the extended confiscation of property, a court must specify the items subject to confiscation or the monetary value of the property or a part thereof subject to confiscation.

163. The evaluators noted with satisfaction that with the amendments of 2010, article 72 covers without ambiguity:
- the instruments used,
- instruments intended for use,
- the direct and indirect proceeds of an offence, and
- the equivalent value of these proceeds in a variety of circumstances – which are explicitly mentioned,

and that it makes use, at present, of a broad concept when it comes to the designation of property/assets subject to confiscation.

164. The article makes no reference to the confiscation of laundered assets themselves but the interviews held on site showed that these assets may be confiscated as the proceeds or as an instrument of laundering. Since article 72 covers instruments used, and instruments intended for use in the commission of a crime, confiscation is in principle adequately applicable also in the context of terrorist financing (subject to the offence being considerably amended, as seen earlier under the developments on the criminalisation of ML and FT), and all this reflects C.3.1.

Assets concerned (C.3.1.1)

165. Article 72 covers all direct and indirect proceeds, and in principle this is to be understood broadly even though court practice remains limited in respect of the concept of indirect benefits. It should also be borne in mind that the concepts used to refer to criminal proceeds were amended in 2010 precisely to cover without ambiguity any benefit other than just money and "things having a material value" (as it was the case until then). The impact of the new provision needs to be tested. The evaluators are also pleased to see that possibilities for confiscation were extended in respect of assets held by third parties, and that in several situations contemplated in article 72, the intention of the third party can be deduced from objective factual circumstances.

Interim measures (C.3.2)

166. Interim measures are the subject of article 151 of the Code of Criminal Procedure, which was also amended in December 2010, in order to reflect the amended rules on confiscation :

Article 151 (Provisional restraint of ownership rights)

1. For the purposes of securing a civil claim or a probable (extended) confiscation of property, provisional restraint of the ownership rights may be imposed, upon the decision of the prosecutor, on a suspect or a natural person who, in accordance with the provisions of legal acts, is held financially responsible for the actions of the suspect, or on any other natural persons who possess the property received or acquired as a result of a criminal offence or who possess the property subject to confiscation which corresponds to the property defined by Article 72[3] of the Criminal Code of the Republic of Lithuania. Provisional restraint of the ownership rights may be imposed in conjunction with seizure or search.

2. The ownership rights of a legal person may be provisionally restrained further to the prosecutor's decision:

1) in order to secure a probable confiscation of property in the cases provided for by article 72 of the Criminal Code of the Republic of Lithuania and a probable extended confiscation of property in the cases provided for by article 72[3] of the Criminal Code of the Republic of Lithuania;

2) in order to secure a civil claim where there are sufficient grounds for bringing a civil action against a legal person;

3. A detailed list of the property of a person subject to provisional restraint of the ownership rights shall be made in the presence of persons indicated in Paragraph 4 of Article 145 of this Code. All the property subject to inventory must be shown to the persons present. In the official record of the provisional restraint of ownership rights or in annex thereof which is drawn up separately (detailed list of property) the quantity and individual features of the objects listed in the inventory must be specified. Provisional restraint of the ownership rights may not be applied in respect of objects which, pursuant to the list laid down by the laws of the Republic of Lithuania, are necessary for the suspect, his family members or persons dependant upon him.

4. The property ownership rights whereof have been provisionally restrained shall, at the prosecutor's discretion, be transferred to the custody of a representative of a municipal institution, or the owner of such property, or his family member, or his close relative, or any other person. The aforementioned persons must be informed that they will be held liable for the embezzlement or concealment of this property under the provisions of Article 246 of the Criminal Code of the Republic of Lithuania. For this purpose, a written pledge shall be taken from those persons. In case of necessity, this property may be taken from them. Where provisional restraint has been applied with respect to the bank deposits, all transactions involving them shall be suspended unless indicated otherwise in the decision on provisional restraint of the ownership rights.

5. A person subject to provisional restraint of the ownership rights shall be entitled to appeal against such decision of a prosecutor to a pre-trial judge. Such an appeal must be examined by the investigating judge not later than within seven days from the receipt of the appeal. The resolution of the investigating judge may be appealed against to a higher court. The resolution of the higher court shall be final and not subject to appeal.

6. Provisional restraint of the ownership rights imposed further to the prosecutor's decision may not last longer than for a period of six months. This term may be extended by the ruling of a pre-trial judge but for not more than two periods of three months. The pre-trial judge rulings on either extending or refusing to extend the time period of provisional restraint of the ownership rights shall be appealed in accordance with the procedure established by the law. Where the case has been brought before the court, the imposition of provisional restraint of the ownership rights or the extension of the time period of this penal measure shall be decided (in the form of a court ruling) by the court having jurisdiction over the case. The court ruling may be also appealed against.

7. In cases involving serious or particularly serious (grave) crimes or where the suspect has gone into hiding, the number of extensions of the time periods of this penal measure shall be unlimited.

8. Provisional restraint of the ownership rights shall be cancelled further to the decision of a prosecutor or a court ruling, where this measure has become unnecessary.

167. The above provision was analysed in detail in the 3rd round. It was found to meet to a large extent Criterion 3.2 as it allows the imposition of both restrictive measures (for instance for real estate, freezing of accounts etc.) and the transfer of assets into safe custody. However, a

restriction exists, since temporary measures under article 151 paragraphs 6 and 7 are limited to a period of validity of one year, except for serious and particularly serious crimes. In Lithuania just like elsewhere, investigations can take much longer than one year. This means that temporary measures cannot be used to secure a confiscation in a manner that would reflect the "all crime approach" followed by Lithuania as regards ML offences but also the confiscation regime discussed above: various relevant offences remain minor crimes, including elements of the ML offence of article 189 CC discussed earlier. This is an issue from the viewpoint of C.3.2.

Applications to freeze or seize property subject to confiscation to be made ex-parte or without prior notice (C.3.3)

168. The measures under article 151 of the Code of Criminal Procedure are applicable once a formal pre-trial investigation has been launched. The Lithuanian authorities explained that this article provides for the possibility to apply temporary measures rapidly, without prior notice or involvement of the suspect in preliminary specific procedural steps (which would obviously give him/her ample opportunities to place his/her assets in safe custody by the time restraining measures become effective). In particular, it was explained that paragraph 3 is not a general provision applicable in all cases where temporary measures are needed, as the evaluators originally thought. This paragraph deals only with the way temporary measures are to be applied where a search is conducted and it does not imply that such a search (with the subsequent drafting of a protocol of assets to be seized) must be conducted every time temporary measures need to be applied.

Adequate powers of competent authorities including the FIU to identify and trace assets (C.3.4)

169. The replies to the questionnaire and on-site discussions showed that the authorities have ample access to information and that no financial or commercial secrecy provisions can be cited to oppose investigators once a pre-trial investigation has been started. The FIU has access to a variety of databases and information. Recent agreements (see the introductory part of this report) have fostered the involvement of the tax administration in the conduct of criminal investigations that have a financial component, including money laundering, with a view to ascertain the actual property of a suspect. Although there is no centralised database of bank accounts in place, information on accounts held by a person can be obtained from the tax administration register, without the preliminary authorisation of a judge or prosecutor. All law enforcement authorities have direct access to it. Banking information with details of operations are accessible through a court order; in practice, law enforcement bodies often turn to FCIS to obtain the information directly since the latter is not subject to prior judicial authorisation procedure. All this goes in the direction of C.3.4 requirements. During the discussion and adoption of the present report, the Lithuanian authorities also provided assurances that the access to information is not impeded by any professional privilege and that once a formal investigation has been initiated, even advocates and their assistants are required to provide access to information. This being said, the legal privilege of this profession does prevent the FIU from obtaining any additional financial information from them in the context of the FIU's analytical work.

Protection for the rights of bona fide third parties (C.3.5)

170. Article 72 CC provides for the possibility to confiscate assets held by third persons in a series of specific circumstances which protect *bona fide* third parties (there are also appeal possibilities against freezing and confiscation measures), but allows the application of such

measures including where the person is a relative, or a fictitious transaction was made, or the assets have been transferred to a legal entity which is involved in the criminal activity. Article 151 CCP broadly reflects these mechanisms. In the opinion of the evaluators, Lithuania has found a fair balance between the protection of legitimate interests and the needs of an effective policy to target the proceeds of crime.

Authority to take steps to prevent or void actions, whether contractual or otherwise (C.3.6)

171. Article 151 of the CPC stipulates that property which has been provisionally subjected to a restraining order shall, at the prosecutor's discretion, be transferred to the custody of a representative of a municipal institution, or the owner of such property, or his family member, or his close relative, or any other person. The aforementioned persons must be informed that they will be held liable for the embezzlement or concealment of this property under the provisions of Article 246 of the Criminal Code of the Republic of Lithuania in case they do not implement the custody accordingly. For this purpose, a written pledge shall be taken from those persons. In case of necessity, the property may be transferred into the custody of another person or state institution. It was also indicated that where provisional restraint has been applied in respect of bank deposits or other financial assets, all transactions involving them shall be suspended unless indicated otherwise in the decision on provisional restraint of the ownership rights.

172. The on-site discussions confirmed that the current arrangements are not entirely satisfactory. There is no legal provision in place for clearly designating an entity which should manage seized assets where a safe public custody is necessary. In connection with this, it remains unclear how expenditures for managing the seized assets would be borne in cases where those assets would not be left in the suspect's custody. Practitioners also confirmed that no best practice or solution has been found to date to deal with assets the value of which is likely to fluctuate – such as financial products. Although Lithuania meets the requirements of C.3.6, there is nonetheless room for some improvement.

Additional elements (C.3.7)

173. With the introduction of the new provisions on extended confiscation of article 72^3C, Lithuania has added a powerful tool to its legal arsenal concerning the targeting of assets held by criminal organisations, since it requires the suspect(s) involved to determine the legitimate origin of their assets.

174. Both confiscation and extended confiscation of property (Articles 72 and 72^3 of Criminal Code) are applied not only following a conviction but also where a person has been released from criminal liability (because of the statute of limitation). As it was noted above, confiscation of property may also apply to other persons in cases where they knew or ought to have known that the property was obtained in a criminal way or the property might be used in the commission of further criminal offences.

175. Furthermore, the new criminal offence of illicit enrichment, also introduced in December 2010 through Article 189^1 CC, equally provides for a mechanism that allows to reverse the burden of proof where a person cannot demonstrate the legitimate origin of his/her assets and these exceed by far the official standard of living of that person:

Article 189[1] (Unjust Enrichment)
1.Any person who owns property worth more than 500 MSLs while knowing or having the obligation to and being able to know that such property could not be obtained from legitimate income, shall be punished by a fine or arrest, or by imprisonment for a term of up to 4 years.
2.Any person who has taken over property defined in Part 1 of this Article from third parties shall be exempted from criminal liability for unjust enrichment provided that – prior to the serving of Notice of Suspicion upon him – he reported about that to law enforcement authorities and actively cooperated with them to disclose the origin of such property.

176. At the time of the visit there were discussions about the possible constitutional challenge against this new provision but this has not materialised. The evaluators note that Lithuania has taken steps that go in the direction of C.3.7.

Recommendation 32 (statistics relating to R.3 – seizures and confiscations)

177. Lithuania is currently not in a position to provide consolidated national statistics on seizure and confiscation. Outdated information was provided in the replies to the questionnaire. The authorities stated that with the assistance of EU funds, the completion of a central national database had to start functioning by the end of October 2004. A similar project had already been alluded to in the 3rd round report of 2006. However, the information provided on site showed that these projects have still not materialised and that no such database exists. As a result, only sporadic information was available.

Implementation and effectiveness

178. As indicated above, Lithuania is not in a position to provide reliable overall data on confiscation and temporary measures to enable the evaluators to conduct a proper assessment of the extent to which such measures are effectively implemented in the country.

179. The evaluators welcome the various measures taken in recent years, as indicated in the introductory part of this report concerning new developments, in support of greater attention being paid to the financial dimension and the targeting of criminal assets. The evaluators are pleased to see in particular that inter-agency agreements have been concluded to facilitate cooperation and exchange of information in this respect. Furthermore, the amendments to the law and general instructions on confiscation and temporary measures encourage law enforcement agencies and prosecution services to look at the assets and possible ML elements during their investigation.

180. This being said, none of the authorities/agencies met on-site managed to convince the evaluators that the application of temporary measures or confiscation had become a common practice in their area of activity and the concrete examples given were more anecdotal than a real illustration of a policy. The Special Investigation Service for instance, which is dealing with high level and complex corruption cases, stressed that they had no information on seizure and confiscation concerning any of their cases. The evaluators recall that a number of criminal organisations operate in the country and that a number of proceeds-generating offences are reported annually (several of which are on the rise). None of the authorities was able to describe how they had conducted a financial investigation into the assets of an offender or a criminal scheme in order to reconstitute the financial flows of monies and/or the actual profit realised through criminal activity. The evaluators noted that the government had set in 2010/2011 an

objective of 3% for the annual increase in the identification of criminal assets in the pre-trial phase but it would appear that this did not have a discernible impact until now and it remains unclear how the results will be assessed in the absence of a reliable central data collection system. Given the lack of pro-activity observed in the 3rd round and the present evaluation round, such an objective could even have a counter-productive effect if the institutions concerned just stick to this objective. It comes also as a surprise that the concept of financial investigations would have required a definition in 2009 or so in order to become an objective for investigative/prosecutorial bodies; Lithuania has been involved for many years now in AML/CFT policies and this matter should not have been something new. The evaluators strongly encourage the authorities to devise further ways to support the implementation of the many good tools which have been available for several years now for targeting the proceeds of crime, and to ensure that all the recent initiatives translate into more convincing results. Without this effectiveness issue, Lithuania would largely comply with the requirements of R.3

2.3.2 Recommendations and comments

Recommendation 3

181. The seizure and confiscation system is solidly based in law and practitioners have at their disposal many good legal tools. Some improvements can still be made, though.

182. First of all, temporary measures can only be applied for a period of one year in the case of minor and less serious offences. Although the Lithuanian authorities explained that in practice, this bears little consequence since investigations into minor and less serious offences must themselves be completed within that time span, the country may need to ensure, through a review of past and current practice, that this does not hinder unnecessarily the effective targeting of proceeds from crime. It is recalled in particular that part of the conduct criminalised under article 189CC (which is also used in practice for the prosecution of ML) constitutes a minor or less serious offence. This matter would of course be automatically resolved should the main money laundering offence, under article 216 CC, be amended in accordance with international standards. But there are still possibly other relevant criminal (predicate) offences affected.

183. Lithuania should also review the sources of information available to investigative/prosecutorial bodies, and the FCIS, in order to ensure that they can determine in a rapid manner the number of accounts that a suspect holds, and that they are not unduly prevented from obtaining information held by advocates (currently, such information is available in the context of criminal investigations, but not for the purposes of the FIU's analytical work).

184. Lithuania should review the current arrangements for the management of assets subject to temporary measures, in particular the funding of such management and the safekeeping arrangements for assets subject to value fluctuation.

185. Finally, Lithuania needs to find additional ways to ensure that a much broader use is made of confiscation and temporary measures in practice.

Recommendation 32

186. Eight years after the initial deadline (2004) for the completion of a centralised data collection system taking into account confiscation and temporary measures, this project has not

materialised. The Lithuanian authorities should address this as a matter of urgency, not only in the light of international AML/CFT standards, but also for the purposes of their own assessment of objectives and policies.

2.3.3 Compliance with Recommendation 3

	Compliance rating	Summary of reasons for the compliance rating
R.3	**LC**	• Confiscation and temporary measures are generally available, although temporary measures are still subject to a time limitation for lesser offences (including elements of ML if article 189CC is used). • Access to information for the purposes of the FIU's work needs to be reviewed as regards information held by advocates • Effectiveness: modest results overall and in comparison with the criminal activity present in the country

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

2.4.1 Description and Analysis

Special recommendation III (rated PC in the third round report)

Summary of reasons for the 2006 compliance rating

187. Lithuania was rated partially compliant with SR III in the third round report. The report found that there was some uncertainty about a) the articulation between domestic and EU regulations (with consequences in particular as to how EU internals are to be treated and how to act on behalf of foreign jurisdictions; b) the way entities required to apply international sanctions were (kept) informed and how information was provided on the implementation of international sanctions.

188. At the time of the adoption of the report, the Lithuanian authorities had indicated that as far as EU internals were concerned, on 9 February 2006, the Government adopted Decree N°137 on measures implementing international sanctions aiming at EU internals (persons and entities), which ensures that international sanctions are equally applied to EU internals (persons and entities). A list of persons was appended to the decree. The Decree was then renewed on 18 October 2006 by Decree N°1027, and again after that date, on January 2008 by Decree No 113 (which is the version currently in force).

General

189. As a member of the EU, Lithuania should normally freeze funds and assets of terrorists on the basis of EC Regulations and complementary domestic legislation. As it was the case in the 3rd round, the replies to the questionnaire and the interviews on-site did not provide an entirely clear picture of the situation as to the extent to which EU regulations are actually to be applied directly and domestic provisions supplement, or on the contrary, transpose these. Representatives of FCIS and of the Ministry of foreign affairs, which are the main coordinating authorities in this area, could not provide much clarification either as to the developments since the previous round. The information presented in this section on the respective UN and EU requirements, their relationship and the way they are meant to be applied in Lithuania, is largely based on the content of other MONEYVAL reports.

190. UNSCRs 1267 (1999), 1390 (2002), and 1455 (2003) are implemented by Council Regulation No. 881/2002[13] 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 once they are published in the Official Journal of the EU are directly applicable and binding law in the EU member States.

191. As at the time of the 3rd evaluation round, the Lithuanian legal framework regarding SR III which is in force is the Law on the Implementation of Economic and Other Sanctions (22 April 2004, No IX-2126) – hereinafter the "Law on sanctions" - complemented by several Government Resolutions. Reference was made by the Lithuanian authorities to Government Resolution N°820 of 4 June 2002 *on measures implementing Resolutions of the United Nations Security Council*. The evaluators note that the Law on sanctions (article 7) provides for the direct applicability of EU rules and that Lithuanian provisions shall only have a complementary character. The above Resolution cannot be seen as an implementing provision. It contains mostly a list of actions that the government has resolved to adopt/implement through subsequent decisions.

UNSCR 1267 (1999)

192. The EU has implemented UNSCR 1267 (1999) and its successor resolutions under EU Regulation 881/2002, which provides for measures against Al-Qaeda and the Taliban. The EU Regulations have direct effect and applicability in the jurisdiction of the EU. EU Regulation 881/2002 requires the freezing of funds and economic resources belonging to, owned or held by listed individuals or entities and prohibits making available any funds or economic resources to, or for the benefit of listed individuals or entities. The lists (annexes) are updated regularly by the EU via Commission regulations.

193. Albeit the EU implementation follows the listing procedure of Sanctions Committee of UNSCR 1267, a certain delay of time is apparent between the UN listing and the subsequent EU implementation.

194. As already indicated in the 3rd round report, Lithuania does not directly implement the list of designated persons and entities in UNSCR 1267 through domestic legislation. Reliance is made on EC Regulation 881/2002 for such purpose. There is thus no action taken for more timely freezing of funds and economic resources in compliance with the changes of UN list. As a consequence the time gap between the listing of UN and the subsequent listing of EU Commission is of relevance in the context of Lithuania. Similarly, the fact that EC Regulation 881/2002 does not expressly extend to funds and assets that are owned and controlled indirectly by a designated individual, entity or organisation is also of relevance here.

UNSCR 1373 (2001)

195. The UNSCR 1373 provides a general obligation for States to freeze funds and economic resources of terrorists. The UNSCR 1373 itself is not a targeted financial sanction (no list is annexed), but it obliges states to adopt domestic targeted financial sanctions, or to have appropriate mechanisms for adopting such domestic targeted sanctions.

[13] 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 16 March 2011 by approving EC Regulation No 260/2011.

196. Turning to the relevant EU legislation, the obligation of UNSCR 1373 to freeze the assets of terrorists and terrorist entities is implemented jointly by Council Common Positions 2001/930/CFSP and 2001/931/CFSP, and EU Regulation 2580/2001. The EU Regulation 2580/2001 requires the freezing of all funds and economic resources that belong to the listed terrorists and prohibits making available any funds or economic resources for listed individuals and entities. The definition of funds, financial assets and economic resources determined by directly applicable EU Regulation 2580/2001 is in compliance with the scope of UNSCR 1373.

197. The Council of the EU has the authority for designating individuals or entities. Any member state may put forward names for the list and the Council ascertains, amends and reviews this autonomous EU list. This list does not include persons, groups and entities having their roots, main activities and objectives within the EU (EU internals).Domestic legislation is required to deal with European Union internals.

EU internals

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

199. The Lithuanian Law on sanctions (article 3 para.4) provides for the domestic applicability of international measures. The law also applies to listed Lithuanian nationals and entities present domestically or abroad. As indicated earlier, the broader issue of EU internals is dealt with by the government decree of 2006, with an appended list of persons and entities (it also appears on the Internet – see below). The decree has been renewed at regular intervals (October 2006, January 2008). Therefore, Lithuania does not rely exclusively on EU regulations, contrary to what was often indicated before and during the on-site visit.

Domestic mechanisms

200. As also indicated in the 3rd round report, the Law on sanctions has designated the Ministry of Foreign Affairs for the overall implementation of international sanctions. It has accordingly created a website for the implementation of international sanctions (http://www.urm.lt/sankcijos also in English http://www.urm.lt/popup2.php?item_id=13101). It is meant to provide information on:

- the nature of international sanctions and their objectives;
- the relevant legal framework, in particular, international, European and national legislation applicable with respect to implementation of international sanctions;
- the list of all currently applicable international sanctions, including financial sanctions;
- updates on current developments.

201. The Law on Sanctions provides that Lithuanian entities must immediately cease unilaterally or through negotiation, their business relationship or any transaction with listed persons, and should not engage in such new relations or transactions. Exemption of civil and other liability

for these measures is guaranteed. Sanctions (to be determined in subsequent rules) are applicable in case of non-compliance. At the time of the 3rd evaluation round, there were specific administrative fines and criminal law sanctions for not complying with obligations on international FT sanctions. The evaluators understand this has not changed. The Law on Sanctions also foresees that "A Resolution of the Government of the Republic of Lithuania concerning the implementation of international sanctions shall establish what actions natural and legal persons of the Republic of Lithuania must perform or are prohibited from performing when carrying out international sanctions." It remains unclear whether these additional implementing measures have been adopted/specified. Discussions with representatives of FCIS and the Ministry of foreign affairs have shed no light on this.

202. As indicated in the 3rd evaluation round, an Order of the director of FCIS N°96-V of 2005 further requires that any measure taken above shall be reported immediately to FCIS and the Ministry of Foreign Affairs which shall then forward the information to the EU Commission. Apparently, the Order was not updated following the amendments made to the AML Law as regards the list of obliged entities as the Order currently lists: a) financial institutions; b) auditors; c) Companies providing accounting or tax consultancy services; d) Notaries and persons authorized to perform notarial acts; e) Attorneys and attorneys' assistants; f) Persons engaged in economic-commercial activities; g) Postal service providers delivering domestic and international money transfer services. In any event, bearing in mind that this Order sets the starting point for the freezing procedure required at international level, it should be noted that the list is broader than that of EU Regulation 2580/2001 which targets primarily financial institutions. However, it remains unclear whether the concept of financial institutions captures all those listed as such in the EU Regulation (for instance insurance business). The Lithuanian authorities confirmed after the visit that there is indeed a need to update the above Order of 2005.

203. All the businesses and professions listed above are also required to check their list of customers in accordance with the lists of the EU (without naming the relevant texts) or any additional government decision.

204. Article 12 of the Law on sanctions provides as follows for the distribution of responsibilities for implementation of international sanctions:

> ***Article 12. Institutions supervising the implementation of international sanctions***
> *1. Within the limits of their competence, the following institutions shall be responsible for the implementation of international sanctions:*
> *1) the Ministry of Foreign Affairs of the Republic of Lithuania, the Ministry of Economy of the Republic of Lithuania, the Customs Department under the Ministry of Finance of the Republic of Lithuania, the Insurance Supervisory Commission of the Republic of Lithuania – for supervision of the implementation of economic sanctions;*
> *2) the Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania, the Customs Department under the Ministry of Finance of the Republic of Lithuania, the Insurance Supervisory Commission of the Republic of Lithuania, the Lithuanian Securities Commission – for supervision of the implementation of financial sanctions;*
> *3) the Government and the ministries of the Republic of Lithuania, the Migration Department under the Ministry of the Interior of the Republic of Lithuania, the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, the Lithuanian State Department of Tourism under the Ministry of Economy – for supervision of the implementation of political sanctions;*
> *4) the Ministry of Transport and Communications of the Republic of Lithuania, the Ministry of Foreign Affairs of the Republic of Lithuania, the Communications Regulatory Authority, the Civil Aviation*

Administration – for supervision of the implementation of communication sanctions;
5) the Ministry of Culture of the Republic of Lithuania, the Ministry of Education and Science of the Republic of Lithuania, the Department of Physical Education and Sports under the Government of the Republic of Lithuania, the Lithuanian State Department of Tourism under the Ministry of Economy – for supervision of the implementation of public sanctions.
2. When necessary, the Government of the Republic of Lithuania may appoint other institutions, which are responsible for supervision of the implementation of international sanctions set out in the Resolution.

205. From the information provided, it is not totally clear which steps have been taken by the respective agencies to ensure the effective implementation of sanctions (both in respect of non-EU and EU internals). For instance, as regards the financial supervisors and the FCIS, it would appear that general inspections or AML/CFT checks have not taken this matter into account (checking the list of customers, checking the level of knowledge and understanding of the EU and domestic rules on the implementation of international sanctions etc.).

206. As underlined in the 3rd evaluation round report, FCIS has sent in the past information to the financial supervisors and self-regulatory bodies to inform them about the website of the Ministry of Foreign Affairs and their obligations. No further measure had been taken to ensure the end-receiver had effectively been informed and no specific action had been taken in respect of other entities which are not subject to a supervisor or self-regulatory body. Representatives of FCIS informed the evaluators that certain measures had been taken since the 3rd round, but a precise overview was not available.

207. As also indicated in the 3rd evaluation round, the Lithuanian mechanism for the freezing of terrorist funds makes use of the AML Law, which requires reporting entities under article 9 to report suspicious monetary operations or transactions to the FCIS (the FIU). The current list of indicators for such suspicions is set out in a new Government decision N°677 of 2008 which provides for a revised criterion in respect of international sanctions: "*1.24. the customer, the customer's representative (if a monetary operation or transaction is carried out through the customer's representative), the entity for the benefit whereof a monetary operation or transaction is performed are subject to financial sanctions in accordance with the Law on the Implementation of Economic and other International Sanctions of the Republic of Lithuania of 22 April 2004*".

208. Although the EU instruments provide for a *sui generis* freezing mechanism, it remains unclear, once the FCIS has been notified under the AML Law or the Order of FCIS N°96-V, under which Lithuanian provisions subsequent measures would be taken, especially bearing in mind the extremely narrow scope of the provisions criminalising FT (see supra). Under the Order of FCIS N°96-V of 2005, the entity is normally obliged to take its own measures to avoid that the accounts be disposed of (item 11). It remains unclear whether this provision is sufficient.

Freezing actions taken by other countries (c.III.3); extension of c.III.3 to funds or assets controlled by designated persons (c.III.4)

209. The evaluators understand that in practice, most EU member states would generally opt to propose a specific person or entity for EU wide designation through EU regulations, rather than propose a person or entity to Lithuania for designation (as noted above, Lithuania has a mechanism to designate EU internals). The same would apply, of course, for any country in the world wishing to make similar proposals on a UN level.

210. As noted above, the Lithuanian authorities pointed to the reporting mechanism for suspicious monetary operations or transactions under the AML Law. This would be the mechanism used for measures under C.III.3. The evaluators understand that through the FIU cooperation channel, the suspension of transactions would be initiated domestically upon a foreign notification. But apart from this, it would appear that there is no mechanism to impose ad hoc freezing measures to assets more generally (as opposed to a given transaction), based for instance upon a foreign legal assistance request.

211. The Lithuanian authorities indicated that for the purposes of criteria III.4, they rely on the EU rules. Other MONEYVAL reports have identified that the scope of EU Regulation 881/2002 does not extend to funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets that are derived or are generated from funds or other assets owned or controlled by such persons or entities. It was pointed out that '*the definitions of terrorist funds and other assets subject to freezing and confiscation contained in the regulations do not cover the full extent of the definitions given by the Security Council (or FATF) – in particular the notion of control of the funds does not feature in Regulation 881/2002, in particular, the European Union Regulations implementing S /RES/1267(1999) simply direct the freezing of all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated on the list [Article 2 (1)].*' Nevertheless, it was pointed out that the Council of the EU adopted Regulation 1286/2009 to widen the scope of the freezing measures to any 'funds and economic resources belonging to, owned, held or controlled' by designated individuals or entities." It was therefore concluded that funds and economic resources owned or controlled jointly by a designated and a non-designated person, entity or organisation are also subject to freezing measures due to the direct applicability of EU regulations.

212. The definition of funds, financial assets and economic resources determined by EU Regulation 2580/2001, which is directly applicable in Lithuania, is in compliance with the scope of UNSCR 1373.

Communication to the financial sector (c.III.5)(c.III.6)

213. As indicated earlier, the Ministry of Foreign Affairs has created a website where information can be found. As underlined in the 3rd evaluation round report, FCIS has sent in the past information to the financial supervisors and self-regulatory bodies to inform them about the website of the Ministry of Foreign Affairs and their obligations. No further measure had been taken to ensure the end-receiver had effectively been informed. Representatives of FCIS informed the present evaluators that similar measures had been taken again since then but a precise overview is not available. It was indicated that in all regular training activities organised by FCIS (with banks, auditors, bailiffs, the association of traders in precious metals and stones and accounting service providers) FT was addressed both as regards the AML/CFT regime and the international sanctions.

214. It is still unclear whether there is any communication between the authorities and all subjected entities generally or other persons and the public at large, on their obligations in this area. From the above information on training, it appears that insurance businesses, securities and several categories of DNFBPs have not benefited from awareness-raising during training. Some of the categories of reporting entities met on the occasion of the on-site visit did not seem to be very clear on the obligations deriving from the legal provisions implementing the UNSCR

resolutions, or the manner in which the lists could be consulted. Many reporting entities seemed not to have instruments to verify all their clients against the lists in a timely manner.

215. No specific guidance was issued by the authorities and there is strong reliance on the information available on the above website. The evaluators noted that retrieving the webpage on the international sanctions on the website of the Ministry of foreign affairs is almost impossible if one does not have the exact address. The website is not really designed as a guidance tool and it does not contain all relevant information (for instance the Decree on EU internals does not appear there, nor did the UNSC resolutions at the time of the visit). There is no easily retrievable information either on how to initiate an unfreezing or delisting procedure. As in the 3rd round, the evaluators consider that more pro-active awareness-raising and information measures need to be taken.

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

216. As a member state of the EU Lithuania relies on the formal de-listing procedures which exist under the European Union mechanisms, both in relation to funds frozen under UNSCR 1267 and UNSCR 1373. EU Regulation 881/002 provides that the Commission may amend the list of persons on the basis of a determination by the United Nations Security Council or the Sanctions Committee (Article 7). EU Regulation 2580/2001 provides that the competent authorities of each member state may grant specific authorizations to unfreeze funds after consultations with other member states and the Commission (Article 6). In practice, therefore a person wishing to have funds unfrozen in Lithuania would have to take the matter up with the Lithuanian competent authorities who, if satisfied, would take the case up with the Commission and/or the United Nations.

217. 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 shall remain in effect until otherwise decided by the EU. Common Position 2001/931/CFSP of the European Union along with the EU Regulation 2580/2001 implements UNSCR 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 in order to contest the listing decision. Delisting from the EC Regulations may only be pursued before the EU courts.

218. However, in order to ensure procedural fairness, Lithuania should have a publicly-available procedure in place for any individual or entity to apply for a review of the designation. The Lithuanian authorities could not advise the evaluators about the existence of any effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international standards. At the time of the on-site visit, there had not been any cases in Lithuania requesting de-listing. The evaluators are also concerned that there is no clear Lithuanian authority responsible for advising individuals as to the procedures necessary for requesting delisting or related matters.

219. Finally, there is no procedure for domestic de-listing requests and for unfreezing the funds or other assets of de-listed persons with regard to EU internals. In light of the above, it was not clear to the evaluators that there are procedures or guidance at the disposal of a Lithuanian

resident or citizen who finds himself erroneously listed or Lithuanian authority to which such an individual could refer. The situation is thus problematic from the viewpoint of c.III.7.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8); Access to frozen funds for expenses and other purposes (c.III.9); Review of freezing decisions (c.III.10); Protection of rights of third parties (c.III.12)

220. Essential criterion III.8 requires that countries should have effective and publicly-known procedures 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. The freezing as such would be automatically applied without any national measures. Financial institutions, which hold the funds or other assets, are required to inform the Ministry of Foreign Affairs and the FCIS about the freezing applied.

221. The evaluators could not identify any specific procedure which deals with the (initiation of) unfreezing in a timely manner of 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. As indicated earlier, the information website does not address this matter. This is a lacuna from the perspective of C.III.8.

222. With regard to releasing funds that are necessary for basic expenses (humanitarian exemptions), UNSCR 1452 (2002) provides that the freezing measures under UNSCR 1267 do not apply to funds and economic resources that have been determined by the relevant state (Lithuania) necessary for basic expenses, including payments for foodstuff, rent, etc.

223. The Lithuanian authorities indicated that EU Regulations 881/2002 and 2580/2001 provide for this. The evaluators recall that neither EU Regulation 881/2002, nor the subsidiary regulation against Taliban provides specific provisions on humanitarian exemptions. With respect to Regulation 2580/2001 there is a specific procedure for humanitarian exemptions and application must be made to the competent authority of the member state in whose territory the funds have been frozen.

224. The Lithuanian authorities stated that unfreezing procedures should be initiated by a person wishing to unfreeze his/her frozen funds directly with the European Court of Justice. After the visit, it was also indicated that domestic administrative courts would also be competent but the evaluators were not able to determine the respective areas of competence or whether the Lithuanian authorities consider that there is concurrent jurisdiction. As for bona fide third parties, the evaluators were told that the EU regulations are followed in this respect; the evaluators recall that the penal law provisions on confiscation and temporary measures do take this matter generally into account.

225. The evaluators recall that in accordance with the Law on sanctions, an applicant can refer a broad variety of issues with one of the agencies listed in article 12 (see the list above) who shall then refer the matter to the Minister of Foreign Affairs who will decide on a case by case basis in coordination with the competent Ministry:

Article 4. Exemptions on the implementation of international sanctions
1. If decisions of the international organisations imposing international sanctions and (or) legal instruments of the European Union, with the exception of Regulations, provide for the exemptions on their implementation for humanitarian purposes, purposes pertaining to provision for peace keeping missions or in other particular cases, the implementation of exemptions from sanctions in the Republic of Lithuania shall be set out by Resolutions of the Government of the Republic of Lithuania, with the exception of the case referred to in

paragraph 1 of Article 8 of this Law.
2. The Ministry of Foreign Affairs of the Republic of Lithuania shall be responsible for the implementation of the specified exemptions. The entities with respect to which international sanctions are implemented or natural or legal persons of the Republic of Lithuania (except financial institutions), seeking to avail themselves of the exemptions, shall apply to an institution carrying out supervision of the implementation of international sanctions, which is indicated in Article 12 of this Law, and the said institution or a financial institution shall apply to the Ministry of Foreign Affairs of the Republic of Lithuania regarding the implementation of an exemption on a case by case basis and shall implement an exemption only with the consent of the said Ministry. In those cases when the Ministry of Foreign Affairs of the Republic of Lithuania is an institution carrying out supervision of international sanctions, entities with respect to which international sanctions are implemented or natural or legal persons of the Republic of Lithuania shall, in order to avail themselves of exemptions, apply directly to the Ministry of Foreign Affairs of the Republic of Lithuania.

226. It remains unclear whether this procedure is still applicable and whether all implementing secondary rules announced in paragraph 1 of this article have been adopted (or whether Lithuania relies exclusively, as announced, on EU rules). The evaluators did not manage to obtain satisfactory clarifications during the interviews conducted on-site. Many uncertainties remain as regards criteria III.8 to III.12 that the evaluators have not been able to address despite requests for additional clarification during and after the visit.

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

227. The Criminal Code criminalises terrorist-related activities and all measures applicable to the criminal offences under the Criminal Code and Code of Criminal Procedure are thus applicable. As indicated in the chapter on criminalisation of FT, the current provisions on terrorism and its financing are narrowly defined and this would logically impact on the ability of Lithuania to apply temporary measures and confiscation. Under the Chapter on confiscation and temporary measures, the evaluators acknowledged the overall quality of the tools available in this regard, but they expressed reservations as regards the ability to impose temporary measures without a formal search and/or the preliminary involvement of the suspect. This would also normally impact on the ability to apply temporary measures rapidly and effectively in respect of suspected TF. The loopholes identified in Recommendation 3 therefore concern freezing, seizure and confiscation of funds or other assets relating to terrorism cascade on the application of Resolutions 1267 and 1373.

Appropriate monitoring mechanism and enforcing obligations under SR.III (c.III.13)

228. In accordance with article 11 of the Law on Sanctions, the Ministry of Foreign Affairs plays a central role: "1. the Ministry of Foreign Affairs shall co-ordinate the implementation of international sanctions in the Republic of Lithuania and provide natural and legal persons with information about the issues pertaining to the implementation of the international sanctions; 2. The Ministry of Foreign Affairs of the Republic of Lithuania shall furnish information on the implementation of international sanctions to the United Nations, other international organizations or institutions of the European Union whose imposed international sanctions are implemented".

229. At the same time, article 12, as seen before, entrusts a variety of organisations with specific supervisory tasks:

Article 12. Institutions supervising the implementation of international sanctions
1. Within the limits of their competence, the following institutions shall be responsible for the implementation of international sanctions:
1) the Ministry of Foreign Affairs of the Republic of Lithuania, the Ministry of Economy of the

Republic of Lithuania, the Customs Department under the Ministry of Finance of the Republic of Lithuania, the Insurance Supervisory Commission of the Republic of Lithuania – for supervision of the implementation of economic sanctions;

2) the Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania, the Customs Department under the Ministry of Finance of the Republic of Lithuania, the Bank of Lithuania – for supervision of the implementation of financial sanctions;

3) the Government and the ministries of the Republic of Lithuania, the Migration Department under the Ministry of the Interior of the Republic of Lithuania, the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, the Lithuanian State Department of Tourism under the Ministry of Economy – for supervision of the implementation of political sanctions;

4) the Ministry of Transport and Communications of the Republic of Lithuania, the Ministry of Foreign Affairs of the Republic of Lithuania, the Communications Regulatory Authority, the Civil Aviation Administration – for supervision of the implementation of communication sanctions;

5) the Ministry of Culture of the Republic of Lithuania, the Ministry of Education and Science of the Republic of Lithuania, the Department of Physical Education and Sports under the Government of the Republic of Lithuania, the Lithuanian State Department of Tourism under the Ministry of Economy – for supervision of the implementation of public sanctions.

2. When necessary, the Government of the Republic of Lithuania may appoint other institutions, which are responsible for supervision of the implementation of international sanctions set out in the Resolution.

230. As indicated earlier, there is a system of specific sanctions for non-compliance. The Code of administrative penalties provides, since 2004, for specific sanctions in case of non- compliance with the requirements inherent to the international CFT sanctions: article 187-12 contemplates a fine of LTL 500 to 50 000 (approx. EUR 145 to EUR 14 500). Furthermore, since 2004 as well, the Criminal Code comprises an article 123-1 on "Violation of international sanctions" providing for a sanction of up to 5 year imprisonment and for the liability of legal persons. As indicated in the 3rd round, these sanctions can be applied in case of non-compliance with either the national legislation or EU-requirements (European legislation is considered to be part of the domestic legislation) according to the Lithuanian authorities.

231. There have apparently been no sanctions imposed to the subject persons for breaching the rules on international sanctions since no breaches were identified.

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

232. As indicated earlier, no guidance as such was given directly. Information is available on a dedicated webpage of the Ministry of Foreign Affairs. Guidance is needed to the financial and non-financial sector as to the obligations under these provisions. The mechanisms for challenging a freezing decision and for unfreezing relating to the basic living expenses, which exist within the European Union framework, need a clear and detailed explanation.

Recommendation 32 (Statistics relating to Special Recommendation III)

233. The United Nations' and other lists have apparently not led to the preventive freezing of terrorist assets. One case was already reported in the 3rd round evaluation but there was some uncertainty as to whether this was a "SR III case" or a case of suspicious transactions connected with FT.

Implementation and effectiveness

234. The fact that there have been no freezing of assets under SRIII makes it difficult for the assessors to evaluate the effectiveness of the system. The evaluators were advised that the supervisors had not found examples of non-compliance by the businesses under their responsibility but at the same time, no evidence is available that would demonstrate the effective supervision in this respect.

235. The difficulties encountered by the evaluators on-site to get a clear view of applicable rules and procedures could be indicative of a lack of clarity as regards the architecture of standards. Lithuania has potentially a number of domestic rules which can usefully complement (but also seem to overlap with) EU regulations. For instance, it was indicated on-site that a) the overall supervision is with FCIS, whereas the main role is normally attributed by the texts to the Ministry of Foreign Affairs and to a variety of other bodies (FCIS is only co-responsible for the supervision of financial but not economic sanctions); b) there is no procedure for a person affected by international sanctions to obtain access to minimum subsistence means; c) putting forward a claim to be removed from an EU listing would require filing a complaint with the administrative court (although texts suggest otherwise). As at the time of the 3rd evaluation, a coherent procedure regulating the entire freezing regime is still not in place.

236. The examiners also perceived onsite that practitioners were not clear with regard to the procedure that has to be followed in order to freeze identified funds on the basis of UNSCR 1267 or 1373. A number of interlocutors could not clearly distinguish between the reporting system under the AML/CFT regime and the freezing of assets under the UNSCR.

2.4.2 Recommendations and Comments

237. From a general point of view, Lithuania would certainly take advantage from a general review of rules and mechanisms in place, in order to ensure that all SR III requirements are adequately implemented. For instance, it is acknowledged that the Order of the director of FCIS N°96-V of 2005, requires some updating. Although the team is pleased to see that the issue of EU internals has been addressed, it is now unclear how these lists are dealt with. The above review could also include some tests on the basis of hypothetical cases ("what if…") to ensure that the arrangements are consistent.

238. Lithuania needs to ensure that responsibilities regarding the implementation of measures are clearly defined, that secondary requirements are adequately addressed (including the possibility for persons affected by a measure to challenge a freezing order or to obtain delisting, the unfreezing procedure, access to minimum resources for subsistence) and that financial institutions and DNFBPs are provided with clear guidance for the implementation of the measures provided.

2.4.3 Compliance with SR III

	Compliance rating	Summary of reasons for the compliance rating
SR III	**PC**	• The mechanisms which are actually applicable to challenge domestic and EU decisions are unclear • Insufficient public information and guidance on the specificities of

	Compliance rating	Summary of reasons for the compliance rating
		the international sanctions mechanisms (as opposed to the STR system) • Effectiveness of supervision, coordination and monitoring of implementation is not demonstrated; authorities are themselves not familiar with the applicable rules as these could not be explained to the evaluators.

Authorities

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

2.5.1 Description and analysis

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

Summary of reasons for the 2006 MER rating

239. Lithuania was rated largely compliant in the 3rd round report with regard to R. 26. Although the FIU situation was deemed to be satisfactory overall, the FIU model was questioned since the tasks of the team responsible for AML/CFT matters within the Financial Crimes Investigation Service (FCIS) tended to be absorbed by the much broader tasks and competences of the FCIS. In particular efforts were primarily focussed on the detection and prosecution of tax fraud and other financial crimes to the detriment of AML/CFT efforts. The results of the Division in terms of ML/FT cases appeared very modest. The report also pinpointed the only partially implemented electronic reporting system and the insufficient publicly available information on domestic ML/TF issues in the annual activity reports and other documents. It was recommended in particular to strengthen the autonomy and identity, as an FIU, of the then FCIS' Money laundering prevention department, to isolate from FCIS its information collection system and the use of such information, to focus the activity reports on (A)ML/(C)FT matters specific to Lithuania (and less on general information).

General

240. The Lithuanian FIU (Money Laundering Prevention Division - MLPD) was established in 1998, originally within the Tax Police Department - which was itself subsequently merged into the Financial Crime Investigation Service (FCIS). It became a full member of the Egmont Group in 1999 and on 8 April 2008 FCIS signed the Egmont Group Charter. With the adoption of the Law on FCIS (LFCIS) in 2002, as subsequently amended and republished, the FCIS assumed the role of the FIU of Lithuania. According to art. 2 of the LFCIS, the service is a law enforcement agency accountable to the Ministry of Interior.

241. Article 6 of the LFCIS provides that the FCIS' tasks include the protection of the financial State system against criminal influence, the detection and investigation of crimes, other offences against the financial system and related crimes and other offences, as well as the exercise of prevention of crimes and other offences against the financial system and related offences. Article 6 also stipulates the performance of other tasks assigned to the Service by other laws.

Article 5 of the AML Law stipulates the following functions of the FCIS as regards AML/CFT specifically:

(Article 5 AML Law – tasks of the FCIS)
1) collect and record the information indicated in this Law about the monetary operations and transactions of the customer and about the customer carrying out such operations and transactions;
2) accumulate, analyse and publish, according to the procedure established by legal acts, the information relating to the implementation of money laundering and/or terrorist financing prevention measures and the effectiveness of their system of money laundering and/or terrorist financing prevention (also the information on the prevention of the use of the financial system for the purpose of money laundering and/or terrorist financing as specified in paragraph 2 of Article 33 of 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/or terrorist financing;
3) communicate to law enforcement and other state institutions according to the procedure established by the Government the information about the monetary operations and transactions carried out by the customer;
4) conduct pre-trial investigations of legalisation of the funds and property derived from criminal activity;
5) co-operate and exchange information with foreign state institutions and international organisations implementing money laundering and/or terrorist financing prevention measures;
6) provide to financial institutions and other entities the information on criteria for identifying possible money laundering and/or terrorist financing and suspicious or unusual monetary operations or transactions;
7) submit proposals about the improvement of the money laundering and/or terrorist financing prevention system to other institutions responsible for money laundering and /or terrorist financing prevention;
8) notify financial institutions and other entities, law enforcement and other state institutions about the results of analysis of and investigation into their reports on suspicious or unusual monetary operations and transactions, on the observed indications of possible money laundering and/or terrorist financing or violations of this Law;
9) co-operate, in accordance with the procedure laid down by laws and other legal acts of the Republic of Lithuania under Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, with European supervisory authorities and provide them with the entire information necessary for the achievement of their tasks.

242. The Law on the Prevention of Money Laundering and Terrorist Financing (hereinafter – the AML Law) was amended and republished on 17 January 2008; it entered into force on 24 January 2008. Thus, currently the position of the FCIS as the FIU of Lithuania derives from the LFCIS and the AML/CFT law.

243. Pursuant to the aforementioned legislative provisions, the Lithuanian FIU continues to function as a police-type FIU. It was explained by the Lithuanian authorities that a division of the FCIS, namely the Money Laundering Prevention Division (MLPD) within the Analysis and Prevention Department, coordinates the performance of the FIU functions at the FCIS.

244. The functions of the MLPD are provided in detail in an internal ordinance issued by the Director of FCIS, namely the Regulations of the Money Laundering Prevention Division of the Analysis and Prevention Board of the Financial Crime Investigation Service under the Ministry of Interior, approved by Order No V-21 of 31 January 2011 issued by the Director of FCIS under the Ministry of the Interior. The functions of the MLPD are stipulated in Article 5 of the mentioned Regulations which empower the MLPD to implement the full range of functions pursuant to Article 5 of the AML Law. Those functions include the supervision of the activities of financial institutions and other entities related with the prevention of money laundering and terrorist financing, the coordination of the activities of the administrative subdivisions of the service performing the pre-trial investigation in the field of the prevention of money laundering and terrorist financing, operative activities, performance of separate acts of the pre-trial

investigation in areas falling under its jurisdiction and convoying of detained or arrested persons.

245. The MLPD is therefore entrusted in practice with the implementation of the core functions of an FIU as well as with the performance of a number of additional activities and, pursuant to the mentioned Regulations, it has certain police functions, including in the evidence-gathering phase (pre-trial investigations), although it was claimed by Lithuanian authorities that the actual pre-trial investigations would be carried out by other competent divisions of FCIS.

Countries should establish an FIU that serves as a national centre for receiving (and if permitted, requesting), analysing, and disseminating disclosures of STR and other relevant information concerning suspected ML or FT activities. The FIU can be established either as an independent governmental authority or within an existing authority or authorities. (C.26.1)

246. Pursuant to the provisions of Article 5 of the AML Law, the FCIS is authorized to receive ("collect and record") the information specified in the Law about the monetary operations and transactions of the customer and about the customer carrying out such operations and transactions. The definition of monetary operation is included in Article 2, Item 16 of the AML Law and the evaluators were advised that "transactions" are to be understood by reference to the Civil Code of Lithuania. The term "monetary operations" excludes payments to state institutions and representative and consular offices but also "settlements with" these institutions. The information supplied to the FCIS covers both ML and TF suspicious or unusual operations. At the same time, despite the progress made in the scope of reporting requirements compared to the 3rd round MER, there are still some further limitations to the information to be disclosed to the FIU as described in Sections 2.3 and 3.6. Moreover the definition of terrorist financing in Article 2, Item 21 of the AML Law limits the scope to funds used or supposed to be used for committing the offences within the meaning of Articles 1-4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism. Therefore funds that are supplied to individual terrorists or terrorist organisations for any purpose are not covered by the definition, thus potentially limiting the scope of the information to be received by the FIU.

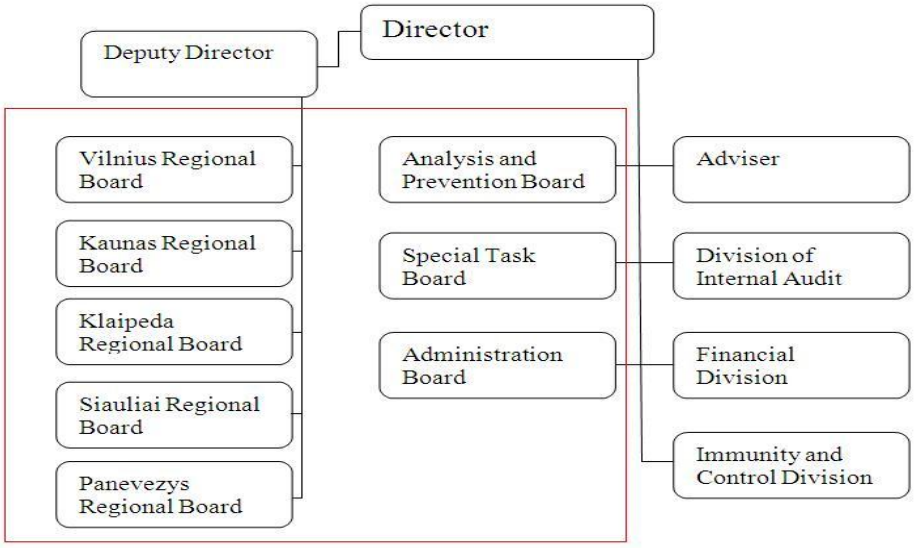
247. In addition the evaluators were advised during the visit that special reporting forms have been developed only for the banks and not for the other reporting entities. Electronic reporting is not required by law as discretion is allowed to choose the form of reporting (based on discussions and agreements between the FIU and the various activity sectors subject to reporting). As a result of this, part of the information is still received in paper form and requires manual input/ processing. As found out already during the 3rd round, this fact, together with the specified tight deadlines for reporting, is still potentially a matter of concern.

248. The analysis and dissemination functions of the FCIS are provided for in Article 5 of the AML Law. When discussing the analysis methodology on-site, it was indicated that the analytical process pertaining to a transaction can take between 1 and 2 months, even though it can also be much shorter depending on the case. The AML Law, article 14 (3) sets a time limit for analysis of suspicious transactions which is 5 working days (since reporting entities are required to suspend all suspicious transactions) for urgent analysis. The analytical process (by the MLPD) would be triggered in the following cases: 1. in all cases of receiving STR's/UTR's (automatically triggered); 2. after receiving relevant information from state and foreign partners (automatically triggered); 3. when conducting operational activities (following an official report for the start of an analysis); 4. When receiving relevant information from natural persons or

legal entities (official report); 5. starting analysis on the initiative of officer of MLPD (official report).

249. At the same time, article 4, Paragraph 9 of the AML Law entrusts the FCIS with supervisory authority over the activities of financial institutions and other entities related to money laundering and terrorist financing prevention. Moreover, it is the FCIS which is responsible for the investigation of ML, besides the numerous tasks related to the protection of the financial system of Lithuania including the investigation of criminal acts provided for in Chapter XXXII (Crimes and criminal offences against the financial system) of the CC, other criminal acts relating to taxes, state (municipal) levies, state social insurance and other contributions. Criminal acts provided for in Art. 213 of the CC (manufacturing, possession or use of counterfeit money or securities), Art. 214 (manufacturing of counterfeit electronic payment instrument; forgery of a true electronic payment instrument or illegal disposition of electronic payment instrument or data thereof) and Art. 215 (illegal use of electronic payment instruments or data thereof) are also assigned to the FCIS for investigation whenever they are committed in combination with criminal acts provided for in Art. 216 of the CC (legalisation of the proceeds or property of crime), Art. 217 (trade in securities by using information not available to the public), Art. 218 (manipulation of the securities prices), Art. 218 (non-payment of taxes), Art. 220 (provision of false information on proceeds, profit or property), Art. 221 (failure to file a declaration, statement or other document), Art. 222 (fraudulent accounting), Art. 223 (negligent accounting), and Art. 224 (manufacturing, possession or use of counterfeit or fake postage stamps, travel or other tickets, parcels, wrappers or other official marking signs). The Financial Crime Investigation Service is also assigned the investigation of criminal acts associated with the receipt and use of financial assistance funds from the European Union and foreign countries and criminal acts provided for in Art.189[1] of the CC (illegal enrichment).

250. The chart below gives a schematic overview of FCIS' structure:



251. Order No V-21 of 31 January 2011 clearly empowers the MLPD within the Analysis and Prevention Board of the FCIS to conduct all the activities for the purposes of implementing the AML/CFT preventive aspects, as well as operative activities within the competence of the

division and participate in separate acts of the pre-trial investigations related to ML. It was stated during the visit that all external correspondence (including but not limited to the disclosures from the obliged entities) after being registered is received and distributed by the Head of the Analysis and Prevention Board and about 95% of the information received in regard to ML and TF is forwarded to the MLPD for processing. MLPD has also extensive coordination powers related to the pre-trial investigation activities in relation to ML and TF within FCIS and coordination with other institutions. Coordination in regard to operative activities carried out by other units of the FCIS is not explicitly mentioned in Order No. V-21. The evaluators were informed that other units are not obliged to request information (checks) from the MLPD while carrying out their operative activities (generating a significant part of the ML cases). In addition the evaluators were advised that no other unit within FCIS can receive and analyse STRs.

252. This creates a unique situation in Lithuania considering that the FCIS is the entity which is legally designated as the FIU, the *de facto* implementation of the core functions of the FIU by a division of the FCIS and the numerous other tasks assigned to the FCIS in relation to the protection of the financial system (see discussion below concerning the functions of the FIU).

Guidance to subjected entities on the manner of reporting suspicious transactions (C.26.2)

253. According to Article 4 of the AML Law, instructions to the obliged entities are the responsibility of the respective institutions including:

- the Bank of Lithuania for credit institutions, electronic money institutions, payment institutions, insurance undertakings engaged in life insurance activities and insurance brokerage firms engaged in insurance mediation related to life insurance, financial brokerage firms, management companies, investment companies and depository
- the Department of Cultural Heritage Protection for the persons trading in movable cultural properties and/or antiques by way of business
- the State Gaming Control Commission for gaming companies
- the Lithuanian Bar Association for advocates and advocate's assistants
- the Chamber of Notaries for notaries
- the Chamber of Auditors for auditors
- the Chamber of Bailiffs of Lithuania for bailiffs or the persons authorised to perform the actions of bailiffs
- the Lithuanian Assay Office for the persons trading in precious stones and/or precious metals by way of business
- the Financial Crime Investigation Service for all obliged entities, including those not covered by the above arrangements.

254. The AML Law states in general terms the right of the FCIS to "co-ordinate the activities of institutions (except for the State Security Department) related to the implementation of ML/TF prevention measures" (Article 7, Paragraph 1, Item 3). FCIS is also empowered "to instruct institutions, financial institutions, and other entities about the circumstances and conditions providing possibilities for violating laws and other legal acts related to the implementation of money laundering and/or terrorist financing prevention measures. The institutions, financial institutions and other entities must examine the instructions of the Financial Crime Investigation Service and, not later than within seven working days following the receipt of the instructions, report to the Financial Crime Investigation Service about the measures taken (Article 7, Paragraph 1, Item 4). Government Resolution No. 677 provides for the exact contents of the

reports to be filed on suspicious and unusual transactions to the FIU. The Lithuanian authorities informed the evaluators that there are no special forms adopted for reporting (except for the banks) and that part of the reports are received in paper form.

255. As indicated in paragraph 91, guidelines intended for prevention of money laundering and/or terrorist financing have been adopted for financial institutions and other entities. These guidelines together with the Government Resolution No 677 approving the list of criteria on the basis of which a monetary operation or transaction is to be regarded as suspicious or unusual and the conditional criteria for the implementation of the suspicious transaction reporting, fully meet the requirements of Recommendation 25.

256. It was noted in several instances during the on-site visit that obliged entities are aware of the appropriate venues for reporting and could contact the FCIS easily. At the same time the impression of the evaluators was that in many cases, the reporting entities would call to discuss the sending of a report.

257. An issue of concern, however, is the lack of reporting forms adopted and published for most of the obliged entities, which creates uncertainty as to the manner of reporting. This issue should be viewed together with the aforementioned information regarding the necessity (in practice) for a number of obliged entities to contact additionally the FCIS in order to arrange the filing of the report. Given that the evaluators were not informed on the technical means of submission of reports and there is a possibility allowed for agreeing the transmission of information by a reporting entity in each separate case it cannot be assessed, despite the requirements for the contents of the reports listed in Resolution No. 677, whether the information provided by the FCIS on the manner of reporting is adequate and would allow efficient further action (that is allowing automated processing and speed of analysis) in each and every case.

Access, directly or indirectly, on a timely basis to financial, administrative and law enforcement information (C.26.3)

258. FCIS' access to information is guaranteed in law (both under the LFCIS and the AML Law). The Law of FCIS provides for the right of FCIS to obtain from the Bank of Lithuania, commercial banks and other credit and financial institutions, as well as also from other legal and natural persons the necessary information required for the performance of the tasks and functions of the Service, including explanations, copies of certificates and documents concerning the property and income of a legal or natural person, as well as economic and financial operations (Article 11 (1), Item 3). AML Law provides the right of the FCIS to obtain from institutions, financial undertakings, other entities information related to the implementation of money laundering and/or terrorist financing prevention measures (Article 7). Furthermore Article 20 (9) explicitly provides for the submission of information pursuant to the AML Law to the FCIS regardless of industrial, commercial or bank secret.

259. In accordance with Article 7(1), Item 1 of the AML Law, the FCIS has the right to obtain from state institutions, financial institutions, other entities, except for advocates and advocate's assistants, the data and documents on monetary operations and transactions necessary for the performance of its functions. Article 11(1), Item 3, of Law on FCIS states that in ensuring performance of the tasks and functions assigned to them during investigation and provided there are reasonable grounds, an officer of the Service shall have the right to obtain from legal and natural persons the necessary information required for the performance of the tasks and functions of the investigative work of the Service. In practice, the latter provision is used by the

MLPD to overcome the prohibition of the AML Law in regard to obtaining information from advocates, according to the explanation provided by Lithuanian authorities. Concerns remain over the powers to obtain such information within the context of analytical work (pursuant to the AML Law and when no investigation has been initiated) and a possible legal discrepancy is noted in this respect.

260. At the same time the FIU has also wide access to tax information including direct access to information held by the Tax Inspectorate on bank accounts. In addition the following databases are directly available to the FCIS, and respectively, the MLPD: Population Register of the Republic of Lithuania, Register of Legal Entities, Real Estate Register, Register of Transport Vehicles, Register of Transport Vehicle Drivers, Information System of the State Social Insurance Fund Board, Courts database ("Liteko"), National Schengen information system, State border information system, Departmental register of wanted, aggrieved and missing persons, Departmental register of suspects, accused and convicted persons, Departmental register of criminal acts, Register of lost-found motor vehicles, Register of administrative violations of laws and traffic accidents, Register of weapons in the civil circulation, Mortgage database, Police incidents database, Customs database, CIS of FCIS, the Public Procurement Office database.

261. A matter of concern is a limitation in relation to the register of legal entities. As explained to the evaluators, automated searches cannot be performed at present, for instance, to establish all legal entities which are related to a given natural person. This could potentially hinder the analysis function of the FIU and the matter needs urgent attention. The evaluators were informed that this limitation of the information system of the register is currently been looked into and a solution is expected to be found.

262. In addition Order No. V-21 of 2011 stipulates the rights of the MLPD to demand and receive from the administrative subdivisions of the FCIS carrying out the pre-trial investigation information about the progress of materials transferred for further investigation and other information necessary for the fulfilment of tasks and functions of the Division. It also empowers the MLPD to obtain from public and other authorities, financial institutions and other entities data and documents about monetary operations and transactions necessary for the performance of its functions. The legislation (including Government Resolution 527 of 1 June 2006) however does not explicitly provide for means of the FCIS to obtain information on the progress of cases from the police or from the SSD. In practice, however, such feedback can be obtained through the general inter-institutional dialogue which is in place.

263. The LFCIS and the AML Law specify the access of the FCIS to information in general terms and do not specify a time period for the provision of the information except where this concerns obliged persons pursuant to Article 19, Paragraph 5 of the AML Law. At the same time the evaluators were informed that in practice a timeframe for the submission of the information sought would be specified separately in each request. In any case the Law on Public Administration (Article 40) specifies a timeframe of 5 working days for the provision of institutional assistance. Considering also the large number of databases directly available to the FCIS (and MLPD) access to information can be considered overall satisfactory.

Authority to obtain additional information from reporting parties (C.26.4)

264. Based on the aforementioned provision of the LFCIS and the AML Law (see C. 26.3), the FCIS (the MLPD) can obtain information from all obliged persons. The information that could

be obtained from all obliged persons pursuant to the AML Law is related to the implementation of the AML/CTF measures. At the same time Article 7, Para. 1, Item 1 of the AML Law stipulates that the FCIS has the right to obtain from the institutions referred to in paragraphs 1-8 of Article 4 of the Law, other state institutions (hereinafter in this Article referred to as "institutions"), financial institutions, other entities, except for lawyers and assistant lawyers, the data and documents on monetary operations and transactions necessary for the performance of its functions. Pursuant to Article 20, Paragraph 9 of the AML Law, this information cannot be considered as protected by industrial, commercial or bank secret. The relevant exception is also provided for in Article 55, Paragraph 5 of the Law on Banks. Thus, despite the LFCIS's overall approach, the AML Law provides for a general exception regarding information needed for AML/CFT purposes from lawyers and assistant lawyers, as discussed under C. 26.3.

Authorisation to disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect money laundering or terrorism financing (C.26.5).

265. Formally, the FCIS is doing both the analytical work and the pre-trial investigative work: the MLPD, which is actually receiving and analysing transaction reports concerning possible ML and TF, pursuant to Order No. V-21 of 2011, is forwarding possible cases for pre-trial investigation to the FCIS' other competent departments performing pre-trial investigations, as well as to any other investigative or prosecutorial authority outside FCIS. Such a file requires prior signature of the head of FCIS. As the FCIS is the unit that is responsible for also conducting pre-trial investigations for money laundering it could be considered that the criterion is formally met in regard to possible ML cases sent for further investigation as they are forwarded to the respective departments responsible within FCIS for the pre-trial investigation. At the same time the investigation of organised crime, corruption, theft, drug trafficking, prostitution, smuggling, as well as other acquisitive crime, falls within the competence of other law enforcement structures, and there are no explicit provisions in the legislation on disclosure of results of STR analysis (the evaluators were informed that the common police cooperation provisions are used in practice). This might lead to the disregard of the ML aspects of some cases (generated under the STR reporting system) or obstacles to proper ML investigation related to acquisitive crimes that do not fall under the competence of the FCIS as explained below, or as well – "overwhelm" the effort, based on the STR system, to establish cases of money laundering.

266. Article 5 of AML Law provides that the FCIS shall communicate to the law enforcement and other state institutions the information about the monetary operations and transactions according to the procedure established by the Government. This is a procedure that mainly covers the reporting of CTRs (i.e. not reporting of the results of the STR analysis), as the evaluators were informed by the Lithuanian authorities.

267. The procedure mentioned in this provision of the Law has been implemented through Government Resolution No. 527 on the Approval of the Rules of Providing the Law Enforcement Agencies and Other State Institutions of the Republic of Lithuania with Information Regarding Customers' Monetary Operations and Transactions at the Disposal of the Financial Crime Investigation Service under the Ministry of the Interior and of the Exchange of Information Between the State Security Department and the Financial Crime Investigation Service under the Ministry of the Interior in Implementing the Terrorist Financing Prevention Measures.

268. Resolution No. 527 stipulates the dissemination of information on monetary operations and transactions by FCIS in the following cases:

- FCIS shall provide institutions with the information on monetary operations and transactions necessary to perform their functions, in accordance with data provision agreements;
- FCIS shall provide, in writing or by technical means, the State Security Department with information on monetary operations and transactions that may be related to terrorist financing;
- pursuant to the concluded data provision agreement, it shall provide, by automatic means, the Special Investigation Service of the Republic of Lithuania with information (necessary for the performance of its functions) on monetary operations and transactions;
- pursuant to the concluded data provision agreement, it shall provide the State Tax Inspectorate of the Republic of Lithuania under the Ministry of Finance with information on monetary operations and transactions that is necessary for the performance of its functions;
- it shall provide information on monetary operations and transactions to the institutions based on the institutions' requests.

269. Such agreements have been concluded between the FIU and the Special Investigative Service and the State Tax Inspectorate, but not between the FIU and the SSD. The texts of those agreements have not been provided to the evaluators. In any case agreements with other law enforcement authorities and other state authorities have not been concluded which potentially hinders the application of Article 5 of the AML Law. As for the requirement that the information is disseminated "when there are grounds to suspect ML or TF", the Lithuanian authorities clarified that pursuant to internal rules of analysis (not made available to the evaluators) the analysis of a case (STR) could be concluded by one of four options:

- disseminating the information to a country branch of FCIS where the investigation of the crime established would be within the competence of FCIS; in principle, pre-trial investigation falls under the responsibilities of the FCIS (units other than the MLPD)
- disseminating the information to the police or other competent law enforcement or state authority where the investigation of the crime does not fall within the competence of FCIS;
- where signs of tax violations are established – sending the information to the Tax Inspectorate
- close the case when there is sufficient information on the legality of funds or assets.

270. With regard to TF, the procedure for the dissemination of the information is provided for in Article 14, Paragraph 12 of the AML Law and Resolution No. 527. According to the AML Law the information on monetary operations and transactions that may be related to terrorist financing shall be submitted by FCIS to the State Security Department (SSD) within 24 hours from its receipt. In practice, the SSD would then deal with the case on an intelligence basis, or it would forward it to the Criminal Police – on the basis of the existing agreements between law enforcement agencies – if a formal investigation was needed. For the time being, these are hypothetical considerations since no STRs or UTRs related to TF were mentioned in the statistics provided by the Lithuanian authorities. Given the short deadline above for the submission of a case to the SSD, the FCIS can only carry out checks for matches with the lists of designated persons. It is also not clear, given the lack of explicit provision in legislation for disseminating the results of the analysis of an STR (when there is a suspicion that it could be related to TF), on what grounds a case related to TF would be disseminated for investigation to the Lithuanian Criminal Police Board (Organised Crime and Terrorism Department) which has

been designated to investigate possible terrorist financing cases. Moreover, considering the overlapping competence of the SSD and the FCIS in regard to the elaboration of criteria for detection of TF (based on the requirements of Article 5, Paragraph 6 and Article 6, Paragraph 3 of the AML Law, authorising both SSD and FCIS to provide criteria), it is not clear who will assume the responsibility for effectively dealing with potential TF cases and whether effective training is provided to the reporting entities. It is also noteworthy that the SSD no longer has investigative functions. The evaluators were therefore concerned that the above system is not entirely in line with C.26.1 (in the sense that the FIU does not carry out a fully fledged analysis). The evaluators are also questioning the effectiveness of the described system, considering the lack of any statistics that would illustrate the actual mechanism of checks conducted by the competent institutions. There was indeed information provided during the evaluation visit, about some partial matches which could not be linked to actual TF.

271. Getting a clear picture of the number of disseminations by the MLPD was not easy since different figures were provided without a clear indication of the purpose (e.g. investigations as ML cases as opposed to other crimes). It would however appear that the number of notifications from the MLPD to the other branches of FCIS and to the Tax Inspectorate remained relatively constant for the period 2009-2011: there were 59, 65 and 57 disseminations to other branches of FCIS respectively for the 2009, 2010 and 2011. In addition the MLPD forwarded an increasing number of notifications to the Tax Inspectorate ranging between 12 for 2009 and 41 for each of the years 2010 and 2011. The number of notifications to other law enforcement authorities (apart from FCIS) increased significantly for the period 2009-2011 starting from 7 for 2009, reaching 25 for 2010 and 35 for 2011.

272. As regards the core subject, i.e. ML and FT, there was no detailed information provided by the Lithuanian authorities before or during the visit with regard to the pre-trial proceedings for ML started on the basis of information disclosed by the MLPD. It was explained during the visit that in 2011 only about 3-4 pre-trial investigations for ML were initiated on the basis of the notifications by the MLPD while the rest of the pre-trial investigations for ML were split equally between the FCIS and the police based on their own operative information. These numbers correspond to the situation established during the third evaluation round and indicate no substantial steps to address the concerns expressed in the 3rd round MER. In a similar vein, there was only 1 indictment for each of the years 2009 and 2010 based on notifications by the MLPD and only 2 indictments for 2011. Data submitted after the visit (see the general table hereinafter) refers to 3 ML investigations in 2009, 3 in 2010 and 7 in 2011. Logically, the number of prosecutions is even lower.

273. Thus, the STR system is not triggering a meaningful number of ML investigations, in accordance with the main purpose of the AML/CFT reporting regime; the latter appears to fulfill purposes which concern the numerous other priority areas of the FCIS as well as, increasingly so, tax-related purposes (taxation-related violations). It is also noteworthy that the notifications to other departments of FCIS and other authorities are signed not by the Director of the MLPD but respectively by the Head of the Analysis and Prevention Board of the FCIS and the Director of FCIS.

274. It is understood that the MLPD is also entitled pursuant to Order No. V-21 during financial investigations to collect data about assets, transactions and financial operations of the individual and other related natural and legal persons, the location of such property for the purpose of finding the assets that could have been acquired in a criminal or illegal manner and (or) can be used for securing a civil action or seizure of property. It was clarified by the Lithuanian

authorities that the data in the statistical tables in regard to the cases opened and the indictments do not include the cases where the MLPD contributed to those investigations. Government Resolution No. 527 provides for requirements in regard to the disclosure of information on monetary operations and transactions (kept by MLPD) based on a request from other institutions. The Resolution stipulates that the purpose of using the received information shall be indicated in the request. The requirement is considered to be too general and does not contribute to actual information sharing for the purposes of combating ML. Considering the threefold increase of the requests from state authorities to the MLPD from 93 in 2009 to 302 in 2011 and comparing these numbers to the relatively constant number of ML investigations it is unlikely that the information requested from the MLPD is actually contributing to effectiveness of the system for combating ML in Lithuania or to strengthening a proactive approach to ML investigations in regard to all acquisitive crimes.

Operational independence and autonomy (C.26.6)

275. The body designated to act as an FIU in the AML Law, and other relevant texts, is the FCIS. The latter is a law enforcement agency accountable to the Ministry of Interior of Lithuania and responsible for a wide range of tasks related to the protection of the financial system with a focus on ensuring contributions to the state (municipal) budget, state social insurance and other contributions along with crimes under Article 216 CC (money laundering).

276. FCIS is headed by a Director assisted by a Deputy Director. The former is responsible for the activities of, and coordination within the Service. S/he is appointed for a term of five years and dismissed by the Minister of the Interior in accordance with the procedure laid down by the Law on Civil Service. S/he is directly subordinated and accountable to the Minister of the Interior. The Deputy Director is appointed and dismissed by the Minister of the Interior upon a recommendation of the Director and in accordance with the procedure laid down by the Law on Civil Service. The FCIS is financed from the state budget of Lithuania. The appropriations manager is the Director of the Service. A statute (Statute of the Internal Service) was provided after the visit, which strictly regulates the possible grounds for dismissal of an officer.

277. It should be noted that shortly before the on-site evaluation visit in Lithuania the Director and Deputy Director of the Service were actually dismissed by the Minister of Interior of Lithuania for disciplinary reasons. Interlocutors could not comment on these decisions but the evaluators understood from media sources that these dismissals could also have been motivated by (alleged) leaks to some shareholders concerning the Snoras Bankas in the end of 2011. The latter was the subject, just like another commercial bank, of investigations on various accounts including fraud and money laundering. These dismissals triggered public discontent and demonstrations on the streets. Media reports alleged that these dismissals were in reality a means to interference in FCIS' on-going investigation of a possible illegal political financing case. The evaluators are not in a position to comment further on this situation but they observe that the core AML/CFT activities appear to be exposed to higher risks of undue political influence given their inclusion in the responsibilities of a body entrusted with a large number of sensitive tasks.

278. The MLPD, which is performing the actual core functions of an FIU as the sole unit within FCIS authorised to handle the disclosures made under the AML Law, does not enjoy any form of independence given the current institutional set-up. It does not perform its functions on the basis of a law, but on the basis of an internal order of the Director of FCIS. The organisation and dissolution is to be pronounced by an order (order N°V-21) of the Minister of the Interior.

279. The above order provides for the following functions of the Head of the MLPD:

- "to address the matters falling within the competence of the Division and be responsible for the implementation of assigned tasks and performance of functions;
- provide proposals to the Head of the Board on the incentives and awards to the Division officers and employees working according to employment contracts;
- immediately inform the Head of the Board about possible cases of the official misconduct and violations of work discipline;
- be responsible for the implementation of corruption prevention measures in the Division with a view to precluding the abuse of office by civil servants;
- represent the Service in its cooperation with other authorities and organisations of the Republic of Lithuania and foreign countries on the matters of competence of the Division;
- organise the work in the manner to reduce all types of bureaucracy, to stimulate the initiative of employees and to strengthen individual responsibility for the final results of work;
- sign official letters being sent and other official letters in the manner established by the Rules of Procedure of the Service;
- carry out other instructions of the Head of the Board.
- when the Head of the Division is absent his functions shall be carried out by one of the chief investigators of the Division appointed by the Director of the Service."

280. The above list provides mostly for administrative competences, rather than AML/CFT-specific powers and responsibilities. The actual discretion for the performance of some of the FIU core functions (e.g. receiving disclosures, analysis and dissemination as described in article 4 of the same order) is not provided for in the list of powers of the Head of the MLPD, including the sole discretion to forward the cases for further investigation.

281. Given the position of the MLPD within the Analysis and Prevention Board (APB) and ultimately the FCIS, the entity actually performing the functions of an FIU within the meaning attributed to a FIU in the FATF Standards is not granted any autonomy as regards human and financial resource management. In fact, the Head of the MLPD is not even given any consultative role in these areas. At the same time, the order stipulates that the Head of the Division shall be directly subordinated and accountable to the Head of the APB. He shall be appointed and dismissed by the Director of the FCIS, just like any other head of a substructure within FCIS. There is no fixed mandate provided for the Head of the MLPD. It is understood that the general grounds for dismissal of FCIS staff apply without exception or special conditions to the head of the MLPD.

282. This lack of autonomy extends also to the operational level and to the statute of the manager of the MLPD. As understood during the evaluation visit, the Head of the APB within FCIS is the person who takes the main decisions in respect of the MLPD's work. The evaluators were told on site that in practice, it is actually the Head of the APB who receives the reports on transactions and who signs the notifications to other departments of FCIS.

283. Given the specificities of the AML/CFT work, the MLPD has a privileged access to sources of information held by other State authorities (upon request or directly) and, of course, by the private sector. As a result, it is apparently often solicited by the FCIS' other structures. This is not uncommon in the life of an FIU, but apparently, the staff of the MLPD appear to spend quite some time on this additional activity.

284. The functions and the powers of the MLPD as well as its subordination within the FCIS therefore remain unchanged since the 3rd round MER. The evaluators can only concur with, and reiterate the findings of the 3rd round as regards the need to review the institutional position of the FIU and, as a minimum to strengthen the role and the autonomy of the MLPD. There are thus significant gaps from the perspective of C.26.6.

285. For the sake of fairness, it should be added that the Lithuanian authorities formally disagree with the approach taken by the evaluators when considering that the core functions of an FIU are performed by the MLPD and not by the FCIS as a whole.

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

286. Article 20, Paragraph 1 of the AML Law requires that the information specified in this Law and obtained by the Financial Crime Investigation Service may not be published or transferred to other state governance, control or law enforcement institutions, other persons, except in the cases established by this Law and other laws. Further dissemination of information is regulated by Article 5, Paragraph 3 of the Law in general terms and referring to secondary legislation for the procedure. The grounds for the dissemination of information are included again in general terms in the secondary legislation (Resolution No. 527) and reference to agreements between institutions is made (such agreements which could serve as the basis for the dissemination of information have not been provided by the Lithuanian authorities).

287. More importantly, the legislation does not explicitly require the dissemination of information for the purposes of investigation of money laundering or terrorist financing and related predicate crime and in practice dissemination occurs for a broad number of suspected offences and violations (administrative infringements, e.g. related to tax). The provisions of the AML Law do not preclude the use of the information by any other department of FCIS (as the FIU) regardless of the confidential internal order. There are no grounds provided in law for the dissemination of information (which is protected by the internal confidential order of the FCIS Director) to the other departments of FCIS unlike the regulations for the dissemination of the information outside FCIS.

288. As mentioned before, the MLPD is, in principle, the recipient of the disclosures made by the obliged entities pursuant to the AML/CFT legislation. According to Lithuanian authorities Information held by the MLPD within the APB is specifically regulated by a confidential order of FCIS' Director issued on 24 November 2005, which specifically prohibits the availability of the information to other departments of the FCIS. Nevertheless neither the AML Law nor the LFCIS make any reference to the role of the MLPD and the protection of its information (which means that information is not protected by law).

289. As indicated earlier, the on-site interviews showed that it is actually the Head of the APB who receives the reports on transactions from subjected financial and other entities. Although interlocutors from the MLPD have given assurances that in practice, all reports are passed over and immediately by the Head of the APB, this situation raises questions from the point of view of the confidentiality of the transmission channel between the reporting entity and the intended recipient responsible for the AML/CFT processing of such information. It should also be recalled that not all the obliged entities have opted to use the secured channel for the transmission of data and reports to the MLPD. Therefore, many categories of entities report on handwritten paper forms or in any another manner (e.g. by fax).

290. Finally, although the databases managed by the MLPD are password protected from the rest of FCIS, and the MLPD has one IT specialist, the maintenance of the IT system is in fact performed with the technical assistance of the FCIS. The evaluators were not informed of any special protective conditions applicable in the context of maintenance operations.

291. The 3rd round report had already pointed to some of the above issues. The present evaluation visit, whilst confirming the earlier findings, has enabled the evaluators to get an even clearer picture of the weaknesses connected with the current position of the MLPD within the FCIS. From the viewpoint of C.26.7, there is thus another importance source of concern. As indicated earlier, the Lithuanian authorities formally disagree with the approach taken by the evaluators when considering that the core functions of an FIU are performed by the MLPD and not by the FCIS as a whole.

Publication of periodic reports (C.26.8)

292. A distinction must be made between the rules and the actual practice. Under the rules, there is an obligation for the FCIS, as the entity designated in law to perform the tasks of an FIU, to publish information relating to the implementation of money laundering and/or terrorist financing prevention measures. This is to include information about the effectiveness of the AML/CFT preventive system (as well the information specified in paragraph 2 of Article 33 of 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/or terrorist financing). The provision refers to procedure established by legal acts. It is not clear to what extent the data protection legislation is limiting the publication of all information (or consolidated review) required by the international standards (including Article 33, Paragraph 3 of Directive 2005/60/EC).

293. In practice, there is no such publication. The only periodic report apparently published is FCIS' annual activity report, which is available on-line for the period 2002-2011 (link to FCIS sitemap including activity reports through an on-line translation tool). An English translation of the overview of the contents of the reports for 2010 and 2011 was made available to the evaluators. These revealed mainly information on the overall activities of FCIS as a whole (thus including the numerous activities outside AML/CFT), the strategic business plan, some figures on objectives etc. With the above translation tool, the evaluators could ascertain that the report for 2011, for instance, comprises 18 pages. On page 2 and 3, 16 lines are devoted to the MLPD's activities and they refer to some general consolidated statistics about the reporting system, suspicious funds identified, and the number of request for information received. There is no breakdown of figures nor information on ML/FT typologies and trends, nor on the other activities carried out in connection with the AML/CFT preventive system (supervision, training, policy or legal proposals). Thus the reports are clearly of negligible use to the entities subjected to the AML/CFT requirements, to assist them in the implementation of those measures. Considering the limited number of investigation for ML, even if information is provided based on completed pre-trial investigations, it can by no means be considered as sufficient to assist the reporting entities. Furthermore Order No. V-21 does not contain any indication as to possible role of the MLPD in drafting or coordinating such reports. C.26.8 clearly cannot be considered as met.

Membership of Egmont Group (C.26.9) and taking account of the Egmont Group "Statement of Purpose" and the "Principles for information exchange between financial intelligence units for money laundering and terrorism financing cases" (C.26.10)

294. The Lithuanian FIU is a full member of the Egmont Group. Article 5 of the AML Law explicitly states that the FCIS is empowered to cooperate and exchange information with foreign state institutions and international organisations implementing money laundering and/or terrorist financing prevention measures. The powers to exchange information with foreign partners in practice are granted to the MLPD within FCIS by Order No. V-21. The statistics provided by the Lithuanian authorities show a considerable number of requests received from and sent to other FIUs. The table below shows that in the period 2009-2011, there was a significant increase both in the number of requests sent and the number of requests received.

Year	2009	2010	2011
Requests sent to foreign FIUs	97	136	184
Requests received from foreign FIUs	148	195	213

295. The feedback that other jurisdictions were invited to provide, prior to the visit, as regards their cooperation with Lithuanian authorities, did not refer to any particular issues of concern in respect of exchange of information with the Lithuanian FIU. At the same time it should be noted that the issues raised in regard to the protection of information held by the MLPD (which in practice exchanges information with foreign units of financial intelligence and international organisations) could also potentially impact the international exchange of information.

Recommendation 30

Structure and Resources (c.30.1)

296. The FCIS includes the following structural subdivisions participating in financial investigations and/or financial crime investigations:

- Analysis and Prevention Board: Activity Analysis and Planning Unit, Money Laundering Prevention Unit, Illegal Use of Support Analysis and Prevention Unit, Information Systems Unit;
- Special Task Board: Operational Activity Unit, Operation Unit, Criminal Act Investigation Unit.
- Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys county boards, criminal act investigation units and economical financial activity investigation units of Financial Crime Investigation Service operate in line with the principle of counties.

297. As indicated earlier, the MLPD is a structural unit within the Analysis and Prevention Board (APB) and its head is directly subordinated to the head of the Board. The total number of the staff of FCIS is according to the information provided by the Lithuanian authorities more than 400 persons and the budget of the service is about LTL 21 million (about 6 million EUR). It is not clear to the evaluators what resources are available to the MLPD itself. Order No. V-21 does not include any provisions that would indicate any rights of the Director of MLPD to participate in the planning of the budget.

298. The situation regarding the functions performed by the MLPD as part of the FCIS seem to have changed considerably compared to the 3rd round evaluation (pursuant to Order No. V-21 and the information provided during the evaluation visit), resulting in a significant increase of the duties of the MLPD. These include receiving, collection, recording, analyzing and disseminating the information provided by the obliged persons pursuant to the AML Law, the supervision (which was previously done with the assistance of the other staff of the FCIS), assisting in financial investigations which were given a priority by the Lithuanian Prosecution authorities, examining the violations reported by other authorities, drafting legislation and instructions (as mentioned during the evaluation visit), providing to the obliged persons criteria for the recognition of suspicious and unusual operations, coordinating the activities of the subdivisions of the service performing the pre-trial investigation in the field of the prevention of money laundering and terrorist financing, as well as operative activities and participation in separate acts of pre-trial investigations.

299. The significant increase in the requests from other authorities to the MLPD should also be noted – from 93 in 2009 to 302 in 2011. In addition the following checks were performed by the MLPD based on requests from other units of the FCIS: 2010 – 88 checks; 2011 – 128 checks. It was mentioned during the interviews that there were only a few cases when the MLPD assisted in the performance of pre-trial investigations as well as that there were 6 other units of the FCIS that are directly engaged in operative activities (with the MLPD providing support). However, these obligations of the MLPD are clearly stated in Order No. V-21 together with the conduct of operative activities.

300. At the time of the 3rd evaluation round, the MLPD was staffed with 13 officers having significantly lower number of duties (with the assistance of the other staff of FCIS). The internal structure plans, as adopted in the context of the October 2010 restructuring of FCIS, foresee that 21 positions are allocated to the MLPD. However, at the time of the on-site visit in April 2012, only part of the positions had been filled. The exact figure was difficult to determine as it varied between 8 (shortly before the visit) and 10 or 11 (during the visit). During the discussions, the evaluators thus enquired about the exact breakdown and the formal distribution of tasks within the MLPD. The following figures were then provided, showing a staff of 9 persons in total (with the probable addition of a manager):

Staff structure within the MLPD	
Analysts	6 persons
IT specialist	1 person
International relations	1 person
Statistics	1 person

301. Whatever the exact figure is, the actual number of staff is lower than at the time of the 3rd evaluation round. Lithuanian interlocutors explained that the recruitment process was still under way but the reasons for the obvious delays in the recruitment procedure remain unclear to the evaluators even considering the special requirements for the law enforcement officers like the time period necessary to obtain the clearance and complete the assessment of candidates. Even if the resources and staff provided to the FCIS could be considered adequate as per the claim of the Lithuanian authorities, the staffing of the MLPD which is directly related to the effectiveness of the AML/CTF preventive system, cannot be considered as adequate, given the discrepancy between the needs assessment for the staff (set officially at 21 people) and the officers actually employed as well as considering the broad responsibilities and duties of the MLPD.

302. In fact, the MLPD has no staff specifically in charge of supervision. In practice, this is done by the analysts, who are also implementing possible training activities. The overall distribution of work time within the team is thus as follows:

Analytical work	60%
Supervision and training	15%
Cooperation with other authorities	25%

303. Although it was mentioned by the Lithuanian authorities after the visit that a legal or economic background is required for the officers of the MLPD, the evaluators understood that MLPD staff, in practice, have mostly a law enforcement background. As to whether any financial, business or accounting expertise was available in the team, it was indicated on site that one of the (six) analysts had a financial background (with a university degree). The evaluators doubt that this is enough. The Lithuanian authorities underlined after the visit that considering the FCIS more broadly, half of its staff consist of auditors and there are no obstacles inside the FCIS to deal with problematic questions if there is need for that. It was also explained that problematic issues could also be discussed with the State Tax Inspectorate's experts within the framework of the Risk Analysis Centre (about 15 such meetings per month) and on a personal basis. However the evaluators are still concerned that these considerations are different from such an issue as the availability of sufficient expertise within the division responsible for the receiving, analysing and disclosing STR information, considering the requirements for autonomy and protection of the disclosures received. It should also be recalled that the information is normally protected within the MLPD pursuant to an order of the Director of FCIS and as a consequence, no one else from outside the MLPD should be involved in such matters.

304. The appraisal of the adequacy of the staff should also take into account the availability of automated tools for the processing of a relatively large number of reports which are received by the MLPD, which include also cash threshold reports pursuant to Article 17 of the AML Law. There are certain tools available to the officers of the MLPD including visualization software and a number of databases in a unified system of the FCIS (Central Information System). It was also stated that some manual analysis is in fact performed by the FIU experts. In addition some of the information is not received electronically by the FIU although no exact information was provided to the evaluators on the volumes of such information. It should be noted that a new project is currently implemented based on funding of the EU ("Financial Crime Investigation Service Performance Improvement" No. VP1-4.2-VRM-03-V-01-101, European Social Fund). The goal of the project is to modernise the document management system of the MLPD, to implement channels for automated communication with obliged entities as well as to provide mechanisms for the automated analysis and generation of red flags including on the basis of analysing patterns in CTRs.

305. The above just confirms that the MLPD is clearly not equipped with adequate means. Evaluators enquired whether additional personnel could be redeployed from the APB but it would appear that the situation of the latter is even worse (overall, out of the APB's 40 posts, 15 had not been filled – also for reasons of recruitment process not being completed following the restructuring of 2010).

Professional standards (c.30.2)

306. The Statute of the Internal Service of FCIS provides several cases for dismissal of officers including: non-compliance with the values of the oath; discrediting conduct; existence of a conviction for an intentional crime or misdemeanour, or another court decision disqualifying the officer from working for law enforcement institutions etc.

307. The FCIS units make use both of civil servants and contractual employees where financial investigations and/or criminal investigations are conducted. All of them are subject to special requirements defined in their job descriptions. Job descriptions, including the special requirements set out therein, are prepared with regard to the functions assumed by employees working in a particular division. The major part of descriptions consists of those containing the requirement to hold a higher university degree or equivalent education in the field of social sciences studies. Usually, employees who conduct financial investigation or financial crime investigation are subject to the requirements to hold a higher university degree or equivalent education in the field of social sciences studies. The evaluators were informed about a number of special requirements and conditions for staff of the APB, including a minimum 2-year experience of work in law enforcement institutions; level of knowledge of the English, German or French languages; ability to manage and synthesise information and prepare conclusions; computer skills (Microsoft Office); compliance with legal requirements necessary for granting security clearance, etc.

308. It would appear that the general criteria applicable to APB staff are the ones applicable also to MLPD staff. The evaluators doubt that these criteria, which are already of a rather general nature, are sufficiently specific given the specificities of the MLPD. They would have expected some further specific requirements, for instance experience with financial investigations, criteria related to the knowledge of financial and/or business environment, some knowledge in specific analytical tools apart from the standard IT package including a requirement to follow/have followed some of the special training offered to FCIS staff (see below). This is problematic from the perspective of C.30.2.

Training (c.30.3)

309. During the period of 2005-2008, the project No. 2005/017-494-02-01 "Protection of the Communities' financial interests and fight against fraud" (Transition Facility programme) was implemented by FCIS. The project was aimed at the strengthening of administrative and technical capacity of FCIS, seeking to ensure the proper analysis of information in fighting against financial crime and implementing the prevention of the offences. Implementing the above mentioned project, the risk assessment methodology and training strategy was developed. In addition, 139 FCIS officers and 123 officials of other state institutions took part in 8 training courses. During 2008 the FCIS officers took part in 8 workshops and trainings for money laundering and terrorist financing prevention, of which 6 had been carried out abroad (13 participants) and 2 (35 participants) in Lithuania. During past years officers of the FCIS took part in continuous training courses:

- AML/CFT prevention (different aspects: corresponding banking, financial investigation of non-economical crime, prosecution of ML, etc.)
- I2 Analysis Notebook
- English/French;
- CEPOL programme;

- Operational tactics;
- Financial analysis;
- Europol courses for analytics.
- Trainings on "Investigation into Financial Crimes" was organized at the Police School of Lithuania on 2010. The training was attended by law enforcement officers.

310. In 2011, the Police School of Lithuania was delegated to organize general training for the representatives of pre-trial investigation institutions and prosecution service in the field of tracing the proceeds and other associated property of crime according to the inter-institutional programme for the advancement of professional skills "Tracing of proceeds and other associated property of crime".

311. The information provided above concerns FCIS as a whole. It remained unclear to what extent the MLPD's current staff members have benefited from these (or other) training initiatives.

Statistics (Recommendation 32)

312. As indicated earlier, article 5 of the AML/CFT legislation requires the FCIS to accumulate, analyse and publish, according to the procedure established by legal acts, the information relating to the implementation of money laundering and/or terrorist financing prevention measures and the effectiveness of their system of money laundering and/or terrorist financing prevention (also the information specified in paragraph 2 of Article 33 of 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/or terrorist financing).

313. At the same time the MLPD is authorised, pursuant to Order No. V-21, to request from other FCIS units, information on the development of pre-trial proceedings triggered by the MLPD. Neither the AML Law, nor Resolution No. 527 contain explicit requirement for the other authorities to provide feedback to the FCIS on the development of the cases based on information submitted by the FCIS.

314. FCIS maintains detailed statistics on the disclosures received from the financial institutions and other entities under the AML Law including the STRs and UTRs (no separate statistics for each) and the CTRs, as well as the reports received from other state institutions and foreign FIUs. Each of those reports is subjected to analysis in the FIU. The statistics for 2009 and subsequent years contain a detailed breakdown of the category of "other entities" as defined in the AML Law, although such breakdown for the other entities was not provided for previous years. Detailed information on CTRs per reporting entity is also maintained. Before 2008 financial institutions were obliged to report all transactions above 50 000 LTL (approx 15 000 EUR) threshold, after – only cash transactions above 15 000 EUR (changes of AML Law). The changes in reporting requirements are reflected in 2009 (inertia factor, need to configure IT systems). The ability of the internal IT systems of FCIS to provide different breakdowns of the statistics are demonstrated by the information provided on CTRs both per category of reporting entity and per type of operations.

315. Customs information is also automatically provided to the FCIS and statistics on cash entering and leaving the country (pursuant to the conditions and definitions of Regulation (EC) No 1889/2005) is maintained and was provided.

316. Statistics are maintained by FCIS and were provided in regard to the postponed operations pursuant to article 7, Paragraph 1, item 5 of the AML Law. The procedure was amended in the new AML Law of 2008 providing a prolonged period of postponement (up to five days). The procedure is provided for in detail in Article 14 of the Law. Additionally, information is maintained as regards requests from other departments of the FCIS and other authorities to the MLPD. FCIS claims that statistics are maintained by the Service regarding STRs resulting in investigations, prosecutions and convictions (cases forwarded to the police/prosecution). However, no detailed and consolidated information was provided to the evaluators and obtaining figures related specifically to the outcome of the AML/CFT work carried out by the MLPD. The following table, summing up the overall activity of the MLPD (but also of some of FCIS' other departments) was provided upon the evaluators' request when preparing for the on-site visit:

FCIS statistics, year 2009 - 2011 m.			
	2009	**2010**	**2011**
STRs received:	**213**	**222**	**223**
credit sector:	141	165	158
Operations above threshold			
Cash deposit	580 031	542 000	482 791
Cash withdrawal	130 044	129 902	133 692
Cash exchange	31 404	22 260	29 966
Information from Customs	877	1 979	2 636
Postponement of transactions			
Number of postponements	10	11	16
total value (EUR) of assets postponed	2 961 194	10 998 122,9	57 948 768
Restrictive measures	851 659	9 263 870	57 625 765
Intelligence provided by the MLPD to boards of FCIS for further actions:	**59**	**65**	**57**
Pre-trial investigations started by the reports from MLPD	22	17	15
Pre-trial investigations on money laundering started by the reports from MLPD	3	3	7
Intelligence provided to State Tax Inspectorate by MLPD:	**38**	**41**	**41**
Damage to the State budget, estimated by STI	1 006 655	294730	1681000
Intelligence provided to other law enforcement authorities by MLPD	**7**	**25**	**35**
Intelligence provided to foreign FIU's by MLPD	**11**	**25**	**11**
AML/CFT Violations established by FCIS	**18**	**15**	**10**
Requests send to foreign FIUs	97	136	184
Requests received from foreign FIUs	148	195	213
Trainings provided to obliged entities by the FCIS	**12**	**14**	**12**
Requests received by the MLPD at the national level			
From state authorities	93	297	302

317. No statistics were provided to demonstrate the speed of analysis of the disclosures received by the FIU. During the on-site interviews, it was indicated that generally, an analysis takes about one to two months; depending on the case, it can take longer but also be much shorter.

318. It would appear that the inspections and controls carried out by the various FCIS' departments (other than the MLPD) also include occasionally, as a component, compliance with the AML/CFT requirements. The following figures were provided for the overall cases in which specific AML/CFT insufficiencies have been identified by FCIS (and would have triggered sanctions, which remain unknown to date):

- 2008: 1 bank (STR non reporting)
- 2009: 6 fast credit companies (no internal rules, no responsible officer appointed), 7 casinos (lack of CDD measures), 8 car dealers (no internal rules, no responsible officer appointed, no operations of 15000 EUR in cash reported)
- 2010: 11 notaries (no internal rules, no responsible officer appointed, no operations of 15000 EUR in cash reported), 4 fast credits (no internal rules, no responsible officer appointed)
- 2011: 2 car dealers (no internal rules, no responsible officer appointed, no operations of 15000 EUR in cash reported), 9 real estate agents (no internal rules, no responsible officer appointed, no operations of 15000 EUR in cash reported).

319. It is clear from the above that improvements are necessary as regards the collection and keeping of data (R.32) by the FIU, when it comes to its AML/CFT function specifically.

Effectiveness/implementation of Recommendation 26 and assessment of overall compliance

320. The FCIS seems well-prepared, funded and staffed to ensure the proper performance of its various tasks within its competence to combat economic and financial crime. Its officers are of adequate background, extensive training is provided to them and proper integrity is ensured through the general requirements for their appointment and internal service. According to the information provided to the evaluators there were 1336 criminal offences recorded by the FCIS and 1228 offences disclosed which constitutes 92% of the recorded offences.

321. Additional focus has been given by FCIS since the last evaluation to several areas worth noting – the financial investigation of criminal assets; the investigation of illegal enrichment pursuant to Article 189 CC; criminal acts associated with EU funds. In that respect the increased participation of the FCIS and MLPD in particular in financial investigations and the significantly increased exchange of information with both the other structures of FCIS as well as other authorities should be noted. The significant efforts of FCIS and effectiveness within its general areas of competence are also demonstrated by the involvement in various initiatives aimed to address the areas of crime assessed as crucial for Lithuania in the present economic and financial situation, namely fraud, smuggling of excise goods and the illegal turnover of goods, VAT fraud, tax fraud and offences related to the state social insurance funds, undeclared wealth.

322. However, the assertion that ML investigations would be one of the priorities of FCIS' work is not supported in practice by the very modest number – in absolute terms – of genuine ML investigations triggered by the analytical work of the MLPD. For the years 2009, 2010, 2011, based on information provided by the MLPD 13 pre-trial investigation for possible ML were conducted by FCIS' operational departments, whereas more than 50 pre-trial investigations

(again based on information from MLPD) have been initiated for other offences. The number of disclosures for further actions not connected with ML or another crime is even higher (e.g. tax violations); it amounts to almost one third of all disclosures annually for the period 2009-2011. The number of prosecutions and convictions for ML is also low in relative terms, i.e. compared to the cases generated based on law enforcement operative sources and compared to the characteristics of the overall criminal activity in the country. The evaluators take into account that generating ML and TF cases could be part of a broader system that aims ultimately to ensure the forfeiture of criminal assets and the significant efforts of the FCIS in this respect are noted. However, in the context of R. 26, the evaluators' focus is the specific ML and TF perspective of the system.

323. The evaluators observe that the AML/CFT efforts still tend to be absorbed by, and diluted with FCIS' other responsibilities as a law enforcement body dealing with a variety of offences. The information and data available show that the reporting system is used by FCIS primarily for purposes other than detecting ML/FT cases, and that a suspicious transaction is likely to become a ML case only if other departments within FCIS can substantiate the underlying predicate offence within their own area of responsibility. This could be explained also by the emphasis put recently by the Prosecutor General's Office on the need for investigative authorities to investigate the legalisation of proceeds of crime in conjunction with the predicate crime. Although this step was, of course, mostly welcome by the evaluators, it could have an adverse effect on the preventive AML/CFT efforts if FCIS is unable to dissociate the FIU-type work and the FCIS' many other areas of responsibility. During the discussions, MLPD representatives sometimes clearly stated that their focus was not only on ML, but also on other crimes such as VAT fraud and that it was for other departments within FCIS, to determine whether a case they had forwarded to them was a possible ML case.

324. As explained during the evaluation visit the time necessary for analysis of a case is 1-2 months and regular reporting of the MLPD as to the stage of analysis is required. The MLPD disposes of mechanisms to obtain information including access to bank account information from tax authorities. There are some restrictions, however, concerning legal professions in particular.

325. The MLPD's active support to other units of the FCIS and other law enforcement authorities is provided for in the case of financial investigations pursuant to the Plan for the strengthening of criminal prosecution for fraud in Lithuania and implementation measures thereof (2009). The use of the CTR system to support law enforcement authorities' work as well as to generate further cases is also noted. However the dissemination practice of the MLPD, just as at the time of the 3rd evaluation round, still seems to be primarily and excessively geared towards the detection of crimes falling with the competence of FCIS and which are not ML as well as assisting the other structures of the law enforcement with information on monetary operations and transactions. It could also be that if the MLPD relies too much on the other services of FCIS to identify a ML component, at the end of the day no one is really committed to identifying such components and this affects the focus of the whole ML and TF preventive system (e.g. generating and publishing meaningful trends and typologies, adjusting the reporting mechanism and raising the awareness of the reporting entities in regard specifically to ML and TF).

326. As can be seen from the table above, the number of occurrences where information collected by the MLPD was sent to FCIS units for purposes other than ML investigations exceeds by far those disseminated for ML investigations. At the same time, the number of pre-trial investigations for ML conducted by FCIS bodies (based on information from the MLPD) is

extremely low (3 in 2009, 3 in 2010, 7 in 2011) if one looks at the total volume of STRs received. The evaluators cannot conclude that the STR system, despite the efforts and dedication of the MLPD staff, is generating meaningful results in terms of the objective of the preventive and reporting mechanism, namely the investigation and prosecution of money laundering.

327. The MLPD does not enjoy the necessary autonomy that would enable it to concentrate on significant cases of money laundering and to prioritise its own work. The division, as part of the Analysis and Prevention Board of the FCIS, is responsible for ensuring sufficient information is provided to other units of FCIS in regard to their tasks. The situation might be partly due also to the lack of specific mechanisms for the other law enforcement structures to obtain the necessary financial information at the time of preliminary checks of alleged criminal activity. The resources of the MLPD, given its numerous responsibilities, are not considered to be adequate for the performance of its tasks.

328. Most staff of the MLPD have a law enforcement background and only one analyst has a financial background. Evaluators take into account the information by Lithuanian authorities concerning the significant number of financial auditors in the FCIS (formally the FIU) and the wide possibilities for exchange of information between the MLPD's experts and the other staff of FCIS. However, at least two problems arise from this. Firstly, the MLPD is indeed carrying out the initial analysis and is subject to the Internal Order which protects the disclosures received from reporting entities, therefore prolonging unnecessarily the time of actual analysis of the cases and increasing the risk of the FCIS overlooking some cases. Secondly, there was no specialization mentioned in regard to the work of the financial auditors, that is, they have to deal with all cases falling within the competence of the FCIS which could again result in overlooking some cases. The evaluators suspect that this could be a reason for the current analytical shortcomings and ultimately the very modest number of ML cases initiated. The shortage of staff could be another reason. This being said, a number of FIUs around the world do not have more staff than the MLPD and they are able to produce noticeable numbers of ML cases.

329. As mentioned above, a number of factors led the evaluation team to express doubts as to the adequacy of the FIU model of Lithuania. For instance, although the FCIS is formally designated as the FIU, it's area of responsibility goes well beyond AML/CFT issues. Additionally, the working methods of the department actually responsible within FCIS for the tasks of an FIU under FATF R.26 and the human resources available to this Department give rise to certain effectiveness concerns..

330. As indicated above, the Lithuanian authorities formally disagree with the approach taken by the evaluators when considering that the core functions of an FIU are performed by the MLPD and not by the FCIS as a whole.

2.5.2 Recommendations and comments

Recommendation 26

331. As indicated in the previous evaluation report, one needs to make a distinction between the FCIS (which is formally designated as the Lithuanian FIU in the AML/CFT law and other pieces of legislation) and the MLPD (for the purposes of analysis of compliance with R.26): the latter is the department responsible within FCIS for the actual core functions and work related to an FIU in the sense of R.26 and the Egmont principles (this is also confirmed by a specific

internal order of FCIS' Director on the functions and activities of the Department). In the 3rd round report, strong reservations were expressed on the current FIU model. MONEYVAL had accepted that the MLPD could remain part of another body with broader competences, which is a situation explicitly envisaged by R.26, but it had recommended "*to strengthen the autonomy and identity of the MLPD - within the FCIS – for it to become the Lithuanian FIU; it should be granted its own powers, an IT system protected by adequate regulations in order to ensure that STRs and CTRs are primarily used for AML/CFT purposes independently from the FCIS' own competencies, and in accordance with the Egmont principles.* To date, no visible steps have been taken to address this recommendation and the evaluators have concluded that the way FCIS is conceived and set up does not allow for the creation of a financially, hierarchically and operationally autonomous FIU within its structures.

332. The present evaluation just confirms the pertinence of earlier findings. The evaluators are concerned that the established mode of functioning of the AML/CTF preventive system is therefore not providing sufficient legal grounds for the MLPD to truly assume its role of coordination of the preventive system and to fully utilise the potential of the AML/CTF reporting system for the purposes of detecting and investigating ML and TF cases. Working methods and staffing issues need to be taken into account in the analysis of the reasons for the lack of results in terms of ML/FT cases generated to date by the MLPD.

333. Lithuania should take determined steps to ensure the country has a financial intelligence unit (FIU) which meets the requirements of FATF Recommendation 26 and in that context to ensure the operational, financial, technical and institutional autonomy, as well as the adequate resourcing of the institution.

334. At the same time, an analysis should be carried out on the other reasons likely to explain the lack of significant results in terms of ML/FT cases generated as a consequence of the preventive system; it should include i.a. a review of the analytical work and background of analysts.

335. The instructions and guidelines to the obliged persons for reporting should be amended to include detailed requirements for the reporting entities. Reporting forms for all categories of obliged persons and further awareness of the reporting mechanisms should be considered.

336. Amendments should be introduced to ensure a coherent framework is in place to obtain information from lawyers and assistant lawyers (where these professionals do not deal with the defence of a client).

337. The FIU should be given a broader analytical responsibility in all cases of possible FT (beyond the current 24 h period for the processing of an STR and in addition to sending the information to the SSD). There should also be clarification of the overlapping responsibilities of the FIU and the SSD when it comes to the elaboration of criteria for the identification of terrorist financing (Article 5, Paragraph 6 and Article 6, Paragraph 1, Item 3 of the AML Law) in order to ensure proper and timely information provided to the obliged persons and adequate awareness of the reporting obligation.

338. The protection of the information received pursuant to the AML Law should be subject to adequate regulations to guarantee its use for AML/CTF purposes and related crimes and to avoid any doubt as to its potential use for other purposes due to the lack of explicit legal prohibition in that sense (information is protected in MLPD pursuant to an internal order of FCIS).

339. Measures should be taken to ensure that a separate annual report related to the implementation of the AML/CFT regime should be published (other than the FCIS report encompassing all its activities), with adequate information on statistics, typologies and trends that could assist the obliged persons under the AML Law.

Recommendation 30

340. As indicated earlier, a significant number of positions within the MLPD have not been filled. The Lithuanian authorities should ensure that the FIU (or the MLPD within FCIS) is adequately and fully staffed according to plans, and that adequate criteria exist for the qualifications required.

Recommendation 32

341. AML/CFT statistics are an important element to assess the actual work of a body active in this area and to ensure it can be held accountable domestically. It also enables the assessment of the impact of AML/CFT policies. Lithuania is in a position to produce statistics of that kind, albeit with some difficulty since feedback is not available systematically from law enforcement to the FCIS on cases which have been forwarded for further investigative steps.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**PC**	• insufficiently clear legal framework regarding the structure and position of the Department performing the actual FIU functions in view of the practical implementation of the AML/CTF regime; • lack of legal safeguards for the operational independence of the unit responsible for the practical implementation of the core functions of an FIU; • inconsistent legal basis for the FIU to obtain additional information from advocates and advocate's assistants; • concerns regarding the absence of fully fledged analysis of FT by the FIU and overlapping competence of the SSD and the FIU when it comes to the elaboration of guidance on FT; • concerns over legal uncertainty as regards the protection of information within the FIU and the purposes it is used for; • no periodic reporting meeting the standards of C.26.8: the annual report of the FIU does not provide detailed information on the core activities of the entity actually performing FIU functions and does not include detailed statistics and information on typologies and trends; • lack of effectiveness which are likely to result from the current approach to ML, the analytical working methods, the background of staff, shortage of staff, lack of follow-up on cases generated; insufficient focus of the FIU on ML and TF; the focus on the offences which fall within FCIS' competence and the system being mainly used to detect such individual offences.

2.6 Law enforcement authorities (R.27)

2.6.1 Description and analysis

Recommendation 27 (rated PC in the 3rd round report)

342. Recommendation 27 was rated PC due to the lack of an overall proactive approach to ML investigations by all law enforcement authorities and the lack of focus in ML as part of police investigations, the lack of clear overall TF responsibility and observed problems related to the use of special investigative techniques in ML and FT. The recommendations included providing the police with responsibilities in money laundering and terrorist financing investigations, to review the access of SSD to information held by the obliged persons, to clarify the grounds for the use of special investigative techniques and to ensure consistency between the Law on Operational Activities and the Code of Criminal Procedure, to review effectiveness and resources of the police services dealing with FT and ML predicate crimes.

Legal framework

343. The Law on Operational Activities was amended to take into account recommendations from the 3rd round and it is now possible to monitor bank accounts of natural and legal persons, including in the context of an investigation into the (new) offence of illicit enrichment. As also indicated in the introductory part of this report, the creation of an asset recovery office is under way. Additionally the mechanism of extended confiscation was introduced and confiscation is now applicable to instruments of crime and a broader range of assets (e.g. indirect proceeds, equivalent confiscation). No changes relevant for the purposes of the current criteria under this recommendation occurred to the Code of Criminal Procedure. The modalities of distribution of investigations into criminal acts among pre-trial institutions were approved by Order No.I-47 of the General Prosecutor of the Republic of Lithuania, dated 11 April 2003. It also makes reference the FCIS investigations.

344. Effective as of 2010, the State Security Department was converted into an operative law enforcement institution and was deprived of its powers to conduct pre-trial investigations although its powers to conduct operational activities pursuant to the Law on Operational Activities remained.

345. On 6 August 2009 through order No 17.2.-13753, the General Prosecutor sent an official letter to the Chief Prosecutors of the Departments and Divisions of the central and territorial prosecution services. It recommends to prosecutors to instruct FCIS to carry out investigations of offences under article 216 of the Criminal Code, but it also stresses that all other pre-trial investigation institutions and prosecutors should enquire whether, in the context of their own investigations into criminal proceeds, there are indications of a ML offence under the said article 216.

346. All other major changes occurred also through internal orders of institutions involved, in particular the practice established by the Prosecutor's Office, introducing and extending the requirements for conducting financial investigations, focusing on particular crimes among which EU structural funds, value added tax and state social insurance funds, criminal acts associated with smuggling (smuggling, illegal non-export of goods or production from the Republic of Lithuania, customs fraud, illegal disposal of excise-taxed goods) with a major emphasis on

fraud. The mentioned initiatives were also implemented through an increased level of interagency cooperation. Those changes and any relevant results are discussed below.

Designation of Authorities ML/TF Investigations (c.27.1)

347. Pursuant to Order No.I-47 of the General Prosecutor of the Republic of Lithuania as of April 11th 2003 and the information provided by the Prosecutor's Office during the evaluation visit the FCIS remains the main law enforcement authority that would be responsible for the investigation of money laundering. At the same time the aforementioned order refers to certain crimes (Articles 213-215 of the Criminal Code) that would be investigated by the FCIS only if committed in combination with specific other crimes, including money laundering (Article 216 of the Criminal Code). Otherwise they would be investigated by the police. This could create potential uncertainty in those specific cases as to the powers of the respective law enforcement authorities and might not contribute to a pro-active approach to those acquisitive crimes in all cases.

348. The police units which would be responsible to deal with economic and financial crime would be the Board of Crime Investigation and the Board of Organized Crime Investigation of Lithuanian Criminal Police Bureau as well as the Economic Crime Investigation subdivisions in the territorial police agencies. According to the aforementioned order of the General Prosecutor of 2009 all pre-trial investigation authorities including the police should look for indications of money laundering. However it remains unclear based on the mentioned order and the information provided by the Prosecutor's Office during the evaluation visit whether the police units would be encouraged to actually conduct the investigation proper into money laundering and whether sufficient specialization is available to those authorities to deal with those cases. The information provided by the Prosecutor's Office points to the FCIS being considered by the prosecutors as the proper authority to investigate major money laundering cases and the police confirmed that the police units would mainly be engaged in more simple investigations in money laundering. That also raises the question whether some types of predicate crimes (outside of the competence of the FCIS) would be dealt with effectively and whether a proactive approach would be followed.

349. The additional emphasis on financial investigation has been a major achievement of the Lithuanian law enforcement authorities especially in the case of criminal prosecution of fraud. This is demonstrated by the Plan for the strengthening of criminal prosecution for fraud in Lithuania and subsequent implementing measures (hereinafter – the Fraud plan and measures) approved by Order No.133/5-V-683/2-242/V-83/1R-130/4-620 of the Prosecutor General of the Republic of Lithuania, General Commissioner of the Lithuanian Police, Director of the Special Investigation Service, Director of the Financial Crimes Investigation Service, Director of the Customs Criminal Police and Commander of the State Border Guard Service of 28 September 2009, which covers the period 2009-2012. Among the major priorities in financial investigation is the collection of information on the property held by the suspect and related persons, also transactions, and financial operations seeking to trace the proceeds and property possibly related to crime for securing a civil suit, also to collect other information important for pre-trial investigation associated with property transactions and financial operations. The striving to ensure that financial investigation issues and money laundering disclosure were included into all investigations of crimes relating to property acquisition should be stressed. Based on the description provided by the Lithuanian authorities this seems a commendable effort to ensure the tracing of property and the recovery of assets in all cases.

350. The FCIS has dedicated a significant part of its staff to the conduct of financial checks and the mentioned financial investigations. It was mentioned by Lithuanian authorities that about 50% of the staff in local FCIS departments consists of auditors responsible for doing these checks. However it remains unclear to the evaluators whether the priority given to financial investigations is contributing to the actual investigation into the money laundering component in all cases of acquisitive crime especially by the police, given also the aforementioned views of the police and the prosecution, but also by the FCIS. This is also supported by the specific focus (as seen from the interagency initiatives presented by the Lithuanian authorities to the evaluators) on a limited number of crimes which are considered to be of highest risk to the Lithuanian society and financial system. However this still excludes some important areas like organised crime.

351. Despite the high level of interagency cooperation pointed out by the other law enforcement authorities (Special Investigation Service and the Border Guard), it remains highly unlikely, based on the information provided during the evaluation visit by those authorities, that they would engage in money laundering investigations in addition to the investigations that directly fall under their competence (respectively corruption and smuggling or trafficking).

352. Implementing the new provisions on illicit enrichment (Art. 189^1 of the Criminal Code) was mentioned during the on-site visit as one of the top priorities for law enforcement authorities, in particular the FCIS. There is a risk, supported also by the intended amendments to the Criminal Code, that by combining the offence of money laundering with the *corpus delicti* of illicit enrichment, investigations would increasingly focus on Article 189^1 of the Criminal Code given the (lower) level of proof required in these situations. The understanding of the evaluators was that there is a risk that some parts of the judiciary might favour possible increased use of Article 189^1 of the Criminal Code as a priority in regard to fighting proceeds generating crimes and recover assets, to the detriment of acts of money laundering as such.

353. As of 2010, the State Security Department was deprived of its powers to conduct pre-trial investigations for terrorist financing. Both the FCIS and the State Security Department underlined the cooperation that would occur between both services in potential cases of terrorist financing. The information provided by the Prosecutor's Office in regard to conducting potential pre-trial investigations into terrorist financing referred to the powers of the prosecutors to conduct the pre-trial investigations themselves or decide which would be the most appropriate authority to conduct those pre-trial investigations. The police was thus not involved in investigating terrorist financing until 2010. It was mentioned that there is a section of the police that would be responsible for such investigations (Crime Investigation Board 3 of the Criminal Police Bureau).

354. An agreement for operational cooperation and overall coordination in criminal matters in general was renewed on 01.03.2010. Agreement No. 17.9-812.5-IN-11 is signed by Prosecutor General's office, State Security Department, Special Investigation Service, FCIS, VIP Security Department, the Department of operational services under the Ministry of Defence, the State Border Guard service, Customs Department and the Police Department. According to this agreement, all information about terrorist matters should be passed to Lithuanian Criminal Police Bureau. Counter terrorism work is assigned to Board on Fight Against Organized Crime and Terrorism. There are 38 officers in Board, also the functions of Board is performed in 10 police districts by specially appointed officers.

Ability to Postpone/Waive Arrest of Suspects or Seizure of Property (c.27.2)

355. There are no explicit legal provisions that would mention the powers to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purposes described in the criterion. The distinction between the operational phase and the pre-trial investigation phase and the role of the prosecutor in overseeing and directing both phases should be taken into consideration.

356. Authorisation is required for the conduct of operational activities by the entities of operational activities pursuant to the Law on Operational Activities of Lithuania. The authorisations are stipulated for each type of operational activities to be conducted by the authorised entities in Articles 10-13 of the Law. In each case the involvement of the prosecutor is required.

357. At the same time the prosecutor organises and is in charge of the pre-trial investigation. Article 170 of the CCP provides for the right of the prosecutor to carry out the whole pre-trial investigation or the separate actions of it on his own. When the pre-trial investigation or the separate actions of it are carried out by the pre-trial investigation officers, the prosecutor shall control the process of the pre-trial investigation.

358. The aforementioned framework would be sufficient for the criterion to be met in practice. The Law on Operational Activities, as noted in the 3rd round, however, refers only to paragraph 2 of Article 189 in the provision of Article 9, which stipulates the grounds when operational activities shall be conducted by the entities of operational activities. In certain cases this might limit the effectiveness of investigations into the financial aspects of crimes, especially considering the priority given by the Lithuanian authorities to deal with money laundering. According to the Lithuanian authorities, this would not lead to any hindrances in practice to the investigation and use of operational activities. However, in the evaluators' opinion this matter deserves further attention.

Additional Elements

Additional Element - Ability to Use Special Investigative Techniques (c. 27.3 and 27.4):

359. A distinction should be made between the so-called "operational activities" and pre-trial investigations. In accordance with The Law on Operational Activities, the special investigative techniques that are available to the entities of operational activities include:

- "Covert Monitoring of Postal Items, Document Items, Money Orders and Documents Thereof", "Use of Economic, Financial Operations of a Natural or Legal Person, Financial Instruments and/or Means of Payment", "Use of Technical Means in Accordance with the Special Procedure and Obtaining of Information from the Economic Entities Providing Electronic Communications Networks and/or Services, from the Bank of Lithuania, Commercial Banks, Other Credit and Financial Institutions, Also from Other Legal Persons";
- "Covert Entry in Residential and Non-residential Premises and Vehicles and Inspection Thereof", "Temporary Seizure and Inspection of Documents", "Seizure of Samples of Substances, Raw Materials and Production and Other Objects for Investigation without Disclosing the Fact of Seizure Thereof";
- "Mode of Conduct Imitating a Criminal Act" [staging of offences]
- "Controlled Delivery"

360. The authorisations for these actions are given in most cases by the chairmen of the regional courts, by Chairmen of the Division of Criminal Cases of these courts and/or by two judges of the Division of Criminal Cases assigned by the Vilnius regional Court according to the motivated request presented by the General Prosecutor (or the Deputy General Prosecutor) or the Chief Prosecutors of the Regional Prosecutor's Offices (or the Chief Prosecutors). Following the above decisions of the prosecutors and the judges, the law enforcement agency can perform the intended operation in case urgent action is required.

361. The Law on Operational Activities therefore provides for a large number of special investigative means. However, as indicated earlier, it remains unclear whether these activities can be used, pursuant to Article 9 of the Law, in all situations covered by Article 189 of the Criminal Code.

362. The measures available in the context of pre-trial investigation are detailed in the Code of Criminal Procedure as follows:

- search of premises/persons (Article 145, 146 of the CCP)
- seizure (Article 147 of the CCP)
- seizure of a parcel (Article 148 of the CCP)
- temporary restriction of property rights (Article 151 of the CCP)
- control, recording and accumulation of information transferred by means of electronic networks (Article 154 of the CCP)
- the right of the prosecutor to access information (upon visiting an institution or a written request) (Article 155 of the CCP)
- taking photographs, filming, measuring, and taking an example of handprints for the genetic dactyloscopy (Article 156 of the CCP)
- temporary suspension from duties or temporary suspension of the right to be engaged in a particular activity (Article 157 of the CCP)
- investigation without revealing identity (Article 158 of the CCP)
- performance of actions, which imitate criminal activity (Article 159 of the CCP)
- covert surveillance (Article 160 of the CCP).

Additional Element—Specialized Investigation Groups and Conducting Multinational Cooperative Investigations (c. 27.5)

363. The financial investigations, as mentioned above, have been introduced and made a priority for the investigation. Some of the usefulness of such groups is limited by the seemingly narrow focus on certain types of crime considered to be of utmost importance for Lithuania as discussed previously. The evaluators were also informed by the Lithuanian authorities of several instances where ad hoc joint investigation groups with the participation of the FCIS were established. There have been such groups with Border Guard, police as well as investigations together with the Customs Criminal Service. The evaluators were also informed of at least two cases of joint groups having an international dimension. Article 8, Paragraph 3 of the Law on Operational Activities (subject to the restrictions discussed above) authorizes entities of operational activities, in the cases provided for by the treaties and agreements of the Republic of Lithuania, to co-operate with officers of foreign states in carrying out operational activities in accordance with the procedure laid down by this Law.

364. It was indicated that there has been a substantial number of joint investigations performed with the participation of FCIS. Actually, the figures available for 2011 do not confirm this: 4 with police, 3 with Customs Criminal Service, 3 with foreign partners and Europol and 1 with the Special Investigation Service. Moreover, it is not clear, whether those investigations had been related to money laundering or involved a money laundering element (since these are general figures which refer to the various areas of competence of the FCIS in the area of financial and tax crime).

Additional Element—Review by Competent Authorities of the ML and FT methods, techniques and trends (c. 27.6)

365. A number of initiatives have been taken by the Lithuanian authorities with the active participation of FCIS. These have been entrusted with the tasks of analysing the general crime situation and trends, focus on smuggling of excise goods and illegal turnover of goods, analyses of activities detrimental to the state financial system and collection of taxes. The joint steering group established in 2009 by the order of the director of the FCIS seems to be mainly engaged in the preventive aspects of the AML/CTF regime. Moreover the joint steering group does not involve the Special Investigation Service.

Analysis of effectiveness (R.27)

366. The situation regarding the involvement of the police seems to have partially improved as well in practice as almost half of the money laundering investigations for 2011 (no further information provided by Lithuanian authorities for previous years) have been conducted by the police. This is also probably due to Order No 17.2.-13753 of the General Prosecutor of 2009. Nevertheless the effort by the police still seems to be insufficient in view of the situation with all acquisitive crimes and the lack of sufficient focus on money laundering.

367. Despite the introduction of the financial investigation the effort does not seem to provide viable results in all cases and especially considering the quite limited number of requests from the police for obtaining information disclosures generated through the AML/CTF preventive system. There were 25 requests mentioned for 2011 and 26 requests for 2010. This does not quite support the purposes and priorities of the financial investigation. The Lithuanian authorities informed the evaluators that there would be lists of names provided to the FCIS from the police or other authorities participating in the Criminal Information Analysis Centre in order to obtain information protected by bank secrecy or on cases of organised crime. This channel used by the police and other authorities, for obtaining bank information, still does not span to all investigations into acquisitive crimes. Attention to autonomous ML does not seem to be significant especially considering the uncertainties related to the prosecution of such cases. This is valid for the police as well as for the FCIS. The difficulties related to evidence gathering in those cases were mentioned by the Lithuanian authorities during the evaluation visit.

368. The information obtained through the use of special investigative techniques in the operational phase can be used in court only with limitations requiring the verification of the information through the procedural actions in the Criminal Code of Procedure. It was clarified also by the Prosecution's Office that when the pre-trial investigation phase starts the Law on Operational Activities could not be applied and all information (evidence) is gathered pursuant to the Criminal Code of Procedure. The opinion of the Lithuanian authorities is that this procedure does not represent a practical obstacle. However, the evaluators are concerned about

the efficiency of the use of the special operational activities considering the aforementioned procedure of verification.

369. In the evaluators' opinion, there has been insufficient focus on money laundering issues as such in the joint interagency efforts and initiatives enacted by Lithuanian authorities.

Recommendation 32 (Statistics – law enforcement and prosecution)

370. No detailed statistics were provided on a number of aspects related to the activities in regard to ML performed by the law enforcement authorities: in regard to the preliminary checks (operational phase) performed by the law enforcement authorities related money laundering per institution, as well as on the use of special investigative techniques. Lithuanian authorities consider this information as confidential.

371. The evaluators were informed that the IT system of the Prosecutor's Office that would allow the generation of complete statistics is still not entirely functional. In addition there is no uniform system of the judiciary as a whole to involve the prosecution and courts which makes the statistics gathering a cumbersome and ineffective process that would not allow proper assessment of the AML/CTF system of Lithuania.

Recommendation 30 (Adequate financial, human and technical resources – law enforcement and prosecution) (rated LC in the third round MER)

372. Recommendation 30 in regard to law enforcement and prosecution was assessed as "Largely Compliant" in the 3rd round evaluation of 2006, based on the situation at the time of the visit which was characterised by two major differences from the situation at the time of the 4th round evaluation. Firstly, the police was not involved in investigation of ML and, secondly, the SSD had powers of pre-trial investigation. The resources for the law enforcement in regard to the implementation of their general (and perceived) tasks seem adequate. However, given the current priorities of financial investigation and the (limited) investigations of money laundering by the police, as well as the authority of pre-trial investigation no longer within the remit of the SSD, it is difficult to assess the current adequacy of the resources available to the law enforcement authorities (other than the FCIS) in regard to money laundering investigation. No information was provided by the Lithuanian authorities on the resources available to the department within the Criminal Police Bureau responsible for dealing with TF investigations. Moreover the impression of the evaluators was that there was no full awareness of the Lithuanian authorities of a sole responsibility of the police in regard to the investigation of TF cases.

373. In 2011, the Police School of Lithuania organised a training programme (with 10 activities carried out during the year) for the representatives of pre-trial investigation institutions and prosecution service in the field of tracing the proceeds and other associated property of crime according to the inter-institutional programme for the advancement of professional skills "Tracing of proceeds and other associated property of crime". According to Lithuanian authorities, elements related to money laundering were included in the programme. The evaluators' opinion is that such training is of utmost importance considering the low level of investigations and the lack of focus on money laundering issuers.

374. The prosecution service organises training for prosecutors, including training on financial crimes, both, independently and with other institutions or organizations of Lithuania or foreign

countries. Besides, prosecutors are delegated to workshops and conferences held in Lithuania and foreign countries. On May 30th – June 1st 2011 general training for pre-trial investigation officers, prosecutors, and judges on investigation into property crimes and property recovery will be arranged under the programme for the advancement of professional skills.

375. It is not clear whether a significant part of the institutions that should actually deal with money laundering within their competence have been trained properly in money laundering investigations, including the Special Investigation Service, the Border Guards, the Customs Criminal Service.

376. Considering the current focus on financial investigation, but not necessarily on money laundering, general instructions from management and probably further emphasis on this in the initial and in-service training are probably necessary for the police and other law enforcement authorities.

Additional elements

Special training for judges (C.30.4)

377. There are no specialised units/persons among the pre-trial investigation judges to deal exclusively or mainly with financial crimes. Some steps towards the establishment of a specialisation have nevertheless been taken with a Resolution of the Judicial Council of 13 November 2008.

378. The courses for judges are organised at regular intervals by the Training Centre of the Ministry of Justice. The most recent training sessions for judges on crimes related to the financial system, including international aspects, were organised in 2008–2010.

379. Training for judges was held in the form of seminars. These were divided into two parts: 1) the theoretical part; and 2) practical training - working in groups, analysing and solving practical incident relating to financial crime investigations and prosecutions. During the period 2008-2010 six training classes as referred above were held in the Training Centre of the Ministry of Justice.

2.6.2 Recommendations and comments

Recommendation 27

380. The Lithuanian authorities should provide the body responsible for the investigation of terrorist financing (the Unit for organised crime and fight against terrorism within the Criminal Police Bureau) with the necessary resources and direct access to information, considering the competences of both the State Security Department and the above police unit; for the time being, it would appear that the police service relies on the SSD's discretion to obtain information from certain sources.

381. The emphasis on financial investigation should be complemented by additional focus on investigation of money laundering by all law enforcement authorities other than the FCIS through additional instructions.

382. Action should be considered in regard to all acquisitive crimes and general criminality left outside the scope of the current initiatives.

383. The current legal provisions regulating the use of special investigative techniques for the investigation of money laundering and terrorist financing in the operational phase should be clarified in regard to Article 189.

Recommendation 30

384. Additional training is necessary for the law enforcement authorities investigating money laundering and terrorist financing especially in regard to the investigation of autonomous money laundering offences.

Recommendation 32

385. The information system of the Prosecutor's Office needs to be completed and fully functional to assist the assessment of the law enforcement activities related to money laundering.

2.6.3 Compliance with Recommendation 27

	Rating	Summary of factors underlying rating
R.27	**LC**	• Effectiveness: - no proactive approach to money laundering investigations in a significant number of the predicate crimes investigations. - the number of investigations for money laundering by law enforcement is still low.

2.7 Cross-border declaration and disclosure (SR.IX)

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

Summary of reasons for the 2006 MER rating

386. Special recommendation IX was rated "Partially Compliant" in the 3rd round MER. Reasons for this included the excessively narrow reporting duty, deficiencies regarding the awareness of the Customs and Border Guard of AML/CFT issues and the resulting ineffectiveness of the existing rules, the inadequate time limit for reporting to FCIS and the need to extend the cooperation mechanisms to AML/CFT issues.

2.7.1 Description and analysis

Legal framework

387. Lithuania being a member of the European Union, the cash control system applicable in the country has to take into account Regulation (EC) 1889/2005 *of the European Parliament and of the Council of 26 October 2005 on Controls of Cash Entering or Leaving the Community*. This EC Regulation entered into force on 15 June 2007, i.e. after the 3rd round evaluation.

388. The EC Regulation requires the declaration of cash (as broadly defined in the Regulation, including a variety of bearer instruments[14]) entering or leaving the EU at its external borders. Accordingly, the AML Law was amended to reflect the EC Regulation. For the purpose of this report the evaluators regarded the EC Regulation and the AML Law (as well as the implementing Customs regulations) as the legal basis for the cross-border declaration system in Lithuania. Subject to the footnote below the evaluation team have assessed the compliance of the Cash Control Regulation and these Lithuanian domestic rules with the FATF standards as well as their implementation in Lithuania with an increased focus on effectiveness[15].

389. Since the latter (article 1 para.2) leaves the possibility open for countries to go beyond the requirements of the Regulation, article 18 of the AML Law provides for a declaration regime applicable to movements of cash across EU borders (article 18 para.1 item 1) and also – as from July 2011 - for a declaration regime applicable to cash movements between Lithuania and so-called "other EU member States" (article 18 para.1 item 2):

Article 18. Declaration of Cash and Customs Activities *[for the sake of convenience, bits are underlined by the evaluators]*

1. Cash shall be declared in the following cases:

1) when a person brings into the European Union through the Republic of Lithuania from third countries or brings from the European Union through the Republic of Lithuania to third countries within the meaning used in the Law of the Republic of Lithuania on Customs (hereinafter in this Article referred to as "third countries") a single amount of cash of a value not less than the value indicated in paragraph 1 of Article 3 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 referred to as "Regulation (EC) No 1889/2005");

2) at the request of the Customs Department, when a person brings to other European Union Member States from the Republic of Lithuania and brings from other European Union Member States to the Republic of Lithuania or carries to other European Union Member States and from other European Union Member States a single amount of cash exceeding EUR 10 000 or the corresponding amount in foreign currency.

2. Customs authorities shall carry out:

1) controls of sums of cash brought to the European Union through the Republic of Lithuania from third countries and brought from the European Union through the Republic of Lithuania to third countries in compliance with provisions of Regulation (EC) No 1889/2005;

2) controls of sums of cash brought to other European Union Member States from the Republic of Lithuania and brought from other European Union Member States to the Republic of Lithuania or carried to other

[14] Article 2 paragraph 2 defines "cash" as follows: "(a) bearer-negotiable instruments including monetary instruments in bearer form such as travellers cheques, negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery and incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee's name omitted; (b) currency (banknotes and coins that are in circulation as a medium of exchange)".

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

European Union Member States and from other European Union Member States in a single amount exceeding EUR 10 000 or the corresponding amount in foreign currency.
3. In the cases established by Regulation (EC) No 1889/2005, when the European Union Member States are granted the right of decision making, decisions shall be made and the procedure for applying, in the Republic of Lithuania, the appropriate provisions of Regulation (EC) No 1889/2005 shall be established by the Government or an institution authorised by it, except when this Law or other laws establish otherwise.
4. The procedure for declaring, and carrying out controls of the origin of, sums of cash brought to other European Union Member States from the Republic of Lithuania and brought from other European Union Member States to the Republic of Lithuania or carried to other European Union Member States and from other European Union Member States through the Republic of Lithuania shall be established by the Customs Department under the Ministry of Finance of the Republic of Lithuania.
5. Customs authorities must immediately, and in no case later than within seven working days, notify the Financial Crime Investigation Service:
1) if a person brings to the European Union through the Republic of Lithuania from third countries or brings from the European Union through the Republic of Lithuania to third countries a single amount of cash of a value not less than the value specified in paragraph 1 of Article 3 of Regulation (EC) No 1889/2005;
2) if a person brings to other European Union Member States from the Republic of Lithuania and brings from other European Union Member States to the Republic of Lithuania or carries to other European Union Member States and from other European Union Member States through the Republic of Lithuania a single amount of cash exceeding EUR 10,000 or the corresponding amount in foreign currency.

Mechanisms to monitor cross-border physical transportation of currency (c.IX.1)

390. The evaluators recall that for the purposes of SR.IX, the EU has been recognised by the FATF as supranational jurisdiction in February 2009. As a consequence, physical cross-border transportations of currency/bearer negotiable instruments within the borders of the EU are to be considered domestic. Lithuania appears to make use of article 1 para.2 of the EC Regulation, by maintaining some degree of monitoring also over funds crossing EU internal borders: by doing so, the country is thus using a combination of the two options contemplated by SR IX.

391. As for the first declaration regime, the AML Law requires the mandatory declaration of cash brought from/ to third countries (outside the EU) to be carried out pursuant to the requirements of Regulation (EC) 1889/2005: article 18, Paragraph 1, item 1 of the AML Law stipulates that cash shall be declared when a person brings it into the EU through the Republic of Lithuania from third countries or brings it from the EU through the Republic of Lithuania to third countries (within the meaning used in the Law of the Republic of Lithuania on Customs). The threshold is not explicitly mentioned but determined by a cross reference to paragraph 1 of Article 3 of Regulation (EC) No 1889/2005. The threshold is thus 10,000 EUR. Also, the declaration regime is no longer unduly limited, as at the time of the 3rd round evaluation, since it clearly applies at present to bearer instruments due to the broad definition of "cash".

392. The second declaration regime, in article 18, Paragraph 1, item 2 of the AML Law, provides for a regime of random checks in respect of movements of cash between Lithuania and "other European Member States": customs officers may indeed invite travellers on such routes to submit a declaration when a person carries cash exceeding EUR 10,000 (or the corresponding amount in foreign currency).

393. The way evaluators read and understand the rules leads to some concern. By making the randomly-based declaration regime applicable to movements of cash between Lithuania and other "EU member States", and by defining "EU members States" by reference to "a State which is a European Union Member State and a State of the European Economic Area" (article 2 para.1), the AML Law creates a potentially problematic situation in respect of movements of

cash between the EU territory on the one hand and Iceland, Liechtenstein and Norway on the other hand (the current three EEA countries). It should also be borne in mind that Liechtenstein has signed a customs union with Switzerland in 1924 and that there is potentially a fourth country concerned by this special status granted to the EEA jurisdictions. The EC Regulation strictly considers non-EU member states as "third countries". It does not foresee a particular situation for the EEA members, nor are EEA countries included in the monitoring work of the EU Commission: the report from the Commission on the application of Regulation (EC) No1889/2005 (COM(2010)429 final), dated 12.08.2010, clearly deals with the 27 EU Member States only (in fact 26 countries since one did not respond). The evaluators also note that from a practical point of view, the special situation for these three countries can be in contradiction with actual risks inherent to criminal activities (for instance, the Customs annual activity report for 2011 refers to the Scandinavian countries, including Iceland and Norway, as one of the main destination for drugs (amphetamines and methamphetamines) produced in Lithuania.

394. Moreover, the AML Law also differentiates the two regimes by referring to Lithuania as both a destination and transit country under the first regime, and as the country of origin or destination in the second regime. It remains unclear how the distinction would be made in practice for cash movements with the EEA country crossing the EU border in Lithuania, where for instance, a person coming to Lithuania from one of those EEA countries would finally pursue his/her route to another EU country instead of staying in Lithuania as originally intended. This situation is clearly in contradiction with the spirit and the letter of the EC Regulation which makes it mandatory for any natural person entering or leaving the Community through one of the external borders to make a cash declaration.

395. The third source of concern relates to the concept of "cash". Whereas the reference to the EU Regulation in the regime for extra-EU movements makes it clear that "cash" includes also bearer instruments, this is not the case for the regime applicable to movements of cash with "other EU member States".

396. All the above also raises some questions as to the consistency of regulations since the Customs rules do not make any distinction among the third countries. Also, the Order No 1B-891 (see below) does not refer to the AML Law – the former is from 2006, i.e it predates the more recent amendments to the AML Law.

397. The AML Law 'article 18 para.4) delegates the responsibility for the elaboration and implementation of the above declaration procedures and controls in the aforementioned cases to the Customs Department under the Ministry of Finance of the Republic of Lithuania. The Customs Department have regulated the procedure and the rules currently in force are:

a) Order No. 1B-372 of 1 July 2011 of the Director General of the Customs Department under the Ministry of Finance of the Republic of Lithuania, approving the rules of the control of cash within the EU;
b) Order No. 1B-373 of 25 May 2007 of the Director General of the Customs Department under the Ministry of Finance of the Republic of Lithuania, approving the rules of the control of cash entering or leaving the EU;
c) Order No 1B-891 of 29 December 2006, on *Instruction for completing a cash declaration*, approved by the Director General of the Customs Department under the Ministry of Finance of the Republic of Lithuania: this text provides for a standardised form for the declaration of cash in accordance with EC Regulation (1889)2005.

398. Within the EU, countries can opt to use the "EU Common Declaration Form" or to elaborate their own[16]. Lithuania has opted for the latter. The exact content of the declaration to be filed in, in writing, is specified in the above-mentioned Order No 1B-891. The form is normally available in Lithuanian, Russian and English language at all border crossing points. Information to be supplied includes the identification of the owner of the cash, its provenance, the intended recipient, the route taken by the carrier and the intended use of the cash. The obligation to declare applies to the person carrying the cash, regardless of whether that person or another natural or legal person is the owner. The evaluators understand that the same form is to be used for extra-EU and intra-EU movements of cash by virtue of the above Order.

399. The Lithuanian form is very similar to the EU form. It requires less information on the owner than the EU form. It does not comprise an explanatory note providing guidance for completing the form and making it clear, for instance, that non-compliance with the declaration duties can attract sanctions.

400. Overall, the evaluators note that since the 3rd evaluation round, Lithuania has still not managed to find a clear-cut way to be fully in line with criterion IX.1

Request information on origin and use of currency (c.IX.2)

401. Article 18 para. 2 of the AML Law provides for clear powers for the Customs authorities to carry out controls as regards the EC Regulation-based declaration system, and the specific Lithuanian declaration regime applicable to movements of cash "with other EU Member States". This is reflected in item 8 of Order No. 1B-372: Lithuanian Customs officers may carry out controls to identify/detect undeclared amounts of cash or to seek clarification, for instance in cases where false or misleading declarations or disclosures are suspected or where the person refuses to make a declaration. These controls may include a body search and the physical examination of the means of transport, goods and personal belongings, including in respect of various persons travelling together. The searches are to be carried out at the nearest Customs premises suitable for that purpose. Order 1B-373 (for cash entering or leaving the EU) is silent on those matters. The Lithuanian authorities explain that the Customs rely on their general provisions of the Law on Customs, which provide for powers similar to those mentioned in Order 1B-372, although not related specifically to cash controls. The evaluators had doubts about the consistency of this approach due to the differences between the two above Orders.

Restraint of currency (c. IX.3) in case of suspicion of ML/FT or false declaration/disclosure

402. Item 9 of Order No. 1B-372 empowers the Lithuanian Customs officers to restrain undeclared cash in case they need to carry out checks. The Order does not provide for deadlines. The evaluators were informed that the restraint could last for 72 hours. If the carrier is not able to provide documentation about the origin of funds, the period can be extended up to 1 month. These deadlines are provided by virtue of the general Customs regulations. Order 1B-373 (for cash entering or leaving the EU) is completely silent on the above matters but the authorities refer again to the general Customs regulations which allow the Customs to retain any assets, in order to ascertain whether these are involved in a possible offence (smuggling under article 210 of the CALV, ML etc.). No statistics were provided for the use of those powers by the Customs authorities. During the on-site interviews, reference was made to 6 occurrences in 2011.

16 http://ec.europa.eu/taxation_customs/customs/customs_controls/cash_controls/declaration_form/index_en.htm

403. It is not entirely clear whether restraint of cash is possible also in case of suspicion of ML/FT (and not just undeclared cash). In principle, article 8 of the AML/CFT Law requires that the Customs, just like all "Law enforcement and other State institutions" report suspicions of ML and FT to the FIU. Item 10 of Order No. 1B-372 requires the submission of information concerning only the detection of undeclared cash to the FCIS within 3 days. At the same time, Order 1B-373 refers to the submission of information to the FCIS in the following cases: 1. when the declared amount is above 10 000 EUR; 2. when the declared amount is below that threshold but there are indications of an illegal activity related to the transportation of cash as is specified in the Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering are suspected. The evaluators note that this definition excludes the submission of information when terrorist financing is suspected. There are indeed general requirements to provide information that could fall within the competence of the respective law enforcement authority. The aforementioned mechanism does not amount to an effective way of responding to the requirements of C.IX.3. The first problem is related to the time lapse between the detection and the notification to the FCIS. Secondly, in the absence of information on specific risk indicators related to ML or FT to be used when exercising these powers, the absence of a clear timeframe for the application of temporary retraining measures by the Customs, the postponement powers of the FIU and the potential investigation into ML or TF might be prejudiced. There is thus a problematic situation from the perspective of Criterion IX.3.

Retention of information of currency and identification data by authorities when appropriate (c.IX.4); Access of information to FIU (c.IX.5)

404. Information on all cash declarations and disclosures are stored by the Customs Department and provided to the FIU immediately or no later than within 7 working days pursuant to Article 18, Paragraph 5 of the AML/CFT Law. All data required to be filled by Order No. 1B-891 is retained by the Customs Department. The Lithuanian authorities indicated that data on false declarations or failure to make a cash declaration or where there is a suspicion of ML/FT are stored in the *National Case Management and Intelligence System* of the Customs Criminal Service. The information on false declarations or failure to declare is provided to the FCIS, according to the Lithuanian authorities (through the Customs information system, which is directly accessible to the FCIS). As indicated earlier, article 8 of the AML/CFT Law requires the Customs Department to report to the FCIS about any indications of suspected money laundering and/or terrorist financing as well as violations of the AML/CFT Law.

405. As indicated earlier, pursuant to Order No 1B-372 of 1 July 2011, data on undeclared amounts of cash must be submitted in writing, within 3 working days, to FCIS. There were no statistics provided in regard to the total number of such cases disclosed by the Customs Department to the FIU, but it is assumed that the number corresponds to the number of violations established by the Customs. The earlier observations made in respect of the restraint and submission of information to the FIU are valid for this criterion too.

406. As also indicated earlier, Order 1B-373 excludes the submission of information when terrorist financing is suspected but according to the Lithuanian authorities, this would nevertheless fall under the general obligations for crime prevention, as well as the Agreement between the Prosecution services and the entities of operational activities.

407. The evaluators were informed of several joint investigations between the Customs Criminal Service and FCIS in 2011. It is understood (based on the lack of any suspicious cases submitted

by the Customs to the FCIS for their further investigation related to money laundering) that the FCIS is predominantly supporting the investigations within the remit of the Customs service competence pursuant to FCIS' obligation to provide information on monetary operations and transactions to the respective law enforcement authorities. In this case, there is a risk that there would be no incentives to investigate a possible money laundering element which does not fall within the competence of the Customs service and given the complexity of the ML.

Domestic co-operation between Customs, Immigration and related authorities on issues related to the implementation of SR IX (c.IX.6)

408. The replies to the questionnaire mainly referred to a) a long standing practice of cooperation and coordination for over 10 years on ML/FT-related, and b) to an agreement for operational cooperation and overall coordination that has been in place since 2001 between the Prosecution Service, Police Department, State Security Department, Special Investigation Service, State Tax Inspectorate, State Border Guard Service, Department of Operational Services and Police Department since 2001; c) the existence of agreements between the Lithuanian Customs and FCIS, which provide for rules on exchanging information related to cross-border transportations of cash or bearer-negotiable instruments. The evaluators observe that there is an assumption that cooperation is in place to address issues related to the implementation of SR IX (which is what this criterion is about), without concrete information being provided about the way this cooperation has actually led to possible improvements or adjustments. The evaluators recall that at the time of the third evaluation round, the involvement of the Customs and Border Guard in the AML/CFT efforts was weak. In the light of the discussions and information related to the present round, this has not fundamentally changed. It was striking to see that during the interview with Customs representatives, members of the FIU had in fact to explain the reporting duty for law enforcement and other state institutions under article 8 of the AML/CFT Law, when the evaluators where precisely trying to find out whether the Customs services had ever made use of this provision. As indicated earlier, the Customs authorities appear not to use the version of the AML/CFT Law currently in force, which refers to another regime for the reporting of cash transactions. It is also striking that reference is made above to a multilateral agreement of 2001 without the FCIS being listed among the institutions involved. Given the (still) limited involvement of the Customs Department but also the Border Guard in actively detecting money laundering or terrorist financing, the evaluators cannot conclude that cooperation is in place to address issues related to the implementation of SR IX. There is thus a problematic situation from the perspective of this criterion.

International co-operation between competent authorities relating to cross-border physical transportation of currency (c.IX.7)

409. A wide range of instruments are available to the Customs authorities in respect of EU-cooperation, including the provisions of Regulation (EC) No 1889/2005, Council Regulation (EC) No. 515/97 on mutual administrative assistance in customs matters. Lithuanian Customs (Customs Criminal Service) cooperate and exchange information with the competent authorities of other countries also on the basis of international conventions (Naples II, Nairobi Convention). During the pre-trial investigations exchange of information is based on agreements of mutual legal assistance in criminal matters and on the European Convention on Mutual Assistance in Criminal Matters. Extensive information on general findings associated with the cross-border transportation of cash or bearer-negotiable instruments, including notifications about places of concealment, other characteristics identified in cash controls (amount of undeclared cash, currency, route and etc.) is exchanged through the World Customs Organisation (Regional

Intelligence Liaison Office for Eastern and Central Europe) and OLAF (article 13 of the Law on Customs). The requirements of this criterion are satisfied.

Sanctions for making false declarations/disclosures (applying c.17.1-17.4, c.IX.8) & Sanctions for cross-border physical transportation of currency for purposes of ML or FT (applying c.17.1-17.4, c.IX.9)

410. In accordance with the Customs Order 1B-372 (for cash crossing internal EU borders), Customs Officers are required to draft a violation protocol when they identify undeclared cash. Order 1B-373 is silent on this matter but the Lithuanian authorities indicated after the visit that article 259 paragraph 1 of the CALV provides for the situations in which the Customs officers may draw a violation protocol (including acts captured by the administrative offences of articles 209 paragraph 7 and article 210 on smuggling). Strictly speaking, the obligation under Order 1B-373 (for cash entering or leaving the EU) does not extend generally to any false declaration made in respect of information other than the amount (e.g. information on origin or destination) and since the regime of sanctions covers this (see below), there could be a technical consistency issue to address here.

411. The applicable sanctions are determined under article 209(7) CALV; they are applicable in case of false or incorrect declaration as regards the amount of cash and other data, when the person makes no declaration or refuses to comply with this duty, and more generally in case of "misinformation of the customs". The mentioned provisions concern intra-EU movements of cash (article 209(7)) as well as cash crossing external borders of the EU insofar as the amount is below 250 minimum living standards in Lithuania (article 210). For all other cases of cash crossing the external borders of the EU, the case would be dealt with as a criminal case of smuggling. The sanctions are as follows:

- under article 209 (7): in case of intra-EU movements of cash, a fine of LTL 1,000 to 3,000 (between 289 and 867 EUR) can be imposed, with or without confiscation of undeclared cash. Repeated offences attract a fine of LTL 3,000 to 10,000, i.e 867 to 2,895 EUR
- under article 210: in case of crossing the external borders of the EU, a fine of 10 000 to 20 000 LTL with or without confiscation of undeclared cash can be imposed.

412. The above sanctions are imposed by the administrative court. The evaluators were not provided with information on the severity of sanctions actually imposed in practice. It was nonetheless indicated that confiscation had been applied in most of the 6 cases processed in 2010 and 2011. In case of undeclared funds, the Customs Criminal Service of Lithuania can also start a criminal investigation on the basis of articles 199 CC on "Smuggling" or 199(1) CC on "Customs Fraud". The penalty available is a fine or imprisonment up to 8 years.

413. In addition the concepts of "cash" for the purposes of each of the cases of violations mentioned above differ in the following way: for the purposes of article 209(7) it is considered not to cover bearer negotiable instruments. The term "money" used for the purposes of article 210 is understood to cover also bearer negotiable instruments (by taking into account the definition of "money" in the AML/CFT Law).

414. Considering the abovementioned sanctions and the fact that all violations of the cash control regime above 10 000 EUR (non-declaring or false declarations) at the external EU borders could entail criminal liability for smuggling it is impossible for the evaluators to assess the effectiveness of the system in the absence of data specifically on convictions related to the

smuggling of cash. In addition the availability of criminal sanctions for a significant part of the violations could amount to a cumbersome procedure and could lead to a lack of proportionality with the violations. With regard to criterion IX.9, there are no specific sanctions outside the criminal liability based on the ML and TF provisions in the Criminal Code. Given the narrow definition of article 216 CC (which does not cover acquisition, possession or use of assets) and the overall difficulties in the implementation of this incrimination (money from criminal activity needs to be converted in order for it to qualify as ML), it is unlikely that the criminal sanctions for ML can be seen as reflecting the requirements of C.IX.9 (inevitable cascading effect). The situation is similar with regard to the TF offence, which is also too narrow for this incrimination to be of effective use in the context of C.IX.9. There is thus a problematic situation from the perspective of C.IX.9.

Confiscation of currency related to ML/FT (applying c.3.1-3.6, c.IX.10) and pursuant to UNSCRs (applying c.III.1-III.10, c.IX.11)

415. Lithuanian Customs (Customs Criminal Service), as part of their powers to carry out operational activities and criminal investigation, can apply the provisions of the Criminal Code and the Code of Administrative Violations which allow to apply freezing, seizing or confiscation measures in respect of cash or bearer-negotiable instruments that are related to ML and FT. The Customs authorities are also in a position to involve other authorities to decide on the best steps to apply. The requirements of C.IX.10 are met, in principle. The weaknesses of incriminations, confiscation and coordination mechanisms have already been discussed above, and in earlier chapters of this report.

416. According to the Lithuanian authorities, the data that would be necessary to ensure the application of criterion IX.11 would be available in the State Border Guard databases. It still remains unclear whether and how it is ensured that all data on designations related to terrorism or terrorist financing are included and updated on a regular basis in the State Border Guard databases. The Lithuanian authorities indicated after the visit that their connection to the Schengen information system would allow for this continuous updating. The information provided by the Lithuanian authorities indicated the use of risk profiles, including developed in cooperation with the Ministry of Foreign Affairs of Lithuania. The Customs authorities informed the evaluators of extensive use of the State Border Guard databases such as license plates numbers, vehicles etc. There was also information provided regarding checks carried out weekly by the Customs related to concrete intelligence gathering cases or pre-trial investigations. However, no explicit information was provided on the use of specific lists or criteria for terrorist financing. Thus, the aforementioned mechanism causes some concerns as to the real-time application of the monitoring and checks that would allow the implementation of criterion IX.11 also considering the time required to pass the information to FCIS.

Notification of foreign agency of unusual movement of precious metal and stones (C.IX.12)

417. Regulation (EC) No 1889/2005 does not address this matter and the present FATF requirement does not extend to precious metals and stones. The Lithuanian authorities indicated that the import of gold, precious metals and precious stones are normally subject to the general Customs declaration requirements even if the value does not exceed the threshold value for reporting cash movements. They also indicated that information on cases of unusual cross-border movements of gold, precious metals or precious stones would normally be exchanged with the other countries concerned as part of the general cooperation mechanisms mentioned earlier (see criterion IX.7). The evaluators noted that the statistics provided by the Lithuanian

Customs authorities do not include information that would indicate any detection of precious metals or precious stones to date or violation in this regard. The information at the disposal of the evaluators does not comprise any indication of possible issues connected with this type of products concerning Lithuania (as a country of origin or destination). Therefore, it is difficult to assess the application of criterion IX.12 in practice.

Safeguards for proper use of information (c.IX.13)

418. The Lithuanian authorities have indicated that measures are in place to ensure the application of Article 11 of the Law on Customs, which requires Customs data to remain confidential and disclosed only in accordance with other national laws and international agreements. The national security policy provides for physical protection of the terminals in use (locked rooms, restricted access to premises) and the restriction on personal access. Only designated officers have access to the above-mentioned system. Information on cash declarations is automatically provided to the FCIS.

Training, Data Collection, Enforcement and Targeting Programmes (c. IX.14)

419. Training for Customs officers is provided through the Customs Training Centre, including – as underlined by the Lithuanian authorities - introductory and advanced courses on monitoring of cross-border cash movements. It was mentioned during the on-site visit that there is no specific obligation for providing training to the officers but in practice it is regularly performed for every new officer. In addition, there was a general training initiative on financial crimes in 2010 in the police school, as well as further trainings on cash controls including as part of the activities of the European Commission Directorate dealing with tax matters. The evaluators acknowledge the above efforts but in their opinion, it is regrettable that on-going training is not part of the current human resource management system of the Customs. A particular issue of concern is the obvious lack of efforts (whether training, enforcement and targeting programmes) concerning AML/CFT matters, and the detection of possible links to ML and FT in the context of the training provided. As one can take from the limited figures available, data collection has not been an obvious priority on the internal Customs' agenda either. There is thus a problematic situation from the perspective of C.IX.14.

Access on a timely basis to information kept at supranational level (c.IX.15)

420. As indicated in the introductory developments to this section on SR IX, criterion IX.15 is not subject to examination.

Additional elements – Implementation of SR.IX Best Practices (c.IX.16) & Computerisation of databases and accessibility to competent authorities (c.IX.17)

421. As for the implementation of criterion IX.16, the Lithuanian authorities provided information on some measures which had been taken to inform travellers on the cash control system. The evaluators themselves, when travelling from within various EU countries, cannot remember of any particular information notice concerning the declaration of intra-EU movements of cash. This, of course, does not prejudge of the situation at the external border.

422. At the same time, taking into consideration the discussion above, it is unlikely that the training and awareness raising among the Customs officers (in order to help them in establishing potential links to money laundering and terrorist financing) is sufficient. The evaluators were

also informed on the wide use of risk criteria by both the Customs authorities and the State Border Guard as well as the possibilities of monitoring and sharing prior intelligence to ensure pre-interdiction operations. But it is unclear to what extent these address AML/CFT related matters.

423. No measures have been reported as to the extent to which SR IX is taken into account in the context of postal services, merchandise and cargo/container shipments and the like.

424. A computerised database is maintained and the information on declarations/disclosures is automatically provided to the FIU (the FIU has no direct access). The information on violations and suspicions is, to the understanding of the evaluators, not automatically provided to the FIU but is accessible for them.

425. As a conclusion of the above, there is thus a problematic situation from the perspective of C.IX.16.

Recommendation 32 (Statistics)

426. Comprehensive statistics are maintained and were provided by the Customs authorities in respect of cash declarations made for movements from/to third countries (according to Regulation (EC) No 1889/2005):

Cross-border cash movements (according to Regulation (EC) No 1889/2005) in **2007** (since 15th June 2007)		
Type	Number	Amount in EUR
Entering EU/Lithuania	2 726	58 399 052
Leaving EU/Lithuania	691	30 088 879
Total	3 417	88 487 931
2008		
Type	Number	Amount in EUR
Entering EU/Lithuania	2 902	69 904 748
Leaving EU/Lithuania	764	32 504 086
Total	3 666	102 408 834
2009		
Type	Number	Amount in EUR
Entering EU/Lithuania	780	24 391 324
Leaving EU/Lithuania	549	20 586 790

Total	1 329	44 978 114
2010		
Type	Number	Amount in EUR
Entering EU/Lithuania	1 227	46 617 328
Leaving EU/Lithuania	823	36 072 006
Total	2 050	82 689 334
2011		
Type	Number	Amount in EUR
Entering EU/Lithuania	1 687	62 164 915
Leaving EU/Lithuania	733	36 412 139
Total	2 420	98 577 054

427. Figures are not available for declarations concerning cross-border movements of intra-EU movements of cash, i.e. those involving "other European Member States". The above data relates solely to the implementation of the EC regulation.

428. According to the statistics provided by the Customs authorities there was 1 violation found in 2009, 2 in 2010, 4 in 2011 and 7 in 2012 (at the time of the evaluation visit).

429. No statistical breakdown is kept on the types of violations (e.g. lack of declaration or false declarations etc.) and the sanctions imposed. There are no statistics also for the cases of suspected money laundering or terrorist financing but this denotes the weakness observed above concerning the Customs authorities' activities. Additional measures are thus needed for the maintenance of appropriate statistics.

Recommendation 30 (Customs authorities)

430. The Lithuanian Customs administration has about 2 150 officers across the country at airports, ports and land border entry/exit points (both by road and by rail), as well as in the Customs Criminal Service. 188 officers work in Customs Mobile Groups. The Customs Criminal Service (CCS) has responsibility for customs criminal investigations in the territory of Lithuania. CCS is also involved in international cooperation in investigating cash related crimes, as well as in the organisation (together with the Violation Prevention Division of Customs Department) and performance of activities supporting the prevention of violations.

431. The *Statute of the Service in the Customs of the Republic of Lithuania* lays down the education level required to be admitted to the Lithuanian Customs. Special continuous trainings are provided to Lithuanian Customs officers to equip them to carry out their assigned functions. According to the provisions of the Law on Customs of Lithuania (Article 11) data provided to

Lithuanian Customs are confidential and can be provided only in accordance with other national laws and international agreements. Maintenance of the internal and national standards of confidentiality and data protection is also a part of training provided to the Lithuanian Customs officers.

Effectiveness

432. The quantitative data provided by the Lithuanian authorities, for the period after the reform of the control system applicable to cross-border movements of cash, pursuant to the entering into force of Regulation (EC) 1889/2005, especially the data on violations detected, might indicate a general increase in the effectiveness of the cash control mechanism, possibly resulting from additional training provided to the customs officers in 2011. However, these figures remain quite low in absolute terms (1 violation found in 2009, 2 in 2010, 4 in 2011 and 7 in 2012 - till the end of the evaluation visit).

433. Furthermore, taking into consideration that no further information was provided on the specific circumstances of the violations, it is difficult for the evaluators to ascertain the actual contribution of the Customs Department to the detection/identification of funds possibly connected with money laundering or terrorist financing. There was no information provided by the Lithuanian authorities on further proceedings (e.g. criminal) as a result of the established violations. The Customs have involved or consulted the FCIS on a few occasions to discuss a smuggling case with a possible ML component. For instance, there were 3 joint investigations between the Customs authorities and the FIU in 2011. However it is not clear whether any of those involved investigation of money laundering based on a suspicion of the Customs Department. To date, there have been no formal reports on suspicions of ML/TF by the Customs Department to the FCIS, according to the statistics made available by the Lithuanian authorities.

434. The procedure for the restraint of cash and especially the time frame for notifying the FIU of the violations detected or where suspicion of ML or TF has arisen could pose difficulties for the effective application of the FIU powers and the completion of its goals to prevent possible money laundering and terrorist financing. In most cases the effective counteraction of the Customs authorities was understood as related to the availability of prior intelligence or the subsequent information or support of the other institutions.

435. It seems that the main focus of the Customs authorities is the external EU border due to the high risks connected with smuggling of cigarettes and alcohol, the importation of counterfeited products and the like. Likewise, the Border Guard seem to focus exclusively on their own general business which is illegal immigration, with particular attention at the external border. Georgia was cited as a major source of concern in this respect but the possible financial dimension, in case it involved trafficking in illegal immigrants, is not taken into account. Although Lithuania has retained a system of intra-EU cross-border checks, it would appear that the consequences have not been fully drawn from this situation.

436. The evaluators discussed a series of allegations and cases cited in the media at the time of the visit, for instance allegations of persons used as "mules" for convoying money between the United Kingdom and Lithuania (which was likely to be connected with ML of proceeds from extortion of Lithuanian immigrants in the UK). Interlocutors from the Border Guards indicated that they had heard about these cases from the criminal police. They also referred, as another example, to a recent drug trafficking case involving organised crime activities, on the same route as above with connections in the Netherlands. Despite these indicators, this has not

translated into increased vigilance/controls on this route. Border Guards representatives indicated that no ML-specific risk profiles (as to countries or persons) The lack of reports regarding suspicions of money laundering or terrorist financing to the FIU clearly indicates that a more proactive approach of the Customs authorities is necessary in order to ensure the effective implementation of the requirements of Special Recommendation IX.

437. At the same time, despite several initiatives and channels put in place to support interagency cooperation, joint investigation groups are far from being a common practice. These could be used more broadly and effectively, especially in relation to possible money laundering or terrorist financing cases and not just in relation to the individual general priorities of the Customs Department or Border Guard. In respect of the detection of possible TF or designated persons, according to the information provided by the Customs authorities, lists of persons were used. However there is a risk that the procedure for requesting information from other institutions (in addition to the available customs intelligence information) could affect the timely response of the Customs and the detection of possible links to terrorist financing.

438. The Customs still appear to be affected by corruption. According to the corruption map 2011 for Lithuania, released in November 2011, it would appear that "*Both entrepreneurs and public servants think that corruption is most often encountered in completing customs formalities and pursuing public contracts, financial support from the EU funds and permits for construction and reconstruction. Also, corruption often manifests itself in court trials, recruitment to public service and obtaining healthcare services*." The Border Guard representatives indicated that there have been 15 cases processed under criminal law. The evaluators were told that the number of cases handled on a disciplinary basis was much higher.

439. Finally, it would appear that authorities in Lithuania do not use the same version of the AML/CFT Law. The one published on the website of the FCIS was also the one examined by the evaluators. But the Customs Department provide on-line information on cash declarations which is based on another version of the AML/CFT Law, in which article 18 provides for a single unified regime of declarations. Its staff apparently apply that version[17] which raises concerns from the viewpoint of legal security: for instance, a person travelling from/to an EEA country (which is partly seen as an important drug trafficking route likely to be used also by monies from drug trafficking) could have valid reasons for challenging a sanction imposed for not declaring spontaneously a significant amount of cash. This could potentially undermine the AML/CFT efforts of the law enforcement agencies on those routes.

440. Overall, although the evaluators appreciate the efforts deployed by the Customs and the border Guard to preserve the EU's external border, it cannot be concluded that their actual contribution to the fight against ML and FT has significantly progressed since the third evaluation round.

2.7.2 Recommendations and comments

Special Recommendation IX

[17] An e-mail was sent to the Customs Department asking for clarification on the information published on the website and it was answered that any person travelling from a third country, including from an EEA country, would have to make a compulsory declaration when entering Lithuania with cash in excess of 10,000 EUR.

441. The declaration system applicable to cross-border movement of cash creates a problematic situation for cash-movements with EEA countries which contradicts the requirements of the EC Regulation and is also problematic from the perspective of SR IX. Lithuania needs to amend it.

442. The evaluators are also concerned by the lack of consistency of regulations and the fact that the Customs authorities appear to use an outdated version of the AML Law (they do not apply the current version of the provisions on cross-border movements of cash). Customs regulations cover the initiation of proceedings in case of undeclared cash, but not in case of false declarations more broadly and concerning information not related to the cash itself (although any incorrect information is in principle sanctionable under the Code of Administrative Law Violations - CALV).

443. In view of the above, the secondary legislation concerning cash movements should be clarified and made consistent. The Lithuanian authorities may also need to ensure that the same broad understanding of the concept of "cash" is used at the various levels (for cash movements within and across EU-borders, and also under the CALV.

444. The Lithuanian authorities should consider amending the mechanisms for restraint of cash in order to ensure effective application in regard to suspicion of ML and TF.

445. They should also consider introducing administrative sanctions in regard to all violations of the declaration regime at the external EU borders. Moreover, sanctions need to be reviewed since the level of fines is too low for these to be effective, proportionate and dissuasive enough.

446. Coordination between the authorities should be improved to become a reality. The Customs authorities still need to introduce a proactive approach and increase their awareness of AML/CTF issues. They should undertake further actions in respect of the detection of ML and FT and keep more accurate feedback information (statistics etc.) on the control of cross-border movements of cash and the subsequent proceedings.

447. The mechanism and timeframe for the provision of information to the FIU with regard to violations or possible connections with ML and TF should be reviewed in order to allow the immediate involvement of the FIU.

448. Lithuania should also ensure that a mechanism exists for the proper investigation of ML and TF cases related to the competence of the Customs authorities.

Recommendation 30

449. Additional efforts are needed to ensure Customs officers are prepared and able to detect possible cases having a money laundering or terrorist financing component, and reporting it to the FIU.

Recommendation 32

450. Further and more detailed statistics should be kept so as to show also suspicions of ML/FT reported to the FIU, intra- and extra-EU movements of cash, the number and amounts of undeclared cash detected on the occasion of controls, the type and amount of sanctions and for

which kind of infringement etc. This would assist the Lithuanian authorities in appraising the functioning of the declaration system in practice.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**PC**	• Differences in the definition of cash in regard to the application of various aspects of the cash control regime (e.g. for the purpose of sanctioning according to the CALV, definition in regard to intra-EU disclosures); • inconsistencies in the secondary legislation regarding the cash control regime; • the mechanism for restraining cash - especially in cases of suspicion of ML/TF – is not applicable in a swift and effective manner. Doubts about the application of the mechanism through the general obligations for the prevention of crime; • potential risks exist in relation to the mechanism for notifying the FIU of detected violations; • effectiveness and dissuasiveness of sanctions particularly at the external EU borders cannot be assessed; • specific cooperation in regard to ML/TF detection and investigation should be extended; • limited overall effectiveness in practice and lack of involvement of the Customs in the detection of ML/FT

3 PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Legal framework and developments since the third evaluation

451. Since the adoption of the third mutual evaluation report in November 2006, Lithuania has taken several legislative and regulatory measures in order to address the main deficiencies identified in the third evaluation round. These developments are set out in detail under the description of each of the relevant recommendations.

Scope of application

452. The AML Law, which implements the provisions of the Third EU AML/CFT Directive and its implementing Directive, applies to all service providers in Lithuania engaged in financial activities listed in the Glossary of definitions to the FATF Methodology, so the scope of preventive measures in the AML/CFT area covers all financial institutions.

453. Article 2(8) of the AML Law defines financial institutions as *credit institutions and financial undertakings as defined by the Law of the Republic of Lithuania on Financial Institutions, electronic money and payment institutions as defined by the Law of the Republic of Lithuania on Payments as well as investment companies with variable capital*.

454. Article 4 of the Law on Financial Institutions (Law No IX-1872 of 10 September 2002) defines a financial institution as a financial undertaking or a credit institution, being these concepts defined in Article 2 of such Law as follows:

- Financial undertaking as *an undertaking of the Republic of Lithuania or an establishment of a foreign state's undertaking operating in the Republic of Lithuania in accordance with the procedure set forth by the laws regulating the provision of financial services and mainly engaged in the activities of provision of one or more financial services referred to in paragraph 1 of Article 3 of this Law, with the exception of subparagraph 1* (receipt of deposits and other repayable funds).

- Credit institution as *an undertaking which holds a licence to engage in receiving of deposits and other repayable funds from non-professional participants of the market and lending thereof and is engaged therein.*

455. Article 3 paragraph 1 of the Law on Financial Institutions lists a series of 20 types of activities which fall under the concept of financial services, including "conclusion of transactions, at one's own or a client's expense, on the money market instruments (cheques, bills, deposit certificates, etc.), a foreign currency, financial future and option transactions, the establishment of a currency exchange rate and interest rate, public securities and precious metals"; "investment services"; and "provision of the services related to securities emissions". Thus, securities market intermediaries are covered.

456. Article 2 of the Law on Payment Institutions (Law No XI-549 of 10 December 2009) defines payment institution as *a legal person to which a licence of a payment institution or a payment institution licence for restricted activity has been issued*.

457. Article 2 of the Law on Electronic Money and Electronic Money Institutions (Law No XI-1868 of 22 December 2011) refers as electronic money institution to *a public limited liability company or a private limited liability company which has been issued a licence of an electronic money institution or a licence of an electronic money in the Republic of Lithuania and/or in other Member States.*

458. Furthermore, Article 2(10) of the AML Law refers, as "other entities", to *insurance undertakings engaged in life insurance activities and insurance brokerage firms engaged in insurance mediation activities relating to life insurance, postal services providers which provide domestic and international postal order services,* as well as *close-ended investment companies*, to whom the AML Law is also applicable.

459. Beyond that, it has to be mentioned that, according to the provisions of Article 3 of the Law on Foreign Currency (Law No I-202 of 7 July 1993), amended last in December 2011, credit institutions have the right to provide currency exchange services. Electronic money institutions, payment institutions and financial brokerage companies holding a licence for such activities have a right to provide foreign exchange services to the extent it is related to the provision of electronic money, payment and investment services respectively. Therefore, there are no separate financial institutions providing such services and all foreign exchange providers are credit institutions, electronic money institutions, payment institutions, financial brokerage companies or their branches.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

460. The legal obligation in relation to the CDD and record-keeping requirements applicable to the financial sector is provided in the AML Law and the relevant Government Resolutions.

461. According to the AML Law the financial institutions must establish appropriate internal control procedure concerning, among others, the identification of the customers and the beneficial owners, as well as the risk assessment and risk management.

462. The procedures for identification (normal, simplified and enhanced CDD), as well as the low risk and high risk criteria are established by Government Resolution No 942. The requirements for keeping the registers are provided by Government Resolution No. 562.

463. An important development since the last mutual evaluation report is that the AML Law, together with the guidelines issued for the different sectors of financial institutions, introduced the concept of the risk-based approach into the Lithuanian AML/CFT regime.

464. The AML Law allows for the application of simplified CDD in relation to several customers and products, based on the instances provided by the Third EU AML/CFT Directive (see c.5.9 for further details), but are not allowed to apply simplified CDD in other cases than those stipulated in the Law. If the financial institution decides to apply simplified customer identification it shall, at its own discretion, select the customer identification measures, as well as their scope.

465. It must be further noted, that the financial institutions are not permitted to determine the extent of the CDD measures on a risk sensitive basis depending on the type of customer, business relationship or transactions in the case of normal CDD.

466. Enhanced CDD is required by law for non-face-to-face business relationship, cross-border correspondent banking relationship, PEPs and where there is a high risk of money laundering and/or terrorist financing. The AML Law exactly defines the applicable measures in these cases. The first three 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 Lithuanian financial sector. In addition to these categories, money exchange services, as well as internal and international post remittance transfer services seem to be assessed and considered as higher risk categories, with lower threshold for CDD in the AML Law.

467. Additionally, there are guidelines issued for the different sectors of financial institutions, which include the requirement to classify the customers into risk groups and cases (examples) when the financial institutions have to pay particular attention. Financial institutions are required to assess whether these examples apply to their activities and take them into account when drawing up their internal rules (see c.5.8 for further details) but there is no explicit legal provision that the internal control procedure have to be approved by the competent authorities. These guidelines are considered useful basis for the effective implementation of CDD and record keeping obligations.

468. Overall, it can be stated, that the Lithuanian risk-based approach focuses on the simplified CDD and enhanced CDD in the legal acts.

469. However, from the interviews held during the on-site visit, the evaluators have the impression that several service providers usually do not use the possibility of the simplified CDD measures in practice. Some service providers lack a formal risk based approach and perform the same level of CDD on all clients.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 and R.6)

3.2.1 Description and analysis

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

470. As described in the 3rd round report, Lithuania was rated "Partially Compliant" for Recommendation 5. The underlying factors for this rating were weaknesses identified in the legislation: certain key elements were not provided for through primary/secondary legislation; there was no reference to full CDD measures except for identification procedure; there were restrictions in the identification of beneficial owners of legal persons; furthermore the risk-based approach was not adopted and implemented. In this assessment round Recommendation 5 was reviewed again according to all the criteria of the Methodology.

471. The AML Law implements requirements of the Third Directive, providing new obligations for financial institutions and other subjects.

472. The Government of Lithuania adopted several resolutions dealing with different issues related to client identification:

- Resolution of the Government of the Republic of Lithuania (No 562 of 5 June 2008) on the Approval of the Rules of Keeping the Registers of Monetary Operations Conducted by the Customer as well as Suspicious and Unusual Operations and Transactions and on Establishing the Criterion Characterizing Major Continuous and Regular Monetary Operations Typical of Customer Activities.
- Resolution of the Government of the Republic of Lithuania (No 942 of 24 September 2008) on the List of Criteria for Considering a Customer to Pose a Small Threat of Money Laundering and/or Terrorist Financing and Criteria Based on which a Threat of Money Laundering and/or Terrorist Financing is Considered to be Great, on the Approval of the Rules of Customer and Beneficial Owner identification as well as Detection of Several Interconnected Monetary Operations, and on the Establishment of the Procedure of Presenting Information on the Noticed Indications of Possible Money Laundering and/or Terrorist Financing and Violations of the Law of the Republic of Lithuania on Prevention of Money Laundering and Terrorist Financing as well as the Measures Taken against the Violators.
- Resolution of the Government of the Republic of Lithuania (No 677 of 9 July 2008) on Approving the List of Criteria on the basis whereof a Monetary Operation or Transaction is to be Regarded as Suspicious or Unusual and the Description of the Procedure of Suspending an Unusual Monetary Operation and Transaction and Reporting the Information about Suspicious or Unusual Monetary Operations or Transactions to the FCIS under the Ministry of the Interior.

473. The Lithuanian authorities have issued different guidelines for Financial Institutions on the prevention of money laundering and terrorist financing:

- Guidelines for Credit, Electronic Money and Payment Institutions (hereinafter - Bank Guidelines).
- Guidelines for Providers of Financial Lease (hereinafter - Leasing Guidelines).
- Guidelines for Insurance Undertakings engaged in Life Insurance Business and Insurance Brokerage Firms engaged in Life Insurance related Insurance Intermediation Business (hereinafter – Insurance Guidelines).
- Guidelines for Financial Brokerage Firms, Investment Companies, Management Companies and Depositories (hereinafter – Securities Guidelines).
- Guidelines for Providers of Postal Services of Domestic and International Money Orders (hereinafter – Postal Services Guidelines).

Anonymous accounts and accounts in fictitious names (c.5.1)

474. Prohibition of anonymous accounts and accounts in fictitious names is implemented by the provisions of the AML Law and the Bank Guidelines. According to Article 19 (6) of the AML Law *the financial institutions shall be prohibited from issuing anonymous passbooks, opening anonymous accounts or accounts in a fictitious name, also from opening accounts without requesting the customer to submit documents confirming his identity or when there is a motivated suspicion that the data recorded in these documents are false or fraudulent*. Furthermore this prohibition is also covered by Paragraph 12.2 of the Bank Guidelines.

475. Although there is no explicit legal requirement for prohibition of numbered accounts, Bank of Lithuania informed that, consequent to the foregoing, numbered accounts are prohibited and do not exist in Lithuania.

Customer due diligence

When CDD is required (c.5.2)*

476. According to Article 9 (1) of the AML Law, *financial institutions and other entities must apply customer due diligence measures and identify the customer and the beneficial owner:*

1) before establishing a business relationship;
2) before carrying out monetary operations or concluding transactions (single or several interlinked operations) amounting to more than EUR 15 000 or the corresponding amount in foreign currency, except in cases when the customer's and beneficial owner's identity has already been established;
3) before exchanging cash, when the amount exchanged exceeds EUR 6 000 or the corresponding amount in foreign currency;
4) before performing internal and international post remittance transfer services, if the amount of money sent or received exceeds EUR 600 or the corresponding amount in foreign currency;
5) before performing and accepting money transfers in compliance with the provisions 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;
6) when there are doubts about the veracity or authenticity of previously obtained customer or beneficial owner's identification data;
7) in any other case when there are suspicions that the act of money laundering and/or terrorist financing is, was or will be performed.

477. According to Article 9 (3) of the AML Law, *insurance companies engaged in life insurance activities and insurance brokerage firms engaged in insurance mediation relating to life insurance must establish the identity of the customer and the insured person if the amount payable annually by the customer exceeds EUR 1 000 or the instalment amount payable at a time exceeds EUR 2 500 or the corresponding amount in foreign currency. The undertaking referred to may verify the identity of the beneficial owner specified in the insurance policy after establishing of the business relationship. In all cases, the identity must be verified when paying the amount or before it or when the beneficial owner states his wish to avail himself of the rights provided for in the insurance certificate or before that.*

478. Those legal obligations are further specified in Paragraph 10 of the Bank Guidelines, Paragraph 9 of the Securities Guidelines, Paragraph 21-22 of the Insurance Guidelines, Paragraph 6 of the Leasing Guidelines and Paragraph 6 of the Postal Services Guidelines.

Identification measures and verification sources (c.5.3)*

479. According to Article 9 (1), (5) and (6) of the AML Law the financial institutions are required to identify the customer and, according to Article 9 (8), they must verify customer's identity on the basis of documents, data or information obtained from a reliable and independent source.

480. The AML Law is silent on the type of the identification data and identification documents required, as well as the verification thereof. However Paragraph 3-10 of the Government Resolution No 942 establishes the detailed rules of customer identification and specifies the identification data (documents) that financial institutions are obliged to require.

481. On the basis of Paragraph 3 of the Government Resolution No 942, financial institutions shall require a **natural person** to produce personal documents containing the following identification data:

a) citizen of the Republic of Lithuania: name, surname, personal number, photograph and signature;
b) foreign citizen: name, surname, date of birth (if available – personal number or another unique combination of characters assigned to the person for identification purposes), the number of an identification document or of an equivalent travel document, the place of its issue and the expiry date (or the number and the expiry date of a permit for permanent residence in a foreign state as well as the place and date of its issue), photograph and signature.

482. On the basis of Paragraph 4 of the Government Resolution No 942, financial institutions shall require a **legal person** to produce its identification documents containing the following data: title, legal form and main office, code (if any), registration extract and date of its issue, the data of the representatives (acting under power of attorney on behalf of a legal person), the activities of a legal person, the purposes and the object of a business relationship, as well as the type of economic activities.

483. Additionally, Paragraph 13 of the Bank Guidelines, Paragraph 13-14 of the Securities Guidelines, Paragraph 24-25 of the Insurance Guidelines, Paragraph 11-12 of the Leasing Guidelines and Paragraph 11-12 of the Postal Services Guidelines provide particular details for identification and verification, and further specify the procedure, the list of identification data, as well as give examples for the documents, data and information which considered to be received from a reliable and independent source.

Identification of legal persons or other arrangements (c.5.4)

484. According to Article 12 of the AML Law, *financial institutions and other entities must identify the customer and the person on whose behalf the customer is acting* in the case where the customer opens an account or performs other operations in other than his own name. Other than this requirement under Article 12, the AML Law is silent on the first issue of c.5.4, which requires the verification that any person purporting to act on behalf of the customer is so authorised. However, Paragraph 5.4 of the Government Resolution No 942 requires that, at the beginning of customer identification procedure, a competent officer of a financial institution must make sure that a natural or legal person is duly authorized to act on the customer's behalf. Furthermore Paragraph 7 of the mentioned Resolution prescribes that the financial institutions must request a power of attorney (and check its validity, term of duration and specific actions authorized) in the case where a customer is a legal person represented by a natural person or a natural person is represented by another natural person. Paragraph 15.4 of the Securities Guidelines and 26.3 of the Insurance Guidelines also deal with this matter.

485. The **natural persons** who are authorised to act on behalf of the customer have to be identified and verified with the data and documents required for natural persons (see c.5.3).

486. In addition, the legal status of the **legal person** or **legal arrangement** have to be verified with the data and documents specified in Paragraph 4 of the Government Resolution No 942 and the Guidelines for the different sectors (see c.5.3). The content of paragraph 4 of the

Government Resolution No 942 is essentially compliant with the requirements of c.5.4, however it does not require details on directors and on the basis of the information provided by the Lithuanian authorities this information is not included in the legal person's registration certificate or registration extract, which has to be provided by the customer.

Identification of beneficial owners (c.5.5, c.5.5.1*, 5.5.2(a) and 5.5.2(b)*)*

487. Article 9 (1) of the AML Law provides that the financial institutions must apply CDD measures and obtain the beneficial owner's identification data in all cases mentioned under c.5.2 (where CDD is mandatory). Furthermore Article 9 (8) of the AML Law requires the verification *of the beneficial owner's identity on the basis of documents, data or information obtained from a reliable and independent source*.

488. According to Article 9 (5) of the AML Law, *financial institutions must take all relevant, targeted and proportionate measures in order to establish whether the customer operates on own behalf or is controlled and to identify the beneficial owner*. Furthermore Article 12 of the AML Law provides that *financial institutions and other entities must identify the customer and the person on whose behalf the customer is acting in the case where the customer opens an account or performs other operations in other than his own name*.

489. Government Resolution No 942 deals with this matter under Section IV (Paragraph 5.3) and Section III (Paragraph 11-13) and provides details in relation to the identification data and the verification procedure. Financial institutions shall demand that the customer submit specific data on the beneficial owner identity (e.g. name, surname and personal number), as well as shall check the information on the basis of the documents, data and information received from a reliable and independent source. Such actions also include a request to the customer to specify the public sources that could confirm the information.

490. Additionally, the Guidelines for the different sectors provide further details for the identification and verification of the beneficial owner including examples for the documents, data and information which considered to be received from a reliable and independent source (Paragraph 9-13 of the Bank Guidelines, Paragraph 13 and Section IV of the Securities Guidelines and Section III of the Insurance Guidelines).

491. Referring to the *footnote of c.5.5*, the insurance companies engaged in life insurance also have to verify the identity of the beneficial owner specified in the insurance contract (beneficiary under the policy), beyond that the requirement for the identification and verification of the customer and the insured person (according to Article 9 (3) of the AML Law and Paragraph 22 of the Insurance Guidelines).

492. Modelled on the definition set out by the Third EU AML/CFT Directive, the *term "beneficial owner"* is defined in Article 2 (12) of the AML Law and *shall mean a natural person who ultimately owns the customer (a legal entity or a foreign undertaking) or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted*. As regards:

- **Corporate entities,** the beneficial owner shall be the natural person:
  a) 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); and

b) who otherwise exercises control over the management of a legal entity.

- **Legal entity which administers and distributes funds,** the beneficial owner shall be:
  a) the natural person who is the beneficial owner of 25% or more of the property of a legal entity (where the future beneficial owners have already been determined);
  b) where the individuals that benefit from this legal entity have yet to be determined, the group of persons in whose main interest the legal entity is set up or whose interests legal entity represents;
  c) the natural person who exercises control over 25% or more of the property of the legal entity.

493. The identification and verification procedure (detailed above), as well as the legal term of the beneficial owner (Article 2 (12) of the AML Law) are compatible with the standard (c.5.5*, c.5.5.1*, 5.5.2(b)*).

494. However the AML Law, the Government Resolution No 942 and the Guidelines are silent in relation to the explicit requirement to "*understand the ownership and control structure of the customer*" where the customer is a legal person (c.5.5.2(a)).

Information on purpose and nature of business relationship (c.5.6)

495. On the basis of Article 9 (7) of the AML Law, financial institutions are required to *obtain from the customer information on the purpose and the intended nature of the customer's business relationship* (in all cases when the identity of the customer and the beneficial owner is established). This obligation is also provided, but is not further specified, in the Guidelines for the different sectors (Paragraph 13.1 of the Bank Guidelines, Paragraph 13.1 of the Securities Guidelines and Paragraph 36 of the Insurance Guidelines).

Ongoing due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

496. According to Article 9 (9) of the AML Law *financial institutions and other entities must in all cases perform ongoing monitoring of the customer's business relationships, including scrutiny of transactions undertaken throughout the course of such relationship, to ensure that the transactions being conducted are consistent with the financial institutions' or other entities' knowledge of the customer, the business and risk profile, including, where necessary, the source of funds*. This legal obligation is also emphasised and further specified in Paragraph 14 of the Bank Guidelines and Paragraph 13.4 of the Securities Guidelines.

497. Financial institutions are required on the basis of Article 9 (10) of the AML Law, that *data on the identity of the customer and the beneficial owner must be regularly reviewed and kept up-to-date*. Similarly to the ongoing monitoring requirement, this legal obligation is also emphasised and further specified in the Guidelines: Paragraph 15 of the Bank Guidelines, Paragraph 13.5 of the Securities Guidelines and Paragraph 35 of the Insurance Guidelines.

498. However, the Guidelines for the different sectors do not provide particular guidance for establishing the exact procedure in order to review and update the data. Furthermore the AML

Law, as well as the Guidelines, do not include an explicit requirement for the review of the existing records for higher risk categories of customers or business relationships.

Risk – enhanced due diligence for higher risk customers (c.5.8)

499. On the basis of Article 11 of the AML Law enhanced CDD has to be applied in the following four cases:

a) in the case of performance of transactions or business relationships through the representative or the customer not being physically present for identification purposes;
b) in the case of performance of the cross-border correspondent banking relationships with third country credit institutions;
c) in the case of performance of transactions or business relationships with politically exposed persons;
d) where there is a great risk of money laundering and/or terrorist financing.

500. The same Article of the AML Law provides further requirements for the mentioned four cases of enhanced CDD and exactly defines the applicable measures in these cases.

501. The Government Resolution No 942 deals with this matter particularly under Section V. Before the procedure of customer identification, a competent officer of a financial institution shall verify the existence of circumstances necessitating enhanced customer identification. Furthermore the first part of Government Resolution No 942 provides the list of criteria on the basis of which a threat of money laundering and/or terrorist financing is considered to be high.

502. Additionally, the Guidelines for the different sectors provide further details in relation to the cases and procedures (measures) for enhanced CDD, including (in the case of the Bank Guidelines) the requirement to classify the customers into risk groups and cases (examples) when the financial institutions have to pay particular attention (Paragraph 21-27 of the Bank Guidelines, Section VI of the Securities Guidelines and Paragraph 39-40 of the Insurance Guidelines). Inter alia, the examples of the higher risk categories from the Basel CDD Paper are explicitly mentioned in the Bank Guidelines.

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

503. Article 10 of the AML Law allows for the application of simplified CDD measures in relation to the following customers and products:

- companies whose securities are admitted trading on a regulated market in one or more EU Member States, and other companies from third countries whose securities are traded in regulated markets and which are subject to disclosure requirements consistent with European Union legislation;
- beneficial owners of pooled accounts held by notaries and other legal professionals from the EU Member States or from third countries, provided that they are subject to requirements to combat money laundering and/or terrorist financing consistent with international standards and are supervised by competent authorities for compliance with those requirements and provided that the information on the identity of the beneficial owner is available, on request, to the financial institutions which have such pooled accounts;

- cases of life insurance policies where the annual premium is no more than EUR 1 000 or the single premium is no more than EUR 2 500 or the corresponding amount in foreign currency;
- cases of insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral;
- cases of a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme;
- cases of electronic money, where, if the device cannot be recharged, the maximum amount stored in the device is no more than EUR 250, or the corresponding amount in foreign currency, or where, if the device can be recharged, a limit of EUR 2 500, or the corresponding amount in foreign currency, is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1 000, or the corresponding amount in foreign currency, or more is redeemed in that same calendar year by the owner;
- if the customer is a financial institution covered by this Law, or a financial institution registered in another EU Member State or in a third country which sets the requirements equivalent to those of this Law, and monitored by competent authorities for compliance with these requirements;
- the customer representing a low risk of money laundering and/or terrorist financing.

504. The Government Resolution No 942 provides the list of criteria based on which a customer shall be considered to pose a low threat of money laundering and/or terrorist financing: the customer is a public institutions (and complies with the criteria determined in the Resolution); the activities of the customer are limited and the likelihood of them being used for ML/TF is low (and the customer meets certain criteria determined in the Resolution). Due to these provisions of the AML Law and the Government Resolution No 942 all examples of customers, transactions or products with low risk listed in the Methodology are explicitly categorised.

505. Furthermore the Government Resolution No 942 provides details in relation to this issue under Section IV. Before the procedure of customer identification, a competent officer of a financial institution shall verify the existence of circumstances that allow customer identification. If the financial institution decides to apply simplified customer identification, it shall (at its own discretion) select the customer identification measures as well as their scope.

506. Additionally, the Guidelines for the different sectors provide further guidance in relation to the relevant customers and products for simplified CDD, including (in the case of the Bank Guidelines) the requirement to classify the customers into risk groups and cases (examples) when the financial institutions may apply simplified CDD (Paragraph 19-20 of the Bank Guidelines, Section V of the Securities Guidelines and Paragraph 38 of the Insurance Guidelines).

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

507. In relation to certain customers where the simplified CDD can be applicable (companies whose securities are admitted trading on a regulated market; beneficial owners of pooled accounts; financial institution covered by this Law), Article 10 (1) of the AML Law contains reference to the EU Member States or "*equivalent third countries*" (see c.5.9).

508. Pursuant to the Common Understanding between Member States on third countries equivalence under 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, the Government of the Republic of Lithuania has approved the *List of states*, dependencies and regions that are not members of the European Union but are recognized as applying the requirements equivalent to those set out in the Law of the Republic of Lithuania on the Prevention of Money Laundering and Terrorist Financing (Government Resolution No 1149).

509. Furthermore Article 10 (2) of the AML Law, as well the relevant provisions of the Government Resolution 942 and the Guidelines, states that it is prohibited to apply simplified CDD if a separate decision of the European Commission has been adopted on the issue. In such cases the financial institutions have to apply normal or enhanced CDD.

510. The list of criteria on the basis of which a threat of money laundering and/or terrorist financing is considered to be high also includes the cases where the customer constantly resides in a country that is not a member of the FATF or of an international organization with an observer status at FATF that participates in the efforts to combat money laundering and terrorist financing (Paragraph 2.4 of the Government Resolution No 942).

Risk – simplified/ reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

511. Subparagraph 7 of Article 9 (1) of the AML Law stipulates that CDD measures has to be applied in any case *when there are suspicions that the act of money laundering and/or terrorist financing is, was or will be performed*. This obligation is not exempted under the simplified CDD regime (Article 10 (1)).

512. The AML Law also clearly states, that enhanced CDD has to be applied *where there is a high risk of money laundering and/or terrorist financing* (Article 11). Consequently if specific higher risk scenarios apply, the simplified CDD measures are not acceptable.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

513. Financial institutions could apply simplified and must apply enhanced CDD measures in the cases determined in the AML Law. If the financial institution decides to apply simplified customer identification, it shall (at its own discretion) select the customer identification (verification) measures, as well as their scope. If the financial institution has to apply enhanced customer identification, it shall apply the measures specified in the law (see c.5.8. and c.5.9). However the financial institutions are not permitted to determine the extent of the CDD measures on a risk sensitive basis in the case of normal CDD.

514. The procedures for applying simplified and enhanced CDD, as well as the low risk and high risk criteria are established by Government Resolution No 942 (see also c.5.8 and c.5.9).

515. According to the AML Law (Article 19 (1)) the financial institutions must establish appropriate *internal control procedures* concerning, among others, the identification of the customers and the beneficial owners, as well as the risk assessment and risk management (taking into account the type of the customer, the business relationship, product or transaction, etc.).

Beyond that the competent authorities have to approve guidelines for the financial institutions aimed at preventing money laundering and terrorist financing (Article 4).

516. However the AML Law and the Government Resolution No 942 do not provide the explicit requirement that the content of the internal control procedure (including the provisions in relation to the risk based approach and the extent of the CDD measures on a risk sensitive basis) have to be consistent with the guidelines issued by the competent authorities or the internal control procedure have to be approved by the competent authorities (if it is consistent with the guidelines).

Timing of verification of identity – general rule (c.5.13)

517. In accordance with Article 9 (1) of the AML Law (Subparagraph 1-5) and except for the cases described below, financial institutions are required to apply CDD measures and identify the customer and the beneficial owner *before* or *during* the course of establishing a business relationship or conducting transactions.

518. The Guidelines for the different sector also stipulate, that the financial institutions must take measures to *identify* the customer and the beneficial owner, and *verify* their identity before or during the course of establishing a business relationship/conducting transactions (Paragraph 10 of the Bank Guidelines, Paragraph 9 of the Securities Guidelines, and Paragraph 21 of the Insurance Guidelines), so these provisions confirm the requirement mentioned in the AML Law.

519. The Lithuanian authorities explained that both the identification and verification of the customer must be established before accepting the business relationship. However, the English version of the AML Law is not entirely clear on this issue and it remains unclear for the evaluators whether the application of "customer due diligence measures" in Article 9 (1) of the AML Law also refers to verification (or only to identification).On the basis of this concern, in the view of the evaluators the wording of Article 9 (1) of the AML Law should be reviewed and clarified by adding a reference to the need of verification.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

520. According to Article 9 (3) of the AML Law, the identification of the customer and the insured person is linked to the annual premium (if the amount payable annually by the customer exceeds EUR 1 000 or the instalment amount payable at a time exceeds EUR 2 500) in the case of *insurance companies* engaged in life insurance activities and *insurance brokerage firms* engaged in insurance mediation relating to life insurance. These service providers may verify the identity of the beneficial owner specified in the insurance policy after establishing the business relationship. However, in all cases, the identity must be verified when paying the amount, or before it or when the beneficial owner states his wish to avail himself of the rights provided for in the insurance certificate or before that.

521. Other than the requirement (under Article 19 of the AML Law) for establishing appropriate *internal control procedure* concerning (among others) the identification of the customers and the beneficial owners, as well as the risk assessment and risk management (see c.5.12), the AML Law (as well as the Government Resolution No 942 and the Guidelines) does not contain explicit provision for adopting *risk management procedures* concerning the conditions where the customer is permitted to utilise the business relationship prior to verification. The Lithuanian authorities explained that risk management procedures are only required for the insurance

business, since for the other financial sectors it is not permitted to establish the business relationship prior to verification, on the basis of Article 9 (11) of the AML Law.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

522. According to Article 9 (11) of the AML Law, *financial institution and other entities shall be prohibited from performing transactions through bank accounts, concluding business relationship and performing transactions when they have no possibilities to fulfil the requirements established in the customer due diligence measures*. Furthermore *the FCIS has to be notified about such cases immediately*. This Article 9 (11) is broader than the similar prohibition in Article 9 (6), which leads to a certain level of contradiction (for instance, as regard transactions under the threshold of EUR 15 000). This issue needs to be addressed in the AML Law.

523. However, where the financial institution has already commenced the business relationship and is unable to carry out the customer due diligence measures, the law or the Guidelines issued by the relevant authorities do not provide an obligation to terminate the business relationship and to consider making an STR.

524. It has to be mentioned that, according to Article 15 of the AML Law, the financial institution may terminate the transactions or business relationship with the customer but only in the case of missing information about the origin of funds or property or other additional data. This Article does not refer explicitly to that case, where the identification criteria cannot be met.

Existing customers – (c.5.17 & 5.18)

525. The AML Law (and the Government Resolution No 942) is silent on the application of CDD measures to existing customer-relationships as at the date of its entry into force. However the evaluators have been informed by the Bank of Lithuania that Article 2 of the Law on Amendments of the AML Law (No X-1419 of 17 January 2008) states that financial institutions must apply provisions of Articles 9-11 of the AML Law for customers who existed as such on the date of entering into force of the mentioned law (24 January 2008). On the basis of this provision financial institutions have an obligation to conduct CDD requirements for existing customers, as well as for new customers.

526. Furthermore the Bank Guidelines require the credit institutions to continuously revise and update customer and beneficial owner's identification data, and this provision has to be applied to both new and already existing customers (Paragraph 15 of the Bank Guidelines). However the Guidelines for the other sectors of the financial system make no such references.

527. Although the mentioned law (and the Bank Guidelines) does not provide particular guidance in relation to the procedure ("appropriate time" to conduct due diligence, final deadline with restrictive provisions, etc.), in the course of the evaluation the Bank of Lithuania stated that the system works effectively in practice and they have not been realized any problem up to now (the process have been completed to the greatest extent by the financial institutions). Notwithstanding the evaluators express concern in relation to the appropriate and timely application of the mentioned provisions without any particular guidance for the procedure (for example at what stage these requirements have to be applied).

528. As outlined under c.5.1, according to the AML Law the financial institutions shall be prohibited to issue anonymous passbooks and to open anonymous accounts or accounts in fictitious name. Furthermore evaluators were informed that previously opened anonymous accounts or accounts in fictitious name do not exist in Lithuania.

Effectiveness and efficiency

529. The amended AML Law, as well as the resolutions and the guidelines issued for the different sectors provide a comprehensive and structured legal framework for the CDD requirements. Overall the requirements set out in the AML Law are essentially in line with the standard. However, there are some issues which appear to require clarification and improvements.

530. Meetings with the financial institutions indicated a variable level of awareness and certain entities within the financial sector seemed to understand CDD requirements as a synonym for identification only, whereas others clearly saw the various implications of the legal requirements of the concept. It appeared that the proper implementation of the standards differs somewhat across the financial sector and that sometimes certain aspects and implications of the CDD obligations are not clear enough to some financial institutions.

531. The evaluators express some concern in relation to the effective identification and verification of the beneficial owners. Some of the service providers interviewed on site seem to be unaware of the real meaning of the concept of the beneficial ownership, especially when it comes to ultimate beneficiaries (and in relation to natural persons). Furthermore the establishment of the ownership structure of a legal person can be problematic in practice in the absence of directly accessible public official or commercial database since the Register of Legal Persons does not record the shareholders electronically, but only in a paper-based form.

532. As mentioned under c.5.17, the financial institutions must apply CDD requirements not only for new customers, but also for customers who existed as such on the date of entering into force of the amended AML Law. The evaluators have been informed by the Bank of Lithuania that the re-identification process works effectively in practice. Notwithstanding the evaluators express concern in relation to the appropriate and timely application of the mentioned provisions without any particular guidance for the procedure.

533. Financial institutions reported that they mostly use highly detailed questionnaires to collect information, which are filled out by the customers. Furthermore financial institutions perform risk classification of customers (in their internal rules). Client and beneficial owner data is regularly checked against public official and commercial databases (including as well PEP and international sanctions lists).

534. The Lithuanian risk-based approach focuses on the simplified CDD and enhanced CDD in the legal acts. However the financial institutions and the Bank of Lithuania informed the evaluators that some of them usually do not use the possibility of the SCDD measures in practice.

535. The internal regulations and procedures for CDD measures set up by all financial institutions generally comply with the requirements of the legal acts and the guidelines.

536. The inspections program carried out by the Bank of Lithuania regularly focuses on the adequacy of CDD measures and procedures. The Bank of Lithuania informed the evaluators that they did not identify serious deficiencies in CDD procedures of the financial institutions.

Recommendation 6 (rated PC in the 3rd round report)

537. In the 3rd round report, Lithuania was rated "Partially Compliant" for Recommendation 6. The 3rd round report provided the following underlying factors for this rating: there were not special regulation for politically exposed persons, as well as PEPs were not addressed under the AML Law; furthermore the issue of PEPs were addressed only for the banking and insurance sectors. It was recommended that rules on PEPs are provided for under the AML Law with specific enhanced CDD requirements. In this assessment round Recommendation 6 was reviewed again according to all the criteria of the Methodology.

Requirement to identify; risk management systems (c.6.1)

538. There is now a requirement in the AML/CFT law to apply special diligence measures in respect of PEPs. According to Article 2 (19) of the AML Law politically exposed persons shall mean foreign state citizens who are or have been entrusted with prominent public functions and immediate family members or persons known to be close associates of such citizens.

539. Prominent public functions (Article 2 (20) of the AML Law) shall mean functions, including the functions in the European Community, international or foreign state institutions:

- the Head of the State, the Head of the Government, a minister, a vice-minister or a deputy minister;
- a member of the parliament;
- a member of the Supreme Court, the Constitutional Court or any other highest judicial authority whose decisions are not subject to appeal;
- a member of the management body of the professional organisation of auditors or of the board of the central bank;
- an ambassador, a *chargé d'affaires ad interim* or a high-ranking military officer;
- a member of the management or supervisory body of a state owned entity.

540. Close family members are considered to be: the spouse, the person with whom partnership has been registered (cohabitant), parents, brothers, sisters, grandparents, grandchildren, children and children's spouses, children's cohabitants. (Article 2 (2) of the AML Law).

541. The term "close associate" is also further specified in the law (Article 2 (1) of the AML Law) as:

- A natural person who, together with the PEP, participates in the same legal entity or maintains other business relations;
- A natural person who is the only owner of the legal entity set up or operating *de facto* with the aim of acquiring property or another personal benefit for the PEP.

542. Financial institutions may (having assessed the threat of money laundering and/or terrorist financing) refrain from treating the person as a politically exposed person, if s/he stops performing prominent public functions for at least one year (Article 11 (5) of the AML Law).

543. The Lithuanian definition of PEP is modelled on the one set out in the Third EU AML/CFT Directive, which differs slightly from the FATF standard. The Lithuanian definition does not fully cover "senior government officials" (e.g. non-political heads of ministries) who are listed as an example under the standard (definition of PEPs in the Glossary to the FATF Recommendations). The Lithuanian definition refers to foreign state citizens whereas the standard refers to persons entrusted with prominent public functions in a foreign country irrespective of the citizenship. As a result the Lithuanian PEP definition excludes the Lithuanian citizens entrusted with prominent public functions abroad. Furthermore the standard does not provide for the mentioned one-year time limit.

544. According to Article 11 (5) of the AML Law *financial institutions and other entities must set internal procedures based whereon it shall be established whether the customer and the beneficial owner are PEPs.* The Lithuanian authorities clarified that the mentioned internal procedures should be understood as appropriate risk management systems (as mentioned in the standard). The Guidelines for the different sectors also emphasize this requirement (Paragraph 25 of the Bank Guidelines, Paragraph 39 of the Securities Guidelines and Paragraph 53.8 of the Insurance Guidelines). However the AML Law and the Guidelines does not provide particular guidance in relation to the procedure and measures..

545. Although there is no particular guidance in relation to the procedures and measures, in the course of the evaluation the financial institutions and the Bank of Lithuania stated that they have appropriate procedures to determine whether the customer or the beneficial owner are PEPs and these procedures are specified in their internal rules (some of the internal rules were provided to the evaluators after the on-site visit). On the basis of their internal rules, the financial institutions use special customer application forms, in which there are special questions concerning PEPs. Furthermore they usually apply different additional measures to verify the statement submitted by the customer on the application form, among others information from publicly available sources (e.g. internet websites) or commercial electronic databases.

Senior management approval (c.6.2 and c.6.2.1)

546. The AML Law requires that financial institutions must obtain senior management approval for establishing business relationship with a PEP. Subparagraph 1 of Article 11 (4) of the AML Law provides that, applying enhanced CDD, financial institutions must receive the approval of the authorised manager to conclude the business relationship with a PEP.

547. However there seems to be no explicit requirement in the AML Law to obtain senior management approval to continue the business relationship, if the customer or the beneficial owner subsequently becomes PEP (in the course of the business relationship).

Requirement to determine source of wealth and funds (c.6.3)

548. The AML Law provides that, applying enhanced customer due diligence measures, when transactions or business relationship are performed with PEPs, financial institutions must take appropriate measures to establish the source of property and funds connected with the business relationship or transaction (Subparagraph 2, Article 11 (4) of the AML Law).

Enhanced ongoing monitoring (c.6.4)

549. On the basis of the AML Law financial institutions are required to perform enhanced ongoing monitoring of the business relationship with PEPs (Subparagraph 3, Article 11 (4) of the AML Law).

Domestic PEP-s – Requirements (additional element c.6.5)

550. The PEP definition of the AML Law only covers the foreign state citizens (Article 2 (19) of the AML Law), domestic PEPs are not covered.

Ratification of the Merida Convention (additional element c.6.6)

551. Lithuania signed the 2003 United Nations Convention against Corruption on 10 December 2003 and ratified it on 21st December 2006.

Effectiveness and efficiency

552. The amended AML Law and the Guidelines issued for the different sectors provide a comprehensive framework for enhanced CDD in relation to PEPs, in line with the standard. Furthermore, the larger financial institutions have put in place internal procedures, which are specified in their internal rules (although there is no particular guidance for that in the AML Law and the Guidelines).

553. This being said, the on-site interviews showed clearly that there is no uniform and satisfactory understanding across the financial institutions as to the effective use of the concept of PEPs, and whilst members of larger companies referred to Worldcheck and other acknowledged sources of information, some interlocutors admitted that they wouldn't know which lists or sources of information to use in order to determine whether a person is a PEP. There appears to be some difficulties for financial institutions to implement the required measures.

554. From the interviews it can be stated that the financial institutions generally carry out identification procedures in respect of PEPs, but face difficulties regarding the verification, as well as how to establish whether the beneficial owner may be a PEP. The financial institutions stated that more adequate databases would be necessary in order to implement the verification more effectively. The foreign-owned financial institutions had a better understanding of their requirements and seemed to be more effective in the implementation of the requirements as a result of group-wide procedures.

3.2.2 Recommendations and comments

Recommendation 5

555. With the adoption of the new AML Law, Lithuania rectified several deficiencies identified in the 3rd round MER in relation to the CDD requirements. However further legislative clarifications and improvements are still needed for the full compliance with the standards. Furthermore there remain some concerns regarding the effective implementation.

556. An explicit requirement for the financial institutions to understand the ownership and control structure of the customer where the customer is a legal person should be implemented.

557. The Lithuanian authorities should provide particular guidance for the different financial sectors for establishing the procedure in order to review and update the identification data. Furthermore an explicit requirement for the review of the existing records for higher risk categories of customers or business relationships should be implemented.

558. The Lithuanian authorities should consider introducing an express obligation requiring the content of the internal control procedures of the financial institutions regarding the application of the risk based approach be consistent with the guidelines issued by the competent authorities.

559. The Lithuanian authorities should review and clarify the wording of the AML Law in relation to the timing of verification and should require the financial institutions in the insurance business to adopt risk management procedure concerning the conditions where the customer is permitted to utilise the business relationship prior to verification.

560. The Lithuanian authorities should review and clarify the relevant provisions of the AML Law in those instances where the financial institution fails to complete the CDD before commencing the business relationship. Furthermore the financial institutions should be explicitly required to terminate the business relationship and to consider making an STR, where the business relationship has already commenced and the financial institution is unable to carry out the CDD measures.

561. The Lithuanian authorities are recommended to provide guidance on the application, and the full implications of the CDD measures to existing customers (e.g. final deadline with restrictive provisions and ongoing monitoring of the customer relationship).

562. The Lithuanian authorities should strengthen the effective implementation of the beneficial owner identification and verification, as well as the application of the provisions for simplified CDD.

Recommendation 6

563. The Lithuanian authorities are encouraged to review the PEP definition as the scope differs slightly from the FATF standard.

564. The Lithuanian authorities are recommended to provide guidance in relation to the internal procedures (appropriate risk management systems) on whichit shall be established whether the customer and the beneficial owner are PEPs.

565. An explicit requirement for the financial institutions to receive senior management approval to continue the business relationship if the customer or the beneficial owner subsequently becomes PEP should be implemented.

566. The Lithuanian authorities should strengthen the effective implementation of the requirements in relation to PEPs.

3.2.3 Compliance with Recommendations 5 and 6

	Rating	Summary of factors underlying rating
R.5	**PC**	• Lack of explicit requirement to understand the ownership and control structure of the customer where the customer is a legal person; • lack of explicit requirement for the review of the existing records for

		higher risk categories of customers or business relationships; • lack of explicit requirement that the content of the internal control procedure regarding the application of the risk based approach has to be consistent with the guidelines; • the legal provisions for the timing of verification are not clear. Furthermore there is no requirement to adopt risk management procedure in the insurance business concerning the conditions where the customer is permitted to utilise the business relationship prior to verification; • the legal provisions for failure to complete CDD before commencing the business relationship are not clear. Furthermore there is no explicit requirement to terminate the business relationship and to consider making an STR where the business relationship has been already commenced and the financial institution is unable to carry out the CDD measures; • weakness in effective implementation of the beneficial owner identification and verification, as well as the various implications of the new CDD approach introduced in 2008.
R.6	**LC**	• The definition of PEP slightly differs from the standard (it does not cover all categories of senior government officials and excludes the Lithuanian citizens entrusted with prominent public functions abroad); • lack of explicit requirement to obtain senior management approval to continue the business relationship if the customer subsequently becomes a PEP; • weakness in the effective implementation of the requirements in relation to PEPs.

3.3 Financial institution secrecy or confidentiality (R.4)

3.3.1 Description and analysis

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

567. Lithuania was rated "Largely Compliant" for Recommendation 4 in the 3rd round report. The underlying factor for this rating was the need to harmonise the provisions under the respective laws lifting confidentiality. Accordingly it was recommended that, irrespective of the perceived effectiveness of the system, there was a need to harmonise the various legal provisions for the sake of consistency. In this assessment round Recommendation 4 was reviewed again according to the Methodology. Since the 3rd round report the situation has not changed significantly concerning the legal provisions stating the secrecy and confidentiality obligations imposed to financial institutions.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

568. Confidentiality of information is highly protected under the respective laws. Article 172-7 of the Code of the Administrative Law Infringement provides for a fine from 2 000 to 20 000 Litas (approximately EUR 580 to EUR 5 800) in the case of unlawful disclosure of bank secret. Furthermore Article 211 of the Criminal Code implements sanctions for illegal disclosure of commercial secrets (public work, fine, restriction of freedom or arrest or imprisonment up to two years). However the AML Law and the respective financial legislation provide possibility for the lawful disclosure of information.

569. The AML Law provides the requirements in relation to the *protection of information submitted to the FCIS*. According to Article 20 (1) of the AML Law the information obtained by the FCIS may not be published or transferred to other state governance, control or law enforcement institutions, other persons, except in the cases established by law. Furthermore Article 20 (2) of the AML Law recognizes that persons who are in violation of the procedure for protecting and using information shall be held liable by law. Article 20 (9) of the AML Law however specifically provides that the submission of the information specified in the law to the FCIS shall not be viewed as disclosure of an industrial, commercial or bank secret.

Sharing of information between competent authorities, either domestically or internationally

570. Article 43 of the Law on the Bank of Lithuania (reading together with Article 19) refers to the protection of the information received by the Bank of Lithuania for the purposes of the financial market supervision. However the Bank of Lithuania can cooperate and share information of a prudential nature according to Article 46 of the Law on the Bank of Lithuania: it shall have the right to conclude agreements on cooperation in the area of financial market supervision with the institutions of other states performing the financial market supervision, the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority and other institutions of Lithuania and foreign countries.

571. Furthermore the Law on Markets in Financial Instruments contains provisions in relation to the ability of the supervisory authority to access information they require to properly perform its functions (Article 72), as well as in relation to cooperation and exchange of information between competent authorities, either domestically or internationally (Subparagraph 9-11 of Article 71 (2)). The law also deals with the issue of cooperation (including exchange of information) with other supervisory institutions under its Second Chapter. However the mentioned relevant provisions of the law only apply to prudential information, without any explicit reference in the legal provisions to AML information.

572. The Lithuanian authorities indicated that on the basis of the relevant provisions of the Law on Insurance, the supervisory authority (the Bank of Lithuania) has the right and ability to access information necessary for the implementation of its functions (Article 203) and that, furthermore, the supervisory authority is authorised to disclose information related to the supervision of insurance entities (Article 198).

573. According to the Lithuanian authorities' interpretation, it should be understood that prudential information includes AML/CFT related information in the different mentioned sectoral laws.

574. Article 8 of the AML Law provides for *cooperation between the state institutions*. According to this Article law enforcement and other state institutions must report to the FCIS about any noticed indications of suspected money laundering and/or terrorist financing, violations of the AML Law and the measures taken accordingly. Article 6 (2) of the AML Law provides for cooperation and exchange of information between the State Security Department and the FCIS in implementing CFT measures. Furthermore according to Article 4 (12) of the AML Law the competent state institutions and the FCIS shall co-operate and exchange information on the results of the performed inspections of entities' activities related to prevention of ML and/or TF.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

575. Secrecy rules are not considered as an obstacle for the financial institutions to share the information on their customers for the need of R.7, R.9 and SR.VII.

576. Article 55 of the Law on Banks defines the term "secret of a bank" and determines the possibilities for disclosure. Furthermore the service providers are protected under Article 55 (5) of the Law on Banks which allows a bank to provide the information which is considered a secret of the bank to the institutions referred to in the AML Law, also to third parties according to the procedure set forth by laws where, according to the laws, the bank must provide such information thereto. It is not fully clear to the evaluators, if these laws would allow financial institutions to exchange information as per the requirements of R.7, R.9 and SR.VII.

577. The Law on Markets in Financial Instruments also contains a specific provision that lifts confidentiality and determines the possibility of disclosure. On the basis of Article 65 (6) *heads and employees of a manager of accounts must ensure the confidentiality of the information which they obtained while managing accounts, with the exception of the cases when they are subject to the duty to supply such information under laws*. However under the Law on Markets in Financial Instruments there is no specific provision that defines the term "secret" (Article 65 (6) refers solely to a certain type of information). This issue is addressed under Section X of the Securities Guidelines, as well.

578. The Law on Insurance also addresses the confidentiality issue to a certain extent, and Article 203 (1) lifts confidentiality and determine the possibility of disclosure regarding the information provided for the supervisory authority: *state and local government institutions, other natural and legal persons on a request from the supervisory authority must provide information, including confidential information, necessary for carrying out the responsibilities and for implementing the rights of a supervisory authority*. However the Law on Insurance does not contain further provisions regarding confidentiality and possibility of disclosure, as well as does not define the term "secret". Nonetheless this issue is addressed by Paragraph 56 of the Insurance Guidelines (disclosure of the information defined in the Guidelines to the FCIS shall not be treated as disclosure of industrial, commercial or bank secret).

579. Furthermore the AML Law provides the requirement in relation to the prohibition of disclosure for the financial institutions (Article 20 (3)), as well as regulates the exemptions from this prohibition (where the financial institutions are authorised to exchange information) and the specific circumstances (Article 20 (4)-(8)).

Effectiveness and efficiency

580. During the on-site visit the evaluation team did not detect any problems in relation to the effectiveness and efficiency of this recommendation. From the interviews conducted on-site it appears that there are no legal obstacles regarding financial secrecy which could inhibit the application of the FATF Recommendations (neither domestically nor with foreign counterparts) and no problems have been experienced in practice.

3.3.2 Recommendations and comments

581. Although the financial institutions and the competent authorities confirmed that the system works effectively, the different ways that the issue of the lifting of confidentiality in the financial sector is treated under the respective laws raises some concerns related to consistency.

582. Consequently, the Lithuanian authorities are recommended again (likewise in the 3rd round report) to harmonise the provisions under the respective laws lifting confidentiality.

583. Furthermore the Lithuanian authorities should review and clarify the provisions of the respective laws in order to ensure explicitly the sharing of AML/CFT related information by the Bank of Lithuania, as well as make sure that the legal framework is clear and enables the financial institutions to exchange information required by R.7, R.9 and SR.VII.

3.3.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• no harmonisation of the provisions under the respective laws lifting confidentiality; • no explicit requirement enabling the disclosure of AML/CFT related information between the supervisory authorities.

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)

584. 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 (c.10.1 and 10.1.1)

585. The AML Law, the Government Resolution No 562 and the Guidelines for the different sectors contain detailed rules on record keeping requirements.

586. Article 16 of the AML Law governs the obligation of record keeping for the financial and non-financial sectors. Financial institutions must keep a register of monetary operations

performed by the customer and specified in Subparagraphs 2-5 of Article 9 (1) of the AML Law (operations exceeds EUR 15 000 in a single or several related transactions; exchanging cash, when the amount exchanged exceeds EUR 6 000; performing internal and international post remittance transfer services, if the amount of money sent or received exceeds EUR 600; performing and accepting in compliance with the provisions of Regulation (EC) No 1781/2006), as well as of suspicious and unusual monetary operations and transactions. Where the customer of a financial institution is another financial institution or a financial institution of another EU Member State, no details have to be kept in the register (Article 16 (1) of the AML Law). Postal services providers are also required to register information in the case of internal and international post remittance transfer services, if the amount of money sent or received exceeds EUR 600, as well as of suspicious and unusual monetary operations and transactions (Article 16 (3) of the AML Law).

587. Furthermore financial institutions must keep a register of the customers with whom transactions or the business relationship has been terminated under the circumstances specified in Article 15 of the AML Law (missing information about the origin of funds or property, or other additional data) or under other circumstances related to violations of the procedure of money laundering and/or terrorist financing prevention (Article 16 (7) of the AML Law).

588. In terms of Article 16 (8) of the AML Law, the rules for the keeping of registers have been established by the Government Resolution No 562, which provides details in relation to the record-keeping requirements. Paragraph 14 of the Government Resolution No 562 specifies the data that must be entered into the registers as follows:

- data identifying the customer;
- data identifying the customer's representative (when the monetary operation or transaction is undertaken through an agent);
- data about the monetary operation or transaction (date, amount, currency and method);
- criteria on the basis of which the monetary operation or transaction is considered suspicious or unusual;
- data on the beneficiary of the monetary operation or transaction;
- data on the person receiving the funds;
- motives for terminating the transactions or business relationships (under the circumstances specified in Article 15 of the AML Law or other circumstances).

589. Due to the mentioned provisions of the AML Law and the Government Resolution No 562 financial institutions are required to maintain all necessary records on the transactions both domestic and international and this requirements applies regardless of whether the business relationship is on-going or has been terminated. Paragraph 59 of the Bank Guidelines stipulates that credit institutions must guarantee the keeping of records and information, irrespective of whether monetary operations or transactions are local or international, and business relationship with a customer are on-going or ended. So these provisions confirm the adequate interpretation of the relevant provisions of the legal acts in line with the standard.

590. Furthermore due to the requirements specified in the above mentioned provisions of the AML Law and the Government Resolution No 562, the transaction records are sufficient to permit reconstruction of the individual transactions, so as to provide (if necessary) evidence for prosecution. Paragraph 59 of the Bank Guidelines stipulates that credit institutions must guarantee the keeping of records in the manner facilitating the restoration of the particular

monetary operations or transactions, as well as facilitating their use as evidence for the purpose of investigation of criminal acts. These provisions further specify and confirm the adequate interpretation of the relevant provisions of the legal acts in line with the standard.

591. Article 16 (8) of the AML Law requires that register data shall be stored for ten years from the day of termination of transactions or other business relationship with the customer.

Record keeping of identification data, files and correspondence (c.10.2)

592. Furthermore, according to Article 16 (9), copies of the documents confirming the customer's identity, must be stored for ten years from the day of termination of transactions or business relationship with the customer. According to Article 16 (10) the documents confirming the monetary operation or transaction or other legally binding documents related to the performance of monetary operations or conclusion of transactions must be stored for ten years from the day of performance of the monetary operation or conclusion of the transaction.

593. However financial institutions are not specifically required to maintain records of accounts files and the business correspondence.

594. Although there is no explicit provision to ensure that the mandatory record-keeping period may be extended in specific cases upon request of the competent authorities (as required under c.10.1 and c.10.2*), the Lithuanian AML Law extends the record-keeping period to ten years from the day of termination of the business relationship.

Availability of Records to competent authorities in a timely manner (c.10.3)

595. Article 19 (5) of the AML Law provides that financial institutions must introduce internal systems that would enable them to respond fully and rapidly to inquiries from the FCIS concerning submission of the information specified in the AML Law and ensure submission of this information within 14 working days. If, in certain cases, the AML Law establishes shorter time limits for submitting the information to the FCIS, such information must be submitted within shorter time limits. The information is also available to the supervisory and other authorities according to the relevant laws. Article 42 (3) of the Law on the Bank of Lithuania states, that in performance of the financial market supervision the Bank of Lithuania shall have the right to receive the necessary information from state institutions, financial market participants under supervision as well as from other enterprises, institutions and organisations. Similar provisions are also included under Article 69 of the Law on Banks, Article 72 of the Law on Markets in Financial Instruments, as well as Articles 47 and 48 of the Law on Insurance. Furthermore, according to Article 5 of the AML Law the FCIS has the right to obtain all information necessary to perform its functions.

596. Finally, on the basis of Article 17 of the AML Law the financial institutions performing a monetary operation must submit to the FCIS data confirming the customer's identity and information about the performed monetary operation, if the total amount of the customer's single operation (or of several interrelated operations) in cash exceeds EUR 15 000. The information shall be submitted to the FCIS immediately, but not later than within seven working days from the day of performance of the monetary operation or conclusion of the transaction.

597. The legal obligations in relation to the record keeping requirements (mentioned above) are further specified in Paragraph 56-59 (Section VI) of the Bank Guidelines, Paragraph 62-68

(Section VIII) of the Securities Guidelines and Paragraph 41-52 (Section V-VI) of the Insurance Guidelines.

Effectiveness and efficiency

598. Record keeping requirements for the financial sector are adequately covered by the amended AML Law, as well as the relevant Government Resolution and the Guidelines (with some minor issues in the legal texts which appear to require clarification).

599. Meetings with the service providers indicated a high level of awareness of the record-keeping requirements. The financial institutions stated that they maintain the registers electronically (according to the requirements specified in the Government Resolution No 562) and their internal rules (some of them were provided during and after the on-site visit) contain specific rules on the maintaining of registers, in line with the legal acts and the guidelines.

600. The supervisory authorities informed the evaluators that, as far as record-keeping obligation are concerned, no relevant implementation deficiencies were observed in the course of their inspections. None of the competent authorities has mentioned delays or problems in obtaining all relevant data and information from financial institutions.

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

601. In the 3rd round report, Lithuania was rated "Partially Compliant" for Special Recommendation VII. The underlying factors for this rating were weaknesses identified in the legislation: the provisions of SR VII on wire-transfers were not specifically addressed in relation to various essential criteria. The Lithuanian authorities acknowledged this and expected to fully comply with SR VII once the relevant EU regulation is adopted. In this assessment SR VII was reviewed again according to all the criteria of the Methodology.

602. Requirements under SR VII have been implemented within the EU through *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* (henceforward: Regulation), in force since 1 January 2007. This Regulation is directly applicable throughout the EU membership, including Lithuania. National implementation therefore has to be limited to establishing an appropriate supervisory (monitoring), enforcement and penalties regime and to applying certain derogations allowed for in the Regulation.

603. As provided for in the Annex of the AML Law and on the basis of the information provided by the Lithuanian authorities, the Regulation is implemented by the relevant provisions of the AML Law. However in the view of the evaluators some elements from the legal texts are missing in relation to the implementation (as described below under the relevant criteria).

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

- transfers of funds carried out using a credit or debit card under specific conditions (Article 3 (2)), electronic money up to a threshold of EUR 1 000 (Article 3(3));
- transfers of funds carried out by means of a mobile phone or similar device (Article 3 (4)-(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 (7)).

Obtain Originator Information for Wire Transfers (c.VII.1)

605. According to Article 5 of the Regulation, payment service providers of the payer shall ensure that transfers of funds are accompanied by complete information on the payer. Article 4 of the Regulation provides that complete information shall consist of the name, address and account number. The address may be substituted with the date and place of birth of the payer, his customer identification number or national identity number. Where the payer does not have an account number, a payment service provider of the payer shall substitute it by a unique identifier which allows a transaction to be traced back to the payer.

606. 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 EUR 1 000, unless the transaction is carried out in several operations that appear to be linked and together exceed EUR 1 000 (Article 5 (4)).

607. It is expected that payment services providers have effective procedures in place in order to detect, whether in the messaging, payment or settlement system used to effect a transfer of funds, the fields relating to the information on the payer are complete in accordance with Articles 4 and 6 (Article 8).

608. However, the Regulation (Article 5 (3)) 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 Third 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 Third EU AML/CFT Directive.

609. According to the provisions of Subparagraph 4-5 of Article 9 (1) of the AML Law financial institutions must apply CDD measures in respect of the customer and the beneficial owner in all cases when (i) performing internal and international post remittance transfer services, if the amount of money sent or received exceeds EUR 600; (ii) performing and accepting money transfers in compliance with the provisions of Regulation (EC) No 1781/2006. Consequently the general rules set out in the AML Law (as well as in the relevant Government Resolution and Guidelines) apply for the identification and verification.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2); Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3)

610. According to the FATF Methodology, for the purposes of the assessment of SR VII, transfers between Lithuania and other EU member countries are considered as domestic,

whereas wire transfers between Lithuania and non-EU member states are considered as cross-border.

611. According to Article 7 of the Regulation, transfers where the payment service provider of the payee is situated outside the area of the Community 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.

612. Under Article 6 of the Regulation (by way of derogation from Article 5 (1)), in cases where both payment service provider (that of the payer and that 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.

613. 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.

614. However, for the purpose of the Regulation, there is no explicit provision in the legal text of Lithuania to determine the competent authorities and there is no explicit legal obligation for the financial institutions to hand over to them the complete information on the payer if requested.

Maintenance of Originator Information (c.VII.4, c.VII.4.1)

615. 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.

616. According to Article 13 of the Regulation, in cases of technical limitations to a payment system, an intermediary payment service provider situated within the Community must keep records of all information received for five years. Article 13 provides further details in relation to the obligation of the intermediary service provider in this case.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

617. 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 execute 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:

a) for transfers of funds where the payment service provider of the payer is situated in the Community, the information required under Article 6;

b) 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
c) 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.

618. 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 (Article 9 (1)).

619. 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 (2)).

620. 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 Third EU AML/CFT Directive (implemented by Article 14 of the AML Law), to the authorities responsible for combating money laundering or terrorist financing.

Monitoring of Implementation (c. VII.6) and Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

621. The evaluators were informed that the Bank of Lithuania as supervisory institution for the financial sector (including credit and payment institutions) monitors also the compliance of financial institutions with the requirements of the Regulation, according to the provisions of the Law on the Bank of Lithuania and the AML Law.

622. The evaluators were also informed, that the sanctions for breach of the requirements of the legal acts implementing provisions of prevention of money laundering and terrorist financing are also applied in cases of breach of the provisions of the Regulation. The Bank of Lithuania has the right to impose sanctions or apply other enforcement measures to the supervised financial institutions according to the provisions of the Law on the Bank of Lithuania and on the Law on Banks (for further details see c.17.1-17.4).

623. However the competent authority (Bank of Lithuania) seems to be not explicitly appointed in the relevant legal texts to supervise the application of the Regulation and to penalize non-compliance of the service providers, furthermore there is no explicit provision in relation to the applicable sanctions for the purpose of the Regulation (in order to implement Article 15 of the Regulation).

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

624. For transfers of funds where the payment service provider of the payer is situated outside the Community (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) 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.

625. For transfers of funds where the payment service provider of the payee is situated outside the area of the Community (outgoing cross-border wire transfers), the transfer shall always be accompanied by complete information on the payer, regardless of the threshold, except batch file transfers elaborated above (Article 7 of the Regulation).

Effectiveness and efficiency

626. The requirements of SR VII are clearly stated in the Regulation and (partly) under the AML Law (as well as the other relevant legal texts and the Guidelines) where necessary. However in the view of the evaluators some elements from the legal texts seem to be missing in relation to the national implementation (e.g. explicit provisions to establish the appropriate monitoring, enforcement and penalties regime). These legal deficiencies can negatively impact on the proper implementation of the Regulation by the service providers, as well as on the respective supervision, and they thus give rise to concerns as regards the effectiveness.

627. Nonetheless, despite the mentioned legal deficiencies, all representatives of the providers of payment services met during the on-site visit appeared to be aware of their obligations when conducting transfers of funds. The Bank of Lithuania also informed the evaluators that no relevant implementation deficiencies were observed during their inspections and the system would work effectively in practice. Furthermore there were no circumstances or evidence brought to the attention of the evaluation team during the on-site visit that the supervisory system of wire transfers does not work properly and effectively.

3.4.2 Recommendation and comments

Recommendation 10

628. The amended AML Law, the relevant Government Resolution and the Guidelines adequately cover the record-keeping requirements for the financial institutions, but there are some minor issues in the legal texts which appear to require clarification.

629. Financial institutions should be specifically required to maintain records of accounts files and the business correspondence.

630. 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.

Special Recommendation VII

631. The requirements of SR VII are clearly stated in the Regulation and (partly) under the relevant legal texts (where necessary). However some elements from the legal texts seem to be missing in relation to the national implementation.

632. The Lithuanian authorities should explicitly determine the competent authorities for the purpose of the Regulation and require the financial institutions to hand over to them the complete information on the payer if requested.

633. The Lithuanian authorities should explicitly appoint the competent authority to supervise the application of the Regulation and to penalize non-compliance of the service providers, furthermore the applicable sanctions also should be explicitly provided for the purpose of the Regulation.

3.4.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• No requirement to maintain records of accounts files and the business correspondence; • No provision to ensure that the mandatory record-keeping period may be extended in specific cases upon request of competent authorities.
SR.VII	**LC**	• No explicit provisions in the Lithuanian legal texts to determine the competent authorities for the purpose of the Regulation (shortcoming in the national implementation). • No explicit provisions in the Lithuanian legal texts to establish the appropriate monitoring, enforcement and penalties regime for the purpose of the Regulation (shortcoming in the national implementation).

Unusual and Suspicious transactions

3.5 Monitoring of Transactions (R. 11)

3.5.1 Description and analysis[18]

Recommendation 11 (rated PC in the 3rd round report)

634. In the 3rd round report, Lithuania was rated "Partially Compliant" for Recommendation 11. The underlying factors for this rating were weaknesses identified in the legislation: the issue was partially addressed through the STR criteria in the relevant Government Resolution, but there was no specific obligation to examine background of large, complex transactions and to keep written record accordingly. In this assessment round Recommendation 11 was reviewed again according to all the criteria of the Methodology.

Special attention to complex, unusual large transactions (c. 11.1)

635. According to Article 14 (14) of the AML Law, financial institutions (in performing on-going monitoring of the customer's business relationships, including investigation of the transactions concluded in the course of such relationships) must take into account any activity which they regard as likely, by its nature, to be related to money laundering and/or terrorist financing and,

[18] 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.

in particular, inter alia, complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose.

636. Paragraph 3 of the Government Resolution No 677 (which establishes the list of criteria on the basis whereof a monetary operation or transaction is considered suspicious or unusual) provides the same requirement for financial institutions.

637. Considering the fact that Article 14 of the AML Law refers to a reporting obligation in respect of suspicious or unusual monetary operations and transactions, and that the same requirement is provided in Government Resolution No 677, in the opinion of the evaluators it remains unclear whether the financial institutions are required to pay special attention to that kind of operations in general (and not only to the extent that a given transaction is considered suspicious or not).

638. Additionally, this obligation is also provided (but is not further specified) in Paragraph 27.2 of the Bank Guidelines, which paragraph, however, is inserted in the section referring to customer due diligence and not in the section containing the relevant provisions regarding the suspicious and unusual monetary operations.

Examination of complex and unusual transactions (c. 11.2)

639. According to Article 14 (14) of the AML Law *the results of the examination of the basis for and purpose of performance of such operations or transactions must be substantiated by documents*. So this provision covers the requirement of c.11.2: the financial institutions have to examine the background and purpose of the complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose.

640. The English version of the AML Law, however, is unclear on this issue and it remains questionable for the evaluators whether the expression "must be substantiated by documents" in Article 14 (14) of the AML Law refers to the obligation that the results of the examination must be supported by documents or whether it means that financial institutions have to keep written record of the findings. The English version of Paragraph 27.2.1 of the Bank Guidelines confirms the first interpretation. According to the Lithuanian authorities' interpretation, the expressions contained in the AML Law and Banking Guidelines refer to both requirements.

Record-keeping of finding of examination (c. 11.3)

641. According to Article 14 (14) of the AML Law *the results of the examination of the basis for and purpose of performance of such operations or transactions must be stored for ten years*, which provision covers the requirement of the standard. This obligation is also provided, but is not further specified, in Paragraph 27.2.1 of the Bank Guidelines.

Effectiveness and efficiency

642. On the basis of the mentioned issues which need review and clarification in the legal texts, as well as on the basis of the lack of further guidance in the Guidelines and in the internal rules (provided by certain service providers), the evaluators express concern in relation to the appropriate and effective implementation of this recommendation.

643. On the other hand, in the course of the on-site visit, the Bank of Lithuania did not mention the implementation of the above mentioned requirements as one of the main deficiencies, which were observed during their inspections.

3.5.2 Recommendations and comments

Recommendation 11

459. In the light of the information made available, the evaluators have no particular comments.

3.5.3 Compliance with Recommendation 11

	Rating	Summary of factors underlying rating
R.11	**C**	

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

Recommendation 13 (rated PC in the 3rd round report) & Special Recommendation IV (rated PC in the 3rd round report)

3.6.1 Description and analysis[19]

644. Recommendations 13 and SRIV were rated partially compliant in the 3rd round since the obligation to report did not clearly address attempted transactions or reasonable grounds to suspect money laundering; in the case of financial institutions, it was limited to financial operations and there was no direct obligation to report operations suspected to be linked or related to terrorist financing (the obligation to report suspected terrorist financing transactions was only addressed restrictively through Government Resolution 929).

Requirement to Make STRs on ML to FIU (c. 13.1)

645. In accordance with Criterion 13.1, a financial institution should be required to report to the FIU (a suspicious transaction report – STR) when it suspects or has reasonable grounds to suspect[20] that funds are the proceeds of a criminal activity.

646. Article 14 of the AML Law requires that "Financial institutions and other entities must report to the Financial Crime Investigation Service about the suspicious or unusual monetary operations and transactions performed by the customer."

647. Article 17 para.1 requires in addition the reporting by financial institutions of all "monetary operations" performed in cash (single and inter-related operations) which exceed 15,000 EUR or the equivalent in a foreign currency.

[19] 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.

[20] The requirement to report when the individual "suspects" is a subjective test of suspicion i.e. the person actually suspected that a transaction involved a criminal activity. A requirement to report when there are "reasonable grounds to suspect" is an objective test of suspicion and can be satisfied if the circumstances surrounding the transaction would lead a reasonable person to suspect that the transaction involved a criminal activity. This requirement implies that countries may choose either the two alternatives, but need not have both.

648. As indicated earlier, the concept of « financial institutions » covers through the definitions in the AML Law and the Law on financial institutions, a broad range of undertakings, including banking, insurance and securities market intermediaries. A series of additional useful definitions are provided under article 2 of the Law, including of the concept of « suspicious » and « unsual » monetary operation or transaction :

*9. **Suspicious monetary operation or transaction** shall mean a monetary operation or transaction conforming to at least one criterion stipulated by the Government of the Republic of Lithuania according to which a monetary operation or transaction is considered suspicious and [and/or] which may be associated with money laundering and/or terrorist financing.*

*10. **Other entities** shall mean:*

1) auditors;.

2) insurance undertakings engaged in life insurance activities and insurance brokerage firms engaged in insurance mediation activities relating to life insurance;

3) bailiffs or the persons entitled to perform the actions of bailiffs;

4) undertakings providing accounting or tax advisory services;

5) notaries and other persons entitled to perform notarial actions, as well as advocates and advocate's assistants, when acting on behalf of and for the customer and when assisting the customer in the planning or execution of transactions for their customer concerning the purchase or sale of real property or business entities, management of customer money, securities or other property, opening or management of bank or securities accounts, organisation of contributions necessary for the establishment, operation or management of legal entities or other organisations, emergence or creation, operation or management of trust and company forming and administration service providers and/or related transactions;

6) provides of the services of trust or company forming or administration not already covered under subparagraphs 1, 4 and 5 of this paragraph;

7) the persons engaged in economic and commercial activities covering trade in immovable property items, precious stones, precious metals, items of movable cultural property, antiques or other property the value whereof exceeds EUR 15 000 or the corresponding sum in a foreign currency, to the extent that payments are made in cash;

8) the companies organising gaming;

9) postal services providers which provide domestic and international postal order services (hereafter referred to as "postal services providers");

10) close-ended investment companies.

13. Unusual monetary operation or transaction shall mean a monetary operation or transaction having features of at least one criterion stipulated by the Government of the Republic of Lithuania according to which a monetary operation or transaction is considered suspicious, but these features are not sufficient for the monetary operation or transaction to conform to the criterion and be recognised as suspicious.

649. The reporting system was improved since the 3rd round since it does not refer solely to the reporting of a financial operation anymore (which excluded theoretically, for instance, the opening of a safe deposit box). Nevertheless, a number of concerns remain.

650. First of all, the reporting duty is defined in a complex manner. Subjected entities need to understand the distinction between « suspicious » and « unusual » (transactions or operations). For that, one needs to refer to item 9 and 13 of the above definitions: both must fulfil at least one of the mandatory criteria contained in Government Resolution No 677 (one criterion may in fact contain one or several conditional features. Where it contains several features, all of these must be fulfilled for the criterion to be considered as met and for the operation to become "suspicious". If not, it will be considered as unusual). Furthermore, the suspicious transaction is defined in the AML Law by reference to the presence of a possible ML or FT element: even if none of the criteria is met, the suspicion of an AML/CFT element is enough. Government Resolution No 677 creates in fact a confusion since it does not refer as the AML Law does, to

this particular ML or FT element anymore as a distinguishing feature in the definitions. This is perhaps the reason why FCIS representatives told the evaluators that in practice, no difference is to be made between the two concepts. Actually, there is an important difference: it is only in respect of suspicious transactions or operations that obliged entities must report these within 3 hours and interrupt the transaction, pending further instructions from the FCIS. There is no such duty in respect of unusual transactions.

651. The following figures were initially provided as regards reporting in the financial sector for the period 2005 to 2011:

Reporting entities	**Reports above thresholds**	**Suspicious transactions**	
		ML	**FT**
Banks	1,342,894 (2005) 2,752,390 (2006) 3,801,016 (2007) 2,330,253 (2008) 732,840 (2009) 691,275 (2010) 650,858 (2011)	69 (2005) 112 (2006) 97 (2007) 126 (2008) 213 (2009) 165 (2010) 158 (2011)	0
Insurance companies	-	-	-
Currency exchange	-	-	-
Brokers companies	-	-	-
Securities registrars	-	-	-

652. The Lithuanian authorities indicated after the visit that a general category entitled "other entities" in the MLPD's statistics includes also a few STRs from the insurance and securities businesses. The following figures where thus provided for the years 2009, 2010 and 2011 concerning financial sectors other than the banks. The new figures still show a very low or negligible level of reporting from the non-banking financial sector, both on STRs and operations above threshold:

Reporting entities	**Reports above thresholds**	**Suspicious transactions**	
		ML	**FT**
Insurance companies	-	3	-
Currency exchange	-	-	-
Brokers companies	-	-	-
Securities registrars	-	2	-

653. Government Resolution No 677 does not refer to the suspicion that funds are the proceeds of a criminal activity. In fact the Resolution contains a list of 30 criteria concerning very specific operations, some of which deal i.a. with certain specific operations above a given threshold or specific life insurance transactions or the buying of chips in cash for an amount of EUR 15 000 on a calendar day (in accordance with the threshold-based reporting duties of article 17 of the AML Law mentioned earlier). These 30 criteria have a narrow coverage.

654. Therefore, lists with additional criteria were adopted, in cooperation with the FCIS, between 2008 and 2010. These lists contain so-called « optional » criteria which are specific to certain business activities (the criteria contained in Resolution No 677 remain applicable in any case – hence their « mandatory » character. The list which applies for the securities, for instance,

contains 24 criteria. These various lists with optional criteria follow the logic of the Resolution: if a transaction or operation matches one of the criteria, it shall be reported.

655. The evaluators understand the concerns of the Lithuanian AML/CFT policy-makers to ensure that certain types of transactions are reported whatever the circumstances, but the scope of reporting under this approach is defined in a much narrower way than R.13. It is true that Resolution N°677 refers to the possibility for the entity to report a transaction which may be related to money laundering and/or terrorist financing even if none of the criteria has been met, but this should be stated more clearly together with the requirement for all obliged persons to have adopted their own conditional features. In any event, it does not seem to appear in the sector specific lists and the focus is still on a suspicion of ML (and not that funds may be the proceeds of a criminal offence) or FT. The complexity of the reporting system could (at least partially) explain why commercial banks have reported the highest number of STRs to date. The number of reports emanating from other financial institutions appears to be almost negligible for the period between 2005 and 2011. There are thus some concerns from the viewpoint of C.13.1.

Requirement to Make STRs on FT to FIU (C.13.2 & IV.1)

656. In accordance with criterion 13.2, the obligation to make a STR also applies to funds 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.

657. The evaluators are pleased to see that since the 3rd round, the reporting system was amended in a way that takes more clearly into account FT-related aspects. However, the remarks made above apply here too. They are exacerbated by the absence of any reference to either of the circumstances addressed by C.13.2 if one looks, for instance, at the list of indicators of the Securities Commission in combination with that of Resolution N°677. The evaluators have therefore some concerns from the perspective of fulfilment of C.13.2 and IV.1.

No Reporting Threshold for STRs (c. 13.3 & c. SR.IV.2)

658. This Criterion requires that all transactions, including attempted transactions, be reported regardless of the amount of the transaction. Although some criteria are threshold-based, all transactions which otherwise meet any of the other criteria are to be reported regardless of the amount. The rules in place (article 14 para. 8 AML Law) make it clear at present, compared to the situation in the 3d round, that attempted monetary operations or transactions must be reported immediately to the FIU.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

659. The Lithuanian authorities indicated that there are no such tax-related limitations.

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

660. The limitations mentioned earlier as to the subject of a suspicion (ML as opposed to proceeds) may impact on this criterion, but in principle, there is no limitation to specific categories of criminal acts (related for instance to drug trafficking or organised crime).

Effectiveness and efficiency R.13

661. As indicated earlier, the figures speak for themselves. Apart from the banking sector, reports from other parts of the financial sector are negligible (they are not even listed separately by the FIU). The on-site discussions have pointed to several reasons to explain this including that other financial sectors are not exposed to criminal activity, that life insurance products are not commonly used in Lithuania and that the main insurance products used in practice are mandatory insurance services (car/house/business insurance etc.), that the securities market is not developed and that the financial crisis had had an impact on the volume of business etc.

662. The evaluators were not convinced by these arguments, especially if one keeps in mind the large time span considered for the statistics available. It was particularly disappointing to hear also from insurance and securities market intermediaries that no single transaction had in any event ever met one of the criteria for reporting a transaction, or that since the transaction will ultimately be paid through the banking sector the latter would report it if something is wrong.

663. These last arguments showed clearly that large parts of the financial sector may not be familiar at all with the rules, or at least that the reporting duties need to be clarified/simplified. It also shows that there is a tendency from certain businesses to over-rely on the banking sector, or even to delegate in practice the responsibility for the detection of something suspicious to someone else. These various factors are indicative of a lack of effectiveness, beyond the mere disappointing figures seen earlier. This puts also potentially at question the effectiveness of a number of other requirements, including internal controls, supervision, and the quality of awareness-raising as regards the financial sector other than the commercial banks.

Recommendation 13 and Special Recommendation IV

3.6.2 Recommendations and comments

664. Lithuania has introduced some technical improvements since the 3rd round. These are of course welcome. This being said, some important gaps remain and a review of the reporting regime currently in place is needed again. Precautions have been taken to ensure that the current system would effectively bring to light certain transactions, but this approach has shown its limits. First of all, Lithuania should amend it so as to ensure that the reporting duties refer to situations where one suspects or has reasonable grounds to suspect that funds a) are the proceeds of a criminal activity or b) that 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. This is particularly important in the perspective of, and in order to reflect the future improvements that Lithuania has to carry out as regards the incriminations of ML and of FT (see the Chapter on incriminations in the beginning of this report).

665. Many questions also remain open as to the consistency of rules (especially as regards the distinction between unusual and suspicious transactions, which entail different consequences). This review should therefore aim at increasing the consistency and clarity of the rules, at making it clear that subjected entities can also report transactions or operations which do not meet any criteria determined in advance (some interlocutors from the financial sector clearly were unaware of this).

666. Lithuanian supervisors responsible for the financial sectors should urgently undertake actions to ensure the full application of the reporting system in respect of the financial sector as a whole and not just commercial banks, including awareness raising and other initiatives.

3.6.3 Compliance with Recommendations 13 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• The reporting regime is not based on a suspicion that the funds are proceeds of crime, but on the suspicion that they constitute ML; • complex reporting arrangements, with risks of inconsistencies; • serious effectiveness issues in practice, both quantitatively and qualitatively.
SR.IV	**PC**	• Reporting of FT is still not covered in line with the standards; current rules do not focus enough on this matter; • complex reporting arrangements

Internal controls and other measures

3.7 Foreign Branches (R. 22)

3.7.1 Description and analysis

Recommendation 22 (rated PC in the 3rd round report)

667. In terms of Articles 36 and 39 of the Law on Financial Institutions and Articles 13 and 14 of the Law on Banks, financial institutions have the right to establish a branch in a foreign country or in a Member State of the EU. Financial institutions cannot however establish a branch or a subsidiary in a foreign country or in an EU Member State unless the required authorisation is obtained by the supervisory authority of Lithuania, being the Bank of Lithuania, to establish such branch or subsidiary.

668. Article 13(10) of the Law on Banks outlines instances where no authorisation is required to be obtained by the supervisory authority. Such instance includes the establishment of a branch or subsidiary if established in a Member State of the EU.

669. When a request to establish a foreign branch or subsidiary is received by the Bank of Lithuania, the authorisation to establish such foreign branch or subsidiary is provided after taking into consideration the AML/CFT measures and the legislative provisions applicable in the country of establishment.

670. Articles 28 and 54 of the Law on Insurance, Article 39 of the Law on Markets in Financial Instruments and Article 97 of the Law on Collective Investment Undertakings also provide the possibility for institutions to establish a branch in a foreign country or in a Member State of the EU.

671. Following the on-site examination, the evaluation team was informed that, at the time of the on-site examination, there were two branches of insurance companies (so called European Companies according to the EU Regulation No. 2157/2001) established outside Lithuania, only in Latvia and Estonia.

Consistency of the AML/CFT measures with home country requirements and the FATF recommendations (c. 22.1 & 22.2)

672. In the 3rd round evaluation report it was noted that there were no explicit requirements in Lithuanian legislation for cross-border establishments of Lithuanian financial institutions to observe AML measures. Therefore there was no specific obligation for financial institutions to observe or comply with the criteria of Recommendation 22.

673. Article 19(4) of the AML Law now requires financial institutions and other entities to apply the requirements of the AML Law in their branches and majority-owned subsidiaries located in third countries.

674. The AML Law further states that where the legislation of the third country does not permit the application of equivalent measures, the financial institutions and other entities shall immediately inform the FCIS and, in agreement with the FCIS, shall take additional measures to effectively decrease the threat of ML/FT.

675. The Bank Guidelines also provides guidance to such entities in relation to foreign branches of institutions and states that such entities must guarantee that their branches and subsidiaries operating in third countries in which they have a majority holding are to carry out their activities in observance of the requirements established in the guidelines. Moreover particular attention must be paid to their branches and subsidiaries operating in third countries in which they have a majority holding and which do not apply the FATF recommendations or do not apply them adequately.

676. The Bank Guidelines further state that when the provisions of legal acts of Lithuania and third country regulating the prevention of ML/FT differ, the branches or subsidiaries of credit, electronic money and payment institutions, in which the entity has a majority holding, must apply the more stringent provisions of the legal acts to the extent permitted by the third country's legislation. If the third country's legislation prevents the branch or subsidiary from applying such equivalent requirements, the entity must forthwith notify the FCIS and, on coordination with the latter, take additional measures in order to minimise the threat of ML/FT.

677. The Securities Guidelines mentions, under paragraph 74, the same measures to be applied as per the Bank Guidelines.

678. However the Insurance Guidelines does not provide any guidance to Lithuanian insurance companies in relation to establishing a branch or subsidiary in a foreign country.

Additional elements (c. 22.3)

679. The legislation applicable under the Law on Financial Institutions states that a branch of a financial institution is to be considered as making up a financial group and must ensure that the same requirements are carried out by the whole group. Moreover, the financial group will be subject to supervision on a consolidated basis.

Effectiveness and efficiency

680. In general the Lithuanian authorities have addressed the criteria of Recommendation 22 as recommended in the 3rd round evaluation report.

681. In view of the fact that the evaluation team was only informed about the establishment of two branches of insurance companies outside Lithuania after the on-site examination, the evaluation team could not assess the effective implementation of Recommendation 22.

3.7.2 Recommendation and comments

Recommendation 22

682. The Lithuanian authorities should amend the guidelines of the insurance sector to reflect all the measures outlined in the guidelines of both the banking and securities sector, especially in view of the fact that branches of insurance companies have already been established in foreign countries. This will ensure that the required criteria of Recommendation 22 are taken into consideration by Lithuanian insurance companies when establishing a branch or subsidiary in a foreign country.

3.7.3 Compliance with Recommendation 22

	Rating	Summary of factors underlying rating
R.22	**LC**	• The measures applicable to the insurance sector do not fully reflect the provisions of the Recommendation.

Regulation, supervision, guidance, monitoring and sanctions

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

3.8.1 Description and analysis

683. The provision of financial services in Lithuania is generally governed by the Law on Financial Institutions. Article 3 of the Law on Financial Institutions establishes the activities which are to be considered as 'financial services' whilst the respective laws define which of those activities require to be licensed by a competent authority. All financial institutions, once licensed, are subject to the supervisory regime of the respective licensing authority.

684. At the end of 2011, the Law on the Bank of Lithuania was amended and the licensing and supervision of financial institutions was consolidated and delegated to the Bank of Lithuania (article 42) as from 1 January 2012.

685. Following the supervisory reform, the Securities Commission and the Insurance Supervisory Commission, being the previous supervisory authorities in relation to the securities sector and the insurance sector respectively, are consequently in the process of liquidation.

Authorities/SROs roles and duties & Structure and resources

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

Regulation and Supervision of Financial Institutions (c. 23.1); Designation of Competent Authority (c. 23.2)

686. Article 2 of the AML Law specifically outlines, under the definition of 'financial institutions' and 'other entities', the financial and non-financial institutions subject to AML/CFT supervision which includes the financial institutions listed in the FATF Recommendations.

687. Moreover Article 3 of the AML Law lists a number of competent authorities entrusted with the responsibility to prevent money laundering and/or terrorist financing, whereas Article 4 of the AML Law further outlines which competent authority is responsible for the supervision of the different financial institutions and their responsibilities as supervisory authorities.

688. In relation to financial institutions, the competent authorities entrusted with the responsibility of AML/CFT supervision rests with the Bank of Lithuania and the Financial Crime Investigation Service.

689. Article 4(1) of the AML Law provides that the Bank of Lithuania is responsible for approving instructions intended for credit institutions, electronic money institutions, payment institutions, insurance undertakings engaged in life insurance activities and insurance brokerage firms engaged in insurance mediation related to life insurance, financial brokerage firms, management companies, investment companies and depository. The Bank of Lithuania is further responsible for supervising the activities and giving advice to these entities in relation to the implementation of the prevention of ML/FT.

690. After the implementation of the supervisory reform, as from 1 January 2012, the supervision of all financial sector undertakings – credit and payment institutions, securities market enterprises and insurance undertakings – became concentrated under the Bank of Lithuania. The Securities Commission and the Insurance Supervisory Commission delegated their functions to the Bank of Lithuania. A new unit, the Supervision Service, was set up at the Bank of Lithuania which is entitled to cover two different areas – prudential supervision and business conduct, and as such is split into two departments – the Prudential Supervision Department and the Financial Services and Markets Supervision Department.

691. Within the Supervision Service of the Bank of Lithuania there are 29 staff members who can carry out on-site inspections in the financial sector, 3 of which are AML/CFT experts (Banking Supervision Division - 8 specialists; Insurance Supervision Division - 6 specialists; other Financial Institutions Supervision Division - 10 specialists; Governance and Internal Control Division - 3 specialists and 2 lawyers). As from 1 January 2012 the Governance and Internal Control Division is responsible for the area of AML/CFT.

692. During on-site examinations of licensed institutions the Bank of Lithuania verifies, amongst others, compliance with the AML/CFT legislation, the implementation of sufficient measures for the prevention of ML/FT and the registration of client's monetary operations for submission to the FCIS. When such examinations are carried out, the Bank of Lithuania appoints one member of the inspection commission to analyse the issues in relation to the prevention of money laundering, while other members of the commission provide the necessary information for the analysis. If violations of the AML Law are identified following an inspection by the Bank of Lithuania, the FCIS is informed about such violations.

693. In fact the AML Law provides, under Article 4(12), that the Bank of Lithuania, as a competent authority responsible to prevent ML/FT, is required to co-operate with the FCIS according to the mutually established procedure, and shall exchange information on the results of the inspections carried out in relation to the prevention of ML/FT on entities falling within their remit. In this regard, the FCIS and the Bank of Lithuania have entered into an agreement in November 2009 outlining their respective responsibilities in terms of credit institutions.

694. Apart from the Bank of Lithuania, the FCIS is also responsible for the supervision of the activities of all financial institutions in relation to the prevention of ML/FT and to provide financial institutions with methodological assistance, as stated in Article 4(9) of the AML Law.

695. In practice however the FCIS relies fully on the supervisory work carried out by the Bank of Lithuania. Consequently, the FCIS does not have control of the type and frequency of the compliance examinations carried out by the Bank of Lithuania. However, the latter informs the FCIS prior to conducting a visit in order to check whether the FCIS has any adverse information on the financial institution being examined and notifies the FCIS of any AML/CFT breaches identified during such visits.

696. Moreover, although the FCIS receives the findings of the examinations carried out by the Bank of Lithuania, the FCIS could not provide any information to the evaluation team as to the major violations of the AML Law identified by the Bank of Lithuania.

697. If however the FCIS identifies important issues of non-compliance by financial institutions, then the FCIS can decide to conduct a focused AML/CFT examination itself on the financial institution and not request the Bank of Lithuania to conduct such a visit on its behalf, although such examinations have been conducted sparingly in recent years. Investigations have not been carried out by the FCIS jointly with the Bank of Lithuania[21].

698. The AML Law is supplemented by various guidelines which were issued by the competent authorities in relation to their sphere of competence and which guidelines are mandatory to the particular sector. With regards to the financial industry, the Bank of Lithuania issued Bank Guidelines; the Securities Commission issued Securities Guidelines; while the Insurance Supervisory Commission issued Insurance Guidelines. The guidelines issued by the Securities Commission and the Insurance Supervisory Commission are still valid for their respective sectors even though these competent authorities are no longer existent.

699. Furthermore, Article 8 of the AML Law requires law enforcement and other state institutions to report to the FCIS about any noticed indications of suspected ML/FT or violations of the law encountered in the course of their supervisory work or other work, including reporting on any measures taken against the perpetrators.

Recommendation 30 (all supervisory authorities) (rated C in the 3rd round report)

Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)

FCIS:

700. The FCIS is structurally divided into three boards, the 'Analysis and Prevention Board', the 'Special Task Board' and the 'Administration Board'. Within the Analysis and Prevention Board lies the Money Laundering Prevention Division which is the main institution responsible for the implementation of ML/FT prevention measures.

[21] After the on-site visit, the FCIS carried out an inspection to a credit institution jointly with the Bank of Lithuania.

701. The Head of the Money Laundering Prevention Division is directly subordinated and accountable to the Head of the Analysis and Prevention Board whilst the Director of the FCIS is directly subordinated and accountable to the Minister of the Interior of Lithuania.

702. The FCIS is financed from the State budget of Lithuania and staff members at the FCIS should be of high integrity, appropriately skilled and academically qualified.

703. Within FCIS' Money Laundering Prevention Division, there is currently a much lower number of staff than foreseen by the number of positions. As indicated earlier in the chapter on the FIU, out of the 21 positions, only 9 to 10 had been filled at the time of the visit. Most of the current members of staff work on the analysis of STRs. Supervision of the financial and non-financial sectors and provision of training to the industry is also provided by them. This could – and does – impact on the effectiveness of the work carried out in the various areas. As indicated above, the Lithuanian authorities formally disagree with the approach taken by the evaluators when considering that the core functions of and FIU are performed by the MLPD and not by the FCIS as a whole.

704. The FCIS implemented a project, during 2005-2008, entitled 'Protection of the Communities' financial interests and fight against fraud' in order to strengthen the administrative and technical capacity of the FCIS to seek to ensure the proper analysis of information in the fight against financial crime and the implementation of the prevention of the offences. Over the years the FCIS officers also took part in various training courses including training on AML/CFT prevention.

Bank of Lithuania:

705. Following the supervisory reform, as from 1 January 2012 a new unit called the 'Supervision Service' was set up at the Bank of Lithuania and the majority of staff members of the Securities Commission and Insurance Supervisory Commission were retained at the Bank of Lithuania following the consolidation of supervision and the abolition of these commissions. This ensures the availability of specialised expertise in the different sectors supervised and a more consistent approach to supervision.

706. The supervisory activities of the Bank of Lithuania are financed by the Bank of Lithuania and by the contributions of participants of the financial market. No financing is provided through the state budget of Lithuania.

707. Within the Supervision Service Unit of the Bank of Lithuania, there are 29 staff members who can carry out on-site inspections in the financial sector, 3 of which are AML/CFT experts. The Governance and Internal Control Division within the Supervision Service is responsible for the area of AML/CFT.

708. The staff members of the Bank of Lithuania should be of high integrity, appropriately skilled and academically qualified. Staff members are required to maintain high professional standards and must avoid engaging in activities that would cause a conflict of public and private interest. Furthermore, staff members who have been granted the right of access to the information constituting state, official and bank secrets are to protect the information. This confidentiality obligation continues to exist even after the end of the employment relationship with the Bank of Lithuania. These requirements emanate from Articles 18 and 19 of the Law of the Bank of Lithuania.

709. Over the years staff members attended various training and seminars both locally and overseas in relation to various areas of AML/CFT.

Authorities' powers and sanctions

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

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1); Powers of Enforcement & Sanction (c. 29.4)

710. Articles 4(1) and 4(9) of the AML Law imposes the obligation and responsibility on the Bank of Lithuania and the FCIS, respectively, to supervise the activities of financial institutions in relation to the implementation of ML/FT prevention measures. Moreover other legislation also imposes prudential supervisory obligations and responsibilities on these supervisory authorities.

711. The Law on the Bank of Lithuania further provides that in the performance of supervision of the financial markets, the Bank of Lithuania shall have the right to receive the necessary information from state institutions, financial market participants under supervision as well as from other enterprises, institutions and organisations, as well as inspect (examine) the financial market participants under supervision as stated in Article 42(3) of the Law on the Bank of Lithuania. This is replicated under Article 69 of the Law on Banks.

712. The Bank of Lithuania also has supervisory obligations in relation to foreign branches and majority owned subsidiaries, as per Recommendation 22.

713. Similar provisions are also included under Articles 47 and 48 of the Law on Insurance, Article 93 of the Law on Markets in Financial Instruments and Articles 106 and 109 of the Law of Collective Investment Undertakings.

714. The FCIS is also granted the powers to obtain the necessary information required for the performance of the tasks and functions of the Service and has unimpeded access to the premises used for the carrying out of activities or earning of income, as per Article 11 of the Law on FCIS.

715. All supervisory authorities conduct examinations at the premises of the supervised entities in order to determine whether the provisions of the AML Law are being implemented in practice. In order to carry out the examination, the supervisory authorities have the power to compel production of or to obtain access to the relevant information from the financial institutions.

716. Furthermore, all supervisory authorities have the power to compel production of or to obtain access to the relevant information for supervisory purposes without the need to require a court order.

717. The Bank of Lithuania is empowered by the relevant laws to impose sanctions and fines to financial institutions in relation to prudential measures as well as for breaches of AML/CFT measures, as stated by the Lithuanian authorities.

718. Article 8 of the AML Law requires law enforcement and other state institutions to report to the FCIS about any noticed indications of suspected ML/FT, any violations of the AML Law and the measures taken against the perpetrators. This would however exclude any minor AML/CFT shortcomings identified by the supervisory authority during its supervisory work, since the financial institution can be directly informed about such breaches.

719. The FCIS is only empowered to impose low sanctions (e.g. warnings, minor fines) for breaches of non-compliance with the AML Law. For higher sanctions the FCIS has to initiate proceedings with the Court.

720. The FCIS, through Article 259 of the Code of Administrative Law Violations, is empowered to "draw violations protocol" under Article 172-14 of CALV and send material to Court. The Court will then take a decision whether to apply concrete sanctions. However the Lithuanian authorities informed the evaluators that the requirement to "draw violations protocol" under the CALV is restricted to the FCIS and not to other supervisory authorities, as per Article 259(1).

721. The impossibility for the FCIS, as the main supervisory authority on AML/CFT, to impose administrative sanctions in cases of non-compliance with the AML Law and the requirement by the Court to impose such sanctions, might result in a hindrance in the actual imposition of sanctions.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

722. Lithuania has adequate legislation in place to supervise all financial institutions in respect of AML/CFT requirements. Various authorities have been entrusted with the responsibility to prevent money laundering and/or terrorist financing in relation to their sphere of competence.

723. The fact that different authorities are entrusted with the obligation to supervise financial institutions also in relation to AML/CFT, is a good measure towards efficient use of resources. The FCIS, as the ultimate supervisor of AML/CFT, relies fully on the Bank of Lithuania to carry out AML/CFT supervision of financial institutions.

724. The Bank of Lithuania informs the FCIS as to what AML/CFT examinations are to be carried out and provides feedback on any AML/CFT breaches identified during such examinations. However the FCIS does not have control on the type and frequency of the compliance examinations carried out.

725. Moreover focused examinations have also been carried out sparingly by the FCIS in recent years and overall, the evaluators express their concern in relation to the effective supervision being carried out by the FCIS as the ultimate supervisor of AML/CFT.

726. The consolidation of financial supervision (including the securities and the insurance sector) under the Bank of Lithuania is a positive step and should result in a more harmonised approach to the supervision of financial institutions as well as the availability of specialised expertise in the different sectors supervised. The effectiveness of this supervisory reform was however difficult to assess by the evaluation team due to the short time frame between the supervisory reform and the evaluation visit.

727. The impossibility for the FCIS, as the main supervisory authority on AML/CFT, to impose administrative sanctions in cases of non-compliance with the AML Law goes against the Recommendations. Moreover, the requirement by the Court to impose such sanctions might result in a hindrance in the actual imposition of sanctions and might explain the low number of sanctions imposed over the years.

728. Since posts have not been filled in the MLPD, the current staff members need to divide their work between the analysis of STRs, the supervision of the financial and non-financial sectors as well as the provision of training to the industry. Since it is basically the 6 analysts of the MLPD who are also dealing with supervision, little time is devoted to the supervisory function. As a result,

the number of on-site examinations conducted by the MLPD on the financial and non-financial sectors is low.

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

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

729. The Bank of Lithuania is empowered by the relevant laws to impose sanctions and fines to financial institutions in relation to prudential measures. In fact Articles 72 and 74 of the Law on Banks provide a list of sanctions and fines that can be imposed on a licensed bank or a branch of a foreign bank. In this regard the Lithuanian authorities informed the evaluators that sanctions and fines can also be imposed on credit institutions (and other financial institutions under the relevant laws) for breaches of AML/CFT measures. Reference was in fact made to Article 72(1)(1) which states that sanctions can be imposed "*to warn of infringement of this Law and other legal acts regulating safe and sound activities...*", Article 73(1)(4) which states that sanctions can be imposed on the ground (amongst others) that "*the requirements of the laws regulating safe and credible activities of banks as well as of legal acts of the supervisory institution are violated or activities or the financial situation of a bank or a branch of a foreign bank pose a threat to public interests and/or interests of clients or the functioning of the banking system of the Republic of Lithuania*" and Article 74(1)(5) which states that fines can be imposed "*for other infringements of legal acts regulating safe and sound activities of a bank or a branch of a foreign bank – up to 0.1 per cent of annual gross income*".

730. Similar provisions are also included under the Law on Payment Institutions (Articles 29, 30 and 31) and the Law on Electronic Money and Electronic Money Institutions (Articles 35, 36 and 37).

731. In view of the above it still remains unclear to the evaluators whether the statement in relation to the imposition of sanctions or penalties against laws and legal acts 'regulating safe and credible/sound activities' of credit, payment and electronic institutions actually allows the Bank of Lithuania to impose sanctions and fines in relation to breaches of AML/CFT measures.

732. In relation to the Law on Insurance and the Law on Markets in Financial Instruments, the wording used in these laws allowing the Bank of Lithuania to impose sanctions is wider in scope and states that sanctions can be imposed on the ground (amongst others) that "*the legislation of the Republic of Lithuania, the supervisory authority decisions or other regulations were breached*" (Article 205 of the Law on Insurance) and that "*the laws or other legal acts of the Republic of Lithuania have been violated*" (Article 87 of the Law on Markets in Financial Instruments). However the Law on Markets in Financial Instruments does not provide the possibility of imposing fines whereas the fines that can be imposed under the Law of Insurance for insurance undertakings, reinsurance undertakings, insurance intermediaries' undertakings, or branches of these, in relation to the violation of this law or other legislative acts governing the business of insurance, reinsurance and insurance mediation can amount up to EUR 100,000.

733. However under none of the above mentioned laws (except for the Law on Insurance) can the Bank of Lithuania impose sanctions or fines on natural persons but only on the legal entity itself. However these laws (except for the Law on Markets in Financial Instruments) provide for disciplinary action to be imposed on natural persons such as the temporary suspension or permanent removal of a person from office or divesting a person of his/her powers. Moreover the Law on Insurance provides for the imposition of sanctions and administrative penalties to both natural persons and legal entities.

734. On the other hand, the FCIS is not empowered to impose sanctions for breaches of AML/CFT measures (for both financial institutions and DNFBPs) but is only enabled to initiate proceedings with the Court.

735. The FCIS is then empowered, through Article 259 of the Code of Administrative Law Violations, to "draw violations protocol" under Article 172-14 of CALV and send material to Court. The Court will then take the decision whether or not to apply concrete sanctions. However the Lithuanian authorities informed the evaluators that the requirement to "draw violations protocol" under the CALV is restricted to the FCIS and not to other supervisory authorities, as per Article 259(1). Furthermore the Bank of Lithuania does not approach the FCIS to draw violations protocol against the CALV on breaches of AML/CFT measures identified by it. It is therefore unclear to the evaluators as to which law would be utilised in practice by the Bank of Lithuania to impose a sanction in relation to a breach of AML/CFT measures. The Lithuanian authorities explained that this can be done on the basis of the Law on Banks, the Law on Payment Institutions, the Law on Electronic Money and Electronic Money Institutions, the Law on Markets and Financial Instruments and the Law on Insurance.

736. Article 172-14 of CALV has been amended in April 2011 to increase the fines for violations of the implementation of ML/FT measures. The amendments include:

For the violation of the procedure of implementation of measures of due diligence of customers and beneficial owners under the AML Law – natural persons shall be punishable by a fine from LTL 2 000 to LTL 8 000 and managers of enterprises, institutions and organisations from LTL 8 000 to LTL 20 000.

For the violation of the procedure of implementation of measures established under the AML Law concerning the reporting of unusual monetary operations and transactions and of the procedure of implementation of measures aimed at protecting information provided by the FCIS – natural persons shall be punishable by a fine from LTL 3 000 to LTL 10 000 and managers of enterprises, institutions and organisations from LTL 10 000 to LTL 20 000.

For the violation of the procedure of implementation of other requirements established by the AML Law, except for the above – natural persons shall be punishable by a fine from LTL 2 000 to LTL 6 000 and managers of enterprises, institutions and organisations from LTL 7 000 to LTL 12 000.

For the same acts committed by a person already punished by an administrative penalty for the violations referred to above – natural persons shall be punishable by a fine from LTL 5 000 to LTL 20 000 and managers of enterprises, institutions and organisations from LTL 20 000 to LTL 35 000.

737. The CALV, however, does not provide for the imposition of sanctions on legal persons and directors of financial institutions or businesses. Nor does it include the power to impose disciplinary sanctions apart from financial sanctions. The Lithuanian authorities explained that the term "managers" should be understood to cover both directors and senior management.

738. Although non-compliance of AML/CFT measures were identified during compliance examinations conducted by the supervisory authorities over the years, as provided by the Lithuanian authorities, it is unclear to the evaluators whether such non-compliance issues were brought to the attention of the Court and whether sanctions where actually applied by the Court. In

fact the Lithuanian authorities were not forthcoming to provide information on the sanction amounts imposed for the non-compliance issues identified.

739. The information about the number of (AML/CFT-requirements related) sanctions imposed by the Court on financial institutions during the period 2008 – 2012 was provided to the evaluators as follows:

Financial Institutions	2008	2009	2010	2011	2012*
Credit Institutions	1	-	-	-	1
Fast Credit Institutions	-	6	4	-	-
TOTAL	**1**	**6**	**4**	**-**	**1**

**Until the evaluation visit.*

740. The number of sanctions applied by the Court, as provided by the Lithuanian authorities, for infringements of the AML/CFT measures is quite low and the level of the fines which can be imposed hardly indicate that the penalties are dissuasive enough. In view of the fact that the evaluators were not provided with the actual sanction amounts imposed by the Court for the non-compliance issues identified, the proportionality of the sanction amounts imposed against the severity of the situation could not be evaluated.

741. The following are the number of AML/CFT enforcement measures imposed by the Bank of Lithuania on financial institutions during the period 2009 – 2011:

Financial Institutions	2009	2010	2011
Credit Institutions	-	1	2
Insurance Companies	-	-	-
Insurance Brokerage Firms	1	-	1
TOTAL	**1**	**1**	**3-**

742. The lack of information as to what AML/CFT issues were identified and what the enforcement measures entailed does not enable the evaluators to understand the type of AML/CFT breaches identified in the financial industry. Moreover the lack of imposition of sanctions and fines by the Bank of Lithuania does not enable the evaluators to assess whether the imposition of sanctions and fines under the relevant laws, as opposed to utilising the CALV Law would work in practice. This could explain the number of warnings and enforcement measures provided by the Bank of Lithuania as opposed to sanctions as such.

743. The laws governing the relevant institutions supervised by the Bank of Lithuania provide for the possibility to publish sanctions, unless a decision is taken by the supervisory authority not to announce the information publicly if this could have a detrimental effect on the stability and soundness of the financial institution. This is stated under Article 73(4) of the Law on Banks, Article 30(4) of the Law on Payments Institutions, Article 36(4) of the Law on Electronic Money and Electronic Money Institutions, Article 83(4) of the Law on Markets in Financial Instruments and Article 205(6) in the Law of Insurance.

744. However the sanctions imposed by the Court are not made public and the evaluators are of the opinion that the non-publication of sanctions imposed could have an impact on the dissuasiveness aspect.

745. The Law on Banks defines the sanctioning regime and also empowers the Bank of Lithuania, as the supervisory authority, to withdraw, restrict or suspend a financial institution's license. In fact, Article 72 of the Law on Banks outlines the sanctions that the supervisory authority shall have the right to impose on a licensed bank or a branch of a foreign bank, as follows:

1) to warn of infringement of this Law and other legal acts regulating safe and sound activities or of nonfeasance of instructions of the supervisory institution;
2) to impose penalties provided for under this Law;
3) to temporarily remove from office a member (members) of the bank's supervisory board, a member (members) of the bank's board, head (heads) of the bank's administration, head (heads) of the branch of the foreign bank or to remove from office a member (members) of the bank's supervisory board, a member (members) of the bank's board, head (heads) of the bank's administration, head (heads) of the branch of the foreign bank and to require that they be removed from office and/or a contract concluded therewith be terminated or they be divested of their powers;
4) to temporarily prohibit the provision of one or several financial services;
5) to temporarily or permanently prohibit activities of one or several branches of the bank or other establishments of the bank or the foreign bank. Where the supervisory institution takes a decision on the temporary prohibition of activities of a branch or other establishment, the branch or other establishment shall not have the right to provide financial services, and where a decision is taken to permanently prohibit activities of a branch or other establishment, a bank must additionally forthwith take a decision on the termination of the activities of the branch or other establishment;
6) to announce a restriction (moratorium) on activities of a bank or a branch of a foreign bank;
7) to temporarily restrict the right to dispose of the funds in accounts in the Bank of Lithuania and in other credit institutions and of other assets;
8) to withdraw the issued licence or to temporarily suspend validity thereof until the grounds for the suspension exist; when the grounds for license suspension cease to exist, a supervisory institution shall without delay but no later than within 5 business days of satisfying itself about the cessation of the grounds shall restore the validity of the license.

746. Similar provisions also apply under Article 197 of the Law on Insurance, Article 46 of the Law on Markets in Financial Instruments and Article 15 of the Law on Collective Investment Undertakings.

747. The Lithuanian authorities confirmed that the above mentioned laws provide the power to the Bank of Lithuania, as a supervisory authority, to withdraw, restrict or suspend a financial institution's license also in instances of non-compliance with AML/CFT obligations.

Designation of Authority to Impose Sanctions (c. 17.2)

748. The Bank of Lithuania is empowered by the relevant laws to impose sanctions and fines to financial institutions in relation to prudential measures which can also be extended to breaches of AML/CFT measures, as per the Lithuanian authorities.

749. The FCIS is not empowered to impose sanctions for breaches of AML/CFT measures (for both financial institutions and DNFBPs) but is only enabled to initiate proceedings with the Court by drawing a violation protocol and sending material to Court which will then take a decision as to whether a sanction is to be imposed on a financial institution.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

750. Under the laws governing the relevant institutions supervised by the Bank of Lithuania (except for the Law on Insurance) sanctions or fines can only be imposed on the legal entity itself and not on natural persons. However these laws (except for the Law on Markets in Financial Instruments) provide for disciplinary action to be imposed on natural persons such as the temporary suspension or permanent removal of a person from office or divesting a person of his/her powers. Moreover the Law on Insurance provides for the imposition of sanctions and administrative penalties to both natural persons and legal entities.

751. Under Article 172^{14} of CALV, the Court can sanction both natural persons and managers of enterprises, institutions and organisations for breaches of AML/CFT measures. However sanctioning against breaches of AML/CFT measures does not extend to legal persons or to directors of financial institutions or businesses. The Lithuanian authorities however explained that the term "managers" should be understood to cover both directors and senior management.

Market entry

Recommendation 23 (rated LC in the 3rd round report) (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

752. Upon application for a licence, financial institutions are required to submit to the supervisory authority, amongst others, a list of shareholders of the financial institution specifying the proportion of the authorised capital and/or voting rights acquired by each one of them and, upon the establishment of the financial institution, a list of elected (appointed) heads of the institution whose election or appointment is subject to the authorisation of the supervisory authority as stated in Article 9 of the Law on Banks. This process aims at preventing criminals and their collaborators from holding or being the beneficial owners of a significant or controlling interest or holding a management function.

753. Various other legislation concerning the various financial institutions provide for a licensing or authorisation process by the supervisory authority (the Bank of Lithuania).

754. According to Article 23(5) of the Law on Banks, a bank is required to notify the Bank of Lithuania not later than within 5 days, of any case of acquisition, increase, transfer or reduction of a qualifying holding in the bank's authorised capital and/or voting rights exceeding 20%, 30% or 50% of the holdings. The bank must also submit particulars of the list of the bank's members (shareholders) to the supervisory authority within 10 days from the date of the annual general meeting of the shareholders or otherwise upon the request of the supervisory institution. Through this requirement the supervisory authority is kept aware as to who the shareholders of banks are.

755. Article 8(3) of the Law on Banks establishes that a bank's founder acquiring a qualifying holding in the bank's authorised capital and/or voting rights may only be a person:

- *who meets the requirements set by this Law for a bank's shareholders and the requirements set by Article 7 of the Law on Financial Institutions;*
- *who is of good repute. When a qualifying holding in the bank's authorised capital and/or voting rights is held by a legal person, heads of the legal person must also be of good repute;*
- *whose financial situation is sound and stable.*

756. Moreover, Article 25(8) of the Law on Banks states that upon receipt of any notification of a proposed acquisition, the supervisory authority will assess the notification in order to ensure the sound and prudential management of a bank in respect of which an acquisition is proposed, the likely influence of the acquirer on the bank, to appraise the suitability of the acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

- *the good repute of the acquirer;*
- *the good repute and experience of the person who will be the head of the bank following the proposed acquisition;*
- *the financial soundness of the acquirer, in particular in relation to the type of business pursued and envisaged in the bank in which the acquisition is proposed;*
- *whether the bank will be able to comply at all times, following implementation of the proposed acquisition, with the prudential requirements as set forth by the Law and other legal acts, in particular, whether a group of which the bank will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among supervisory institutions and determine the allocation of responsibilities among the supervisory institutions;*
- *whether there is an appropriate ground to suspect that, in connection with the proposed acquisition, the activities of money laundering or terrorist financing as defined by the law on the Prevention of Money Laundering and Terrorist Financing are being or were carried out or attempted, or that the proposed acquisition could increase the risk thereof.*

757. The respective legal acts further provide for the "fit and proper" criteria of directors and senior management of a financial institution.

758. The Law of Banks further states under Article 34(2) that the heads of a bank (*which include members of the bank's supervisory board; members of the bank's board; heads of administration; heads of the internal audit service; heads of branches and representatives offices of the bank; as well as other employees of the bank and other persons who have been authorised to independently take decisions on the provision of financial services and to conclude, on behalf of the bank, the transactions meeting the criteria set by legal acts of the supervisory institution and having risk characteristics*) must be of good repute and also provides instances where a person may not be regarded as good repute, as per Articles 34(12) and (13). The heads of banks should also have qualifications and the necessary experience to allow them to properly exercise their functions. It is to be understood that directors and senior management are also included under the definition of heads of a bank.

759. Article 7 of the Law on Banks also provides instances where the supervisory authority may refuse to grant an authorisation to establish a bank. One such instance is where the founders of the bank being established and the heads of the bank do not meet the requirements set by laws.

760. Similar provisions apply under Articles 20 and 22 of the Law on Insurance, Article 10 of the Law on Markets in Financial Instruments and Article 10 of the Law on Collective Investment Undertaking.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

761. According to Article 3(4) of the Law on Financial Institutions only credit institutions are authorised to receive deposits and other repayable funds from non-professional participants of the market.

762. Article 3 of the Law on Foreign Currency also states that currency exchange services can be provided by credit institutions holding the authorisations (licences) granted for these activities in accordance with the procedure laid down in the respective laws, other payment services providers to the extent it is related to the provision of payment services, and financial brokerage firms to the extent it is related to the provision of investment services.

763. These institutions are required to be authorised by the Bank of Lithuania and consequently are subject to the AML/CFT obligations.

764. In Lithuania, postal service providers can also provide domestic and international payment services. Whereas in the 3rd round evaluation postal service providers were not required to be licensed, the evaluators were informed that postal services providers are now required to obtain a Payment Institutions licence to provide payment services. Consequently they are also subject to AML/CFT obligations.

Licensing of other Financial Institutions (c. 23.7)

765. Article 3(1) of the Law on Financial Institutions lists the services which constitute a 'financial service' and further provides that certain financial services must be licensed under the respective laws. 'Financial leasing companies' and 'fast credit companies' are companies providing financial services that need not be licensed, except where such services are provided by a credit institution or a subsidiary of a credit institution, although they are still supervised by the Bank of Lithuania for prudential purposes. Nonetheless 'fast credit companies' are companies that need not be licensed, they could start their activities only when they are listed in the public list of consumer credit providers. According to provisions of Article 2 (8) of the Law on Consumer Credit, the Bank of Lithuania perform supervision of their activities, but only to extent provided by the Law on Consumer Credit. However financial service providers are subject to the provisions of the AML Law under Article 2 and therefore fall within the supervisory competence of the FCIS as per Article 4(9) of the AML Law.

On-going supervision and monitoring

Recommendation 23 & 32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4)

766. The Bank of Lithuania, as the supervisory authority of all financial institutions, performs periodic supervision based on prudential matters and on compliance with the AML/CFT legislation, the implementation of sufficient measures for the prevention of ML/FT and the registration of client's monetary operations for submission to the FCIS.

767. The Law on Financial Institutions outlines the internal control requirements as well as other requirements the financial institutions should apply when undertaking business risk as provided under Articles 23 and 31 respectively.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

768. Only credit institutions are authorised to receive deposits and other repayable funds from non-professional participants of the market, as per Article 3(4) of the Law on Financial Institutions, whereas Article 3 of the Law on Foreign Currency states that currency exchange services can be provided by credit institutions holding the authorisations (licences) granted for these activities in accordance with the procedure laid down in the respective laws, other payment services providers

to the extent it is related to the provision of payment services, and financial brokerage firms to the extent it is related to the provision of investment services.

769. All these institutions are required to be authorised by the Bank of Lithuania and consequently are subject to the AML/CFT obligations and supervision by the Bank of Lithuania and the FCIS. Since the first licence of payment services providers was issued in the beginning of 2011, no supervision has been carried out until the date of the visit.

770. In Lithuania, postal service providers can also provide domestic and international postal order services and are now required to obtain a Payment Institutions licence to provide postal order services and are consequently subject to AML/CFT obligations.

Supervision of other Financial Institutions (c. 23.7)

771. Article 3(1) of the Law on on Financial Institutions lists the services which constitute a 'financial service' and further provides that certain financial services must be licensed under the respective laws. 'Financial leasing companies' and 'fast credit companies' are companies providing financial services that need not be licensed except where such services are provided by a credit institution or a subsidiary of a credit institution, although they are still supervised by the Bank of Lithuania for prudential purposes. However financial service providers are subject to the provisions of the AML Law under Article 8 and therefore fall within the supervisory competence of the FCIS as per Article 4(9) of the AML Law. While some on-site supervision has been carried out on fast credit companies, no on-site examinations have been carried out on financial leasing companies during the past years.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

772. The following on-site examinations were conducted by the Bank of Lithuania during the period 2009 – 2011, which included an element of AML/CFT supervision:

Financial Institutions	**2009**	**2010**	**2011**
Credit Institutions	9	9	8
Foreign Bank Branches	3	8	8
Central Credit Union	-	1	1
Credit Unions	30	25	29
TOTAL	**42**	**43**	**46**

773. Whereas in previous years the Bank of Lithuania used to carry out on-site examinations on every credit institution on an annual basis and on a large number of other institutions, the Bank of Lithuania has now drawn up a report for financial institutions to complete and submit to the supervisory authority on a quarterly basis. Following the review of the report the Bank of Lithuania will be in a position to determine the institutions presenting a higher risk and would carry out compliance monitoring on a risk-based approach. However, in practice, the Bank of Lithuania has not carried out an analysis of risks (whether global or sector-specific) that would assist in focusing supervisory efforts on areas identified as problematic due to higher risks.

774. During the time of the evaluators' visit, the Bank of Lithuania had in place an Inspection Manual providing guidelines when carrying out on-site examinations and was followed by the inspection team during such examinations.

775. Depending on the size of the financial institution to be examined, the Bank of Lithuania takes an average of one month to carry out an on-site examination with a team of between 5 – 10 persons. Examinations by the Bank of Lithuania have been constant throughout the last three years.

776. The Insurance Supervision Commission, as supervisory authority until December 2011, conducted the following on-site examinations during the period 2009 – 2011, which included an element of AML/CFT supervision:

Financial Institutions	2009	2010	2011
Insurance Brokerage Companies	9	7	6
Insurance Companies	2	3	1
TOTAL	**11**	**10**	**7**

777. During on-site examinations the Insurance Supervision Commission used to carry out on-site examinations over an average of 4 – 6 weeks with a team of between 6 -8 persons. However the Commission did not carry out a large number of on-site examinations in relation to the number of entities supervised.

778. The Securities Commission, as supervisory authority until December 2011, conducted the following on-site examinations during the period 2009 – 2011, which included an element of AML/CFT supervision:

Financial Institutions	2009	2010	2011
Management Companies	4	2	1
Banks *(Holding a securities licence)*	3	-	-
Financial Brokerage Companies	-	2	1
TOTAL	**7**	**4**	**2**

779. During on-site examinations the Securities Commission used to carry out on-site examinations over an average of one month with 2 persons assigned to the examination. However the Commission did not carry out a large number of on-site examinations in relation to the number of entities supervised.

780. During the period 2009 – 2011 the FCIS carried out the following on-site examinations on financial institutions. DNFBPs were also examined by the FCIS.

Financial Institutions	2009	2010	2011
Fast Credit Institutions	13	8	3
Finance Institutions	-	-	2
Credit Unions	-	-	2
TOTAL	**13**	**8**	**7**

781. The evaluators were informed that the FCIS carries out compliance monitoring on a risk-based approach and information as to which sectors are riskier is provided to the FCIS by law enforcement. In practice no authority in Lithuania has carried out an analysis of risks (whether global or sector-specific) that would assist in focusing supervisory efforts on areas identified as problematic due to higher risks.

782. Unlike the Bank of Lithuania, the FCIS does not have a written methodology in place to follow when carrying out its supervisory function although a brief outline of what the FCIS would evaluate

during an on-site examination, which basically covers the AML/CFT measures, was provided to the evaluators.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

783. The Lithuanian authorities confirmed that the supervisory authorities did not receive any formal requests for assistance or requested any assistance by supervisors relating to or including AML/CFT.

Effectiveness and efficiency (market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

784. The provisions of the laws empower the supervisory authority to prevent persons that are not of good repute and who do not satisfy the 'fit and proper' test to take hold of or participate in the administration or the operation of an entity.

785. All financial institutions required to be authorised by the Bank of Lithuania are consequently subject to the AML/CFT obligations and supervision by the Bank of Lithuania and the FCIS. Other financial institutions which do not require to be licensed are still subject to the AML/CFT obligations and supervision by the FCIS.

786. It appears to the evaluators that the banking sector is well supervised however there seems to have been weak supervision in the securities and insurance sectors since the number of on-site examinations conducted by the Securities Commission and the Insurance Supervisory Commission is not commensurate with the size of the financial market although the Lithuanian authorities consider that supervision of insurance and securities sectors is sufficient enough, taking into account the size of the sectors and the level of possible risks. This should change following the taking over of the supervisory function by the Bank of Lithuania and therefore the supervisory reform is a positive step towards increasing the effective supervision of the insurance and the securities sectors.

787. Whereas in previous years the Bank of Lithuania used to carry out on-site examinations on every credit institution on an annual basis and on a large number of other institutions, the Bank of Lithuania is now carrying out compliance monitoring on a risk-based approach by determining those institutions which present a higher risk to the industry. Although this is another positive move towards directing resources were required, in practice no analysis of risks (whether global or sector-specific) has been carried out to assist in focusing supervisory efforts on areas identified as problematic due to higher risks.

788. Whereas the evaluators were informed that the FCIS also carries out supervision on a risk-based approach, information as to which sectors are riskier is provided to the FCIS by law enforcement and therefore the FCIS does not conduct its own evaluation of the risk areas within the industry. Again, in practice, no analysis of risks (whether global or sector-specific) has been carried out to assist in focusing supervisory efforts on areas identified as problematic due to higher risks.

789. The Inspection Manual of the Bank of Lithuania provides guidelines when carrying out on-site examinations and is a useful document since it can guide compliance officers as to what requires to be evaluated during an on-site inspection. The FCIS informed the evaluators during the visit that a checklist exists for AML/CFT controls carried out on-site. The list was provided after the visit as follows:

- "*If CDD measures where applied in all cases;*
- *If CDD measures which were applied meet all needed requirements;*
- *If KYC policy (portrait of a client, risk assessment) is in place;*
- *If enhanced CDD measures are applied in all cases;*
- *If PEPs identification rules are in place;*
- *If there was a non STR reporting;*
- *If there were background of a large and complex transactions were analyzed;*
- *record keeping issues;*
- *checking if all operations under the threshold were reported;*
- *If internal AML/CFT policies, internal rules, control procedures are in place and AML/CFT responsible person is appointed*."

790. In the opinion of the evaluators, the above is just a brief outline of what should be assessed during on-site examinations. The information available to the evaluators as to the type of insufficiencies identified so far does not allow confirming that the above list is actually fully used: the vast majority of the very few insufficiencies identified to date relate only to formal requirements such as the absence of a designated compliance officer, the absence of internal rules etc.

791. The evaluators also believe that an item such as "*If CDD measures which were applied meets all needed requirements"* is of little use for the purposes of control unless it was translated into concrete sub-items to be looked at.

792. The impossibility for the FCIS, as the main supervisory authority on AML/CFT, to impose administrative sanctions in cases of non-compliance with AML/CFT measures (for both financial institutions and DNFBPs) goes against the Recommendations. Moreover, the requirement by the Court to impose such sanctions might result in a hindrance in the actual imposition of sanctions and might explain the low number of sanctions imposed over the years.

793. The level of the fines imposed through the CALV Law on natural persons can be considered as proportionate. However if the law were to provide for the imposition of sanctions on legal persons such level of fines would not be dissuasive enough. Furthermore, the law does not provide the power to impose disciplinary sanctions. At the moment some level of publicity in relation to sanctions is provided indirectly through the publicity of administrative court decisions, the availability of the deliberations of the Board of the Bank of Lithuania on internet, etc. However, no general policy is in place on the publication of imposed sanctions.

794. The evaluators could not evaluate the proportionality of the sanction amounts imposed against the severity of the situation, in view of the fact that the actual amount of fines imposed by the courts for non-compliance issues were not made available.

3.8.2 Recommendations and comments

Recommendation 23

795. Although the FCIS, as the ultimate supervisor of AML/CFT, places full reliance on the Bank of Lithuania, as the supervisory authority of the financial sector, it is recommended that the FCIS evaluates the findings identified by the Bank of Lithuania during visits in order for the FCIS to be

able to understand the major violations of AML/CFT measures present in Lithuania as well as understand instances were a focused visit would be required.

796. Moreover, the evaluators recommend that an analysis of risks (global or sector-specific) is carried out by the supervisory authorities to assist them in focusing supervisory efforts on areas identified as problematic due to higher risks.

797. Following the supervisory reform, the Bank of Lithuanian should ensure that a more harmonised approach is applied to the supervision of the banking, insurance and securities sectors. Consequently the laws of the different sectors as well as the guidelines issued for each sector should be reviewed in order to ensure consistency.

798. The cooperation agreement between the FCIS and the Bank of Lithuania should also be amended to include references to all types of financial institutions being supervised by the Bank of Lithuania.

799. Moreover, the Bank of Lithuania should ensure that the same approach to on-site examinations which is being applied to the banking sector is now also applied to the insurance and securities sectors in view of the weak supervision carried out on these sectors in previous years.

800. The Inspection Manual of the Bank of Lithuania should be made available to the new staff members who previously worked at the Insurance Supervisory Commission and the Securities Commission for use during their on-site examinations.

801. The evaluators also recommend that the FCIS draws up a similar written methodology on the way on-site examinations are to be conducted.

Recommendation 17

802. The Lithuanian authorities should ensure that the imposition of sanctions and fines in relation to breaches of AML/CFT measures is clearly provided in the country's legislation and that the authorities are aware as to which law is to be applied in case of AML/CFT breaches.

803. The Lithuanian authorities should consider revising their position in order to provide the adequate power to the FCIS, as the main supervisory authority on AML/CFT, to impose sanctions, fines and disciplinary actions in cases of non-compliance with AML/CFT measures (for both financial institutions and DNFBPs).

804. Amendments to the various legislations are also required in order to provide the power to impose disciplinary actions, apart from financial sanctions, and to include the possibility to impose such sanctions, fines and disciplinary actions to both natural and legal persons.

805. The evaluators consider that the range of sanctions which can be imposed is not broad enough to fulfil the various requirements of the AML Law. Moreover, the current maximum amount of approximately EUR 10 000 is clearly not proportionate, effective and dissuasive enough for infringements committed by larger economic entities.

806. The Lithuanian authorities should ensure that the amount of sanctions imposed is proportionate to the breach identified.

807. The non-publication of sanctions is not seen by the evaluators to be dissuasive and therefore the evaluators recommend that any sanctions imposed in relation to AML/CFT are published.

808. The FCIS should ensure that information in relation to the breach identified and the amount of the sanctions imposed for such breach is retained for statistical purposes.

Recommendation 29

809. The evaluators consider this recommendation to be fully observed.

Recommendation 30 (all supervisory authorities)

810. The number of staff members of the FCIS dedicated to compliance monitoring of the financial and non-financial sectors is clearly not enough for the effective supervision of AML/CFT in Lithuania. The evaluators recommend that people are recruited within a short time frame in order to fill in the vacant posts.

811. The staff complement of the Bank of Lithuanian appears to be adequate in size for the supervision of the banking, insurance and securities sector.

Recommendation 32

812. Since the Lithuanian authorities did not receive any formal requests for assistance or requested any assistance involving other supervisors, relating to or including AML/CFT, this recommendation is not applicable.

3.8.3 Compliance with Recommendations 23, 29 & 17

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**PC**	• The FCIS is not empowered to impose sanctions, fines and disciplinary actions (for both financial institutions and DNFBPs); • sanctions cannot always be imposed on legal persons; • disciplinary actions cannot always be imposed; • the range of sanctions which can be imposed is not broad enough to fulfil the various requirements of the AML/CFT Law; • the maximum amount of sanctions which can be applied is not proportionate, effective and dissuasive enough for infringements committed by larger economic entities.
R.23	**LC**	• Effectiveness issue: - No focused examinations are carried out on financial

		institutions by the FCIS. - No risk analysis has been carried out by supervisory authorities to identify the risk areas within the financial industry. - Weak supervision has been carried out on the insurance and securities sectors
R.29	**C**	

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

813. All FATF designated non-financial businesses and professions (DNFBPs) currently exist in Lithuania and they are subject to the provisions of the amended AML Law. Furthermore, the obligations have been extended to several other business and professionals likely to be used for money laundering or terrorist financing purposes.

814. Article 2 (10) of the AML Law provides the list of obliged entities (in general referred to as "other entities") that should be considered as DNFBPs:

1) *auditors*;
2) *bailiffs* or the persons entitled to perform the actions of bailiffs;
3) undertakings providing *accounting* or *tax advisory services*;
4) *notaries* and other persons entitled to perform notarial actions, as well as *advocates* and advocate's assistants, when acting on behalf of and for the customer and when assisting the customer in the planning or execution of transactions for their customer concerning the purchase or sale of real property or business entities, management of customer money, securities or other property, opening or management of bank or securities accounts, organisation of contributions necessary for the establishment, operation or management of legal entities or other organisations, emergence or creation, operation or management of trust and company forming and administration service providers and/or related transactions;
5) the service providers providing *trust or company forming or administration* services;
6) the persons engaged in *economic and commercial activities* covering trade in immovable property items, precious stones, precious metals, items of movable cultural property, antiques or other property the value whereof exceeds EUR 15 000 or the corresponding sum in a foreign currency, to the extent that payments are made in cash;
7) *companies organising gaming*.

815. The term "other entities" under Article 2 (10) also includes other categories, i.e:

1) *insurance undertakings* engaged in life insurance activities and insurance brokerage firms engaged in insurance mediation activities relating to life insurance;
2) *postal services providers* which provide domestic and international postal order services;
3) *close-ended investment companies*.

816. However, for the purpose of this section of the MER, these three categories above are excluded as they have been already addressed under Section 3 of the MER (Preventive Measures – Financial Institutions).

817. In relation to the DNFBPs, the coverage of Article 2 (10) of the amended AML Law matches that of the FATF Recommendation 12, with the following exceptions. Subparagraph 7 of Article 2 (10) of the AML Law goes wider than the Recommendation covering dealers in items of movable cultural property, antiques or other property. However, the AML Law is narrower in scope, in that persons who trade in real estate ("immovable property items") are

only subject to the AML Law where the value whereof exceeds EUR 15 000 (or the corresponding sum in a foreign currency) to the extent that payments are made in cash. According to Recommendation 12 (the situation is the same in the EU Directive 2005/60/EC), the real estate agents have to be under the scope of the on-going CDD and record-keeping requirements in all cases, when they are involved in transactions for their client concerning the buying and selling of real estate.

818. The legal obligation in relation to the CDD and record-keeping requirements is provided in the AML Law and the relevant Government Resolutions (described in Section 3 of the MER). In additions to the AML Law and the Government Resolutions, the beneath Guidelines were issued by the competent authorities (empowered by Article 4 of the AML Law) for the mentioned DNFBPs (except for trust and company service providers), which are considered useful basis for the effective implementation of CDD and record keeping obligations (some of them were provided for the evaluators before or in the course of the on-site visit).

819. The FCIS approved guidelines for traders in immovable properties or other assets and for companies offering accounting or tax consultancy services, the Chamber of Auditors approved guidelines for auditors, the Chamber of Bailiffs approved guidelines for bailiffs, the Chamber of Notaries approved guidelines for notaries, the Lithuanian Bar Association approved guidelines for advocates, the Lithuanian Assay Office approved guidelines for traders in precious stones or precious metals, the Department of Cultural Heritage Protection (under the Ministry of Culture) approved guidelines for traders of movable cultural properties or antiques, as well as the Gaming Control Authority approved guidelines for gaming companies.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

Recommendation 12 (rated PC in the 3rd round report)

820. As described in the 3rd round report, Lithuania was rated "Partially Compliant" for Recommendation 12. The 3rd round report provided the following underlying factors (weaknesses and shortcomings) for this rating: there was a need to address CDD including identification issues, the provision of a legal basis to certain key elements of the ID process, and the timing and basis of the applicability of the ID process; PEPs were not addressed through legal provisions and hence no awareness within some sectors of the DNFBPs; more awareness on threats arising from technological developments and large complex transactions needed. Furthermore the evaluators referred to the same deficiencies regarding CDD and record-keeping requirements as identified for financial institutions in the 3rd round report. In this assessment round Recommendation 12 was reviewed again according to all the criteria of the Methodology.

821. As mentioned above, the AML Law and the relevant Government Resolutions apply to all DNFBPs, so they are subject to the same CDD and record-keeping requirements as financial institutions. Therefore the findings and comments under Section 3 of the MER, as well as the deficiencies identified under Recommendations 5 to 11 for financial institutions are also applicable to DNFBPs (for details see Section 3 of the MER). The following sections therefore only highlight sector-specific differences.

Applying Recommendation 5(c.12.1)

Casinos (Internet casinos / Land based casinos)

822. As stated above, *companies organizing gaming* (including casinos) are under the scope of the AML Law according to Subparagraph 8 of Article 2 (10). The conditions and procedure for the operation of gambling (i.e. the operation of companies organizing gaming) are regulated by the Gaming Law of the Republic of Lithuania (No IX-325 of 17 May 2001, as last amended on 6 November 2008 – No X-1783). In terms of Article 2 (4) of the Gaming Law the *casino* (gaming establishment) means a place where table games (roulette, card or dice games), as well as games by means of category A gaming machines, are operated in accordance with the approved gaming regulations.

823. In terms of Article 9 (4) of the AML Law the companies organizing gaming must verify the identity of the customer before entering the *casino* and register him, also register him when he exchanges cash into chips or chips into cash. On the basis of this provision of the AML Law there is a special identification and verification, as well as registration requirements for the casinos. The Lithuanian authorities explained that the other companies organising gaming (except companies organizing gaming in casinos) are not under the scope of the AML Law therefore the identification and verification (as well as registration) requirements are not applied for these other operators. (This was confirmed by Article 20 of the Gaming Law. According to this Article there is special requirement only for the casino operators to identify, verify and register all customers before entering the casino. While for other companies organizing gaming the duty to verify the identity of the customer before entering a gaming place arises solely when there are doubts whether the person is younger than 18 years of age.) However the (English version) of the AML Law is not entirely clear regarding the scope. On the basis of this concern in the view of the evaluators the wording of Subparagraph 8 of Article 2 (10) and Article 9 (4) of the AML Law should be reviewed and clarified in order to refer unequivocally to the casino operators.

824. According to the Lithuanian authorities' interpretation the casinos have to comply with same CDD requirements as all financial institutions and other entities under the scope of the AML Law (according to Article 2 (10) of the AML Law the casinos belong to the category of "other entities".) The Lithuanian authorities explained that Article 9 (4) just defines special additional obligations for these service providers (they are required to verify the identity of the customer before entering the casino and register him, also register him when he exchanges cash into chips or chips into cash). However in the view of the evaluators the (English version) of the AML Law is not entirely clear regarding the extent of the required CDD, consequently the wording of Article 9 (4) of the AML Law should be reviewed and clarified by adding reference to the need of all CDD measures. In practice, on the basis of the experiences of the evaluators acquired in the course of the visit of a casino, the casinos conduct only a limited identification and verification procedure, which confirms the mentioned need for further specification regarding this issue.

825. On the basis of these concerns in relation to the scope and the applicable CDD measures, the concept, as well as the wording, of Article 2 and 9 of the AML Law (especially Article 9 (4)) should be reviewed and clarified.

826. On the basis of Article 9 (4) of the AML Law the companies involved in gaming activities must register all customers who exchange cash into chips or chips into cash without any

threshold. However Article 20 of the Gaming Law requires the gaming operators to register persons who either exchange cash for tokens or place a stake or collect a winning in excess of LTL 3.500 (approximately EUR 1 000) or an equivalent amount in foreign currency. In practice the casinos register the customers who exchanges cash into chips or chips into cash in excess of LTL 3.500 in a paper-based register. The casino informed the evaluators that the content of this register is recorded in an electronic database regularly. This legal deficiency (discrepancy between the two relevant legal acts) can negatively affect the proper application by the service providers, as well as the respective supervision, so the Lithuanian authorities are strongly encouraged to amend the relevant legal provisions in order to put in line with each other.

827. As at the time of the on-site visit, there were 12 gaming companies in Lithuania and 4 companies were authorized for operation of casinos (with 15 gaming sites). The Gaming Control Authority informed the evaluators that the operation of internet casinos is prohibited in Lithuania according to the relevant provisions of the Gaming Law of the Republic of Lithuania (see c.24.1 for further details). However the evaluators noted at the time of the on-site visit that certain websites for "online casinos" are available in the country, but the real situation remain unclear (location of the servers, applicable legal provisions, supervision, etc.).

Real estate agents

828. Real estate agents accepting cash payments above EUR 15 000 ("persons engaged in economic and commercial activities covering trade in immovable property items the value whereof exceeds EUR 15 000 or the corresponding sum in a foreign currency, to the extent that payments are made in cash") fall within the scope of the AML Law according to Subparagraph 7 of Article 2 (10). Therefore, the CDD requirements described under Recommendation 5 apply in this case, which set up a comprehensive framework.

829. However, as mentioned above, the AML Law is narrower in scope than the standard regarding the real estate agents: according to Recommendation 12, the real estate agents have to be on-goingly subjected to the various requirements of the AML/CFT and thus under the scope of the CDD and record-keeping requirements in all cases and without threshold, when they are involved in transactions for their client concerning the buying and selling of real estate.

830. Although the legal framework for real estate agents to apply CDD measures exist, it is the evaluators' opinion (based on the interviews conducted during the on-site visit) that those measures are not being fully applied in practice. The FCIS (as supervisory authority) consider the real estate agents as one of the most risky DNFBP sector because of the intensive cash movement, furthermore (on the basis of the statistics on sanctions) the FCIS noticed several deficiencies in the course of their inspections (no internal rules, no responsible officer appointed, no operations of EUR 15 000 in cash reported, etc.).

Dealers in precious metals and dealers in precious stones

831. According to Subparagraph 7 of Article 2 (10) of the AML Law, *persons engaged in economic and commercial activities covering trade in precious stones and precious metals the value whereof exceeds EUR 15 000 or the corresponding sum in a foreign currency, to the extent that payments are made in cash* are subject to the requirements under the AML Law. The scope of the AML Law regarding this DNFBP sector is in line with the standard. Therefore the CDD requirements as described under Recommendation 5 apply, which set up a comprehensive framework.

832. Similarly to the case of the real estate agents, although the legal framework to apply CDD measures exists, the evaluators express concern in relation to the appropriate and fully implementation of the CDD measures by this sector, especially the identification and verification of the beneficial owner, on the basis of the interviews conducted in the course of the on-site visit.

833. Furthermore it has to be mentioned that Subparagraph 7 of Article 2 (10) of the AML Law goes wider than the standard covering dealers in items of movable cultural property and antiques ("persons engaged in economic and commercial activities covering trade in items of movable cultural property and antiques the value whereof exceeds EUR.15 000 or the corresponding sum in a foreign currency, to the extent that payments are made in cash").

Lawyers, notaries and other independent legal professionals and accountants

834. As noted above, *advocates* (and advocate's assistant), as well as *notaries* (and other persons entitled to perform notarial actions), as the obliged entities under the AML Law, according to Subparagraph 5 of Article 2 (10), are also obliged to apply CDD measures in line with the requirements of Recommendation 12. They are subject to CDD obligations when acting on behalf of and for the customer and when assisting the customer in the

a) planning or execution of transactions for their customer concerning the purchase or sale of real property or business entities,
b) management of customer money, securities or other property,
c) opening or management of bank or securities accounts,
d) organisation of contributions necessary for the establishment, operation or management of legal entities or other organisations,
e) emergence or creation, operation or management of trust and company forming and administration service providers and/or related transactions.

835. As an exemption, Article 9 (12) of the AML Law stipulates that Article 9 (11) *shall not apply to advocates and advocate's assistants in the course of ascertaining the legal position for their client or defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings*. Article 9 (11) provides that the service providers *shall be prohibited from performing transactions through bank accounts, concluding business relationships, performing transactions, when they have no possibilities to fulfil the CDD requirements. The FCIS must be notified about such cases immediately*. The Lithuanian authorities confirmed that Article 9 (12) of the AML Law exempts the advocates from the CDD requirements and the reporting-obligation as well. However, in the course of the on-site visit the representatives of the Lithuanian Bar Association stated that according to their interpretation this provision of the AML Law provides exemption relating exclusively to the reporting obligation and the advocates identify and verify all customers in all cases (also in the cases mentioned in Article 9 (12)). (However it has not been clearly established or confirmed by them in the course of the on-site visit that this identification (verification) is based on the AML Law or on the sectorial act in practice.)On the basis of this inconsistency and considering the international standard (the mentioned exemptions as set out in R.16 merely relates to the reporting obligation), in the view of the evaluators the scope of the legal privilege (the wording of Article 9 (12) of the AML Law should be reviewed and clarified.

836. The evaluators believe, in the light of the interviews held during the on-site visit and the information provided by the service providers and the representatives of the respective chambers, that the CDD obligations are not being completely fulfilled in practice, especially in the case of *notaries*, which sector seemed to lack detailed knowledge about AML/CFT issues (including CDD requirements). In the view of the evaluators there is a need for a broad outreach to the sector of the notaries.

837. It has to be mentioned, that *the auditors, the bailiffs* and the undertakings providing accounting or tax advisory services are also under the scope of the AML Law, according to Subparagraph 1 and 3-4 of Article 2 (10), and are also obliged to apply CDD measures in all cases (not only regarding the activities specified in the standard).

838. The auditors are fully versed in their obligation. The identification and verification of the client is complete, and compliant with the standard. The awareness in this sector seems to be high and the effectiveness of implementation is sufficient.

Trust and company service providers

839. According to Article 2 (10) of the AML Law the "trust and company service providers" (providers of the services of trust or company forming or administration not already covered under other subparagraphs) are subject to the requirements under the AML Law, including the CDD requirements.

840. However the evaluators express serious concern in relation to the so-called "trust and company service providers" sector and the real legal and market situation, size and composition of the sector, stakeholders involved, services offered by them, etc., as well as the extent of the implementation of the relevant CDD requirements remained unclear. The interviews conducted on-site showed that, in certain cases, the AML/CFT requirements are fully unknown to these professionals. The evaluation team considers there is an urgent need to clarify the situation, being necessary appropriate registration or licensing, as well as effective supervision, in order to enforce the relevant AML/CFT obligations.

841. It must further be noted in relation to all DNFBP sectors that no provisions exist for applying various essential criteria of Recommendation 5 on a risk-sensitive basis. On the basis of the standard the DNFBPs may determine the extent of certain CDD measures on a risk sensitive basis depending on the type of customer, business relationship or transactions.

Applying Recommendations 6 and 8-11 (c. 12.2)

842. The requirements regarding PEPs contained in Article 11 (4)-(5) of the AML Law apply to DNFBPs the same way as to financial institutions, and the same strengths and weaknesses are present (see write-up to Recommendation6).

843. Criterion 12.2 refers also to Recommendation 8 and 9, which were rated "Largely 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 these Recommendations has changed following the implementation of the Third 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 Recommendations 12.

844. On the basis of Article 11 of the AML Law enhanced CDD has to be applied in the case of performance of transactions or business relationships through the representative or the customer not being physically present for identification purposes. The same Article of the AML Law provides further requirements for cases of enhanced CDD and exactly defines the applicable measures in these cases. As regards *non-face-to-face business relationship* all DNFBPs are required to apply one or several additional measures:

- use additional data, documents or information to establish the customer's identity;
- take supplementary measures to verify or certify the supplied documents or requiring confirmatory certification by the financial institution;
- ensure that the first payment is carried out through an account opened in the customer's name with the credit institution.

845. There is no explicit requirement anywhere in the existing legislations that requires DNFBPs to have policies in place or to take measures to prevent the *misuse of technological developments in ML or TF schemes*.

846. All of the service providers (financial institutions and other entities) under the scope of the AML Law may, when identifying the customer or the beneficial owner, make use of the information of the third parties about the customer or the beneficial owner (Article 13 (1) of the AML Law).

847. The service providers may identify the customer and the beneficial owner without his direct participation using of the information about the customer or the beneficial owner from other service providers or their representations abroad, when they comply with the requirements set for third parties in the relevant provision of the AML Law (Article 13 (2) of the AML Law).

848. Third party shall mean a financial institution, another entity or a financial institution or another entity registered in another EU Member State or a state which is a non-EU Member State ("third country"), who meets the following requirements:

- they are subject to mandatory professional registration, recognised by law;
- they apply due diligence requirements and record keeping requirements in respect of customers and beneficial owners as laid down or equivalent to those laid down in the AML Law or they are situated in a third country which imposes equivalent requirements to those laid down in the AML Law (Article 2 (22) of the AML Law).

849. When requested, third parties must immediately submit to the requesting service provider the entire requested information and data which must be in possession when complying with the requirements laid down in the AML Law (Article 13 (4) of the AML Law).

850. Third parties must immediately submit to the requesting service provider copies of the documents relating to identification of the customer or the beneficial owner and other documents relating to the customer or the beneficial owner (Article 13 (5) of the AML Law).

851. As outlined above, only service providers, which are subject to mandatory professional registration and apply equivalent customer due diligence and record-keeping requirements can be relied on for the outcome of customer due diligence (Article 13 (2) and Article 2 (22) of the AML Law). This implies that the service providers are required to satisfy themselves that these requirements are fulfilled when relying on a third party, in order to comply with the AML Law. However there is no explicit requirement in the AML Law that the third party has to be supervised in an equivalent manner.

852. As mentioned above, third parties can only be based in the territory of Lithuania, another EU member state or a non-EU country that meets equivalent requirements. Furthermore it shall be prohibited to use of the information of third parties from the third country about the customer or the beneficial owner if a separate decision of the European Commission has been passed thereon, according to Article 13 (6) of the AML Law.

853. The non-EU countries which impose requirements equivalent to those laid down in the AML Law are determined by the Government Resolution No 1149, pursuant to the Common Understanding between Member States on third countries equivalence under 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.

854. Liability for compliance with the customer's or the beneficial owner's identification requirements established in the AML Law shall rest with the service providers which have used of the third country information about the customer or the beneficial owner (Article 13 (8) of the AML Law). However this provision (of the English version of the AML Law) refers exclusively to the third country information, not to all information from every kind of third party (see the definition of "third party" in Article 2 (22) of the AML Law). It remains unclear for the evaluators whether it is a mistranslation or an issue for clarification.

855. The requirements regarding complex or unusually large transactions contained in Article 14 (14) of the AML Law apply to DNFBPs the same way as to financial institutions, and the same strengths and weaknesses are present (see write-up to Recommendation 11).

856. Record-keeping requirements apply to DNFBPs equally and identically with those applicable to financial institutions. As already set forth in the analysis under Recommendation 10, Article 16 of the AML Law, as well as the relevant Government Resolution (Government Resolution No 562) set forth the detailed provisions in relation to the record-keeping requirements.

857. Article 16 (2) of the AML Law obliges notaries and bailiffs to keep a register of the customer's suspicious and unusual transactions, as well as transactions under which the amount of cash received or paid exceeds EUR 15 000 (or the corresponding amount in foreign currency).

858. Likewise, Article 16 (4) of the AML Law requires all other entities (except for notaries, advocates and bailiffs) to maintain a register of monetary operations and suspicious and unusual monetary operations specified in Article 17 (3) of the AML Law (single payment in cash, if the amount of the cash received or paid exceeds EUR 15 000 or the corresponding amount in foreign currency).

859. Under Article 16 (5) companies organizing gaming must additionally keep a register of (i) the verified customers entering the casino; and (ii) the customers exchanging cash into chips or chips into cash. As mentioned above, there is a discrepancy between the requirements of the AML Law and the Gaming Law in this regard, which can negatively effect the proper application by the service providers.

860. Article 16 (6) of the AML Law requires the Lithuanian Bar Association to keep a register of the suspicious and unusual transactions concluded by their customers and notified by the advocates. However the AML Law (and the Government Resolution No 562) does not provide specific record-keeping requirements for the advocates. The Lithuanian authorities informed the evaluators that the advocates maintain their registers on the basis of Article 16 (7) of the AML Law (as "other entity").

861. According to Article 16 (7) of the AML Law the DNFBPs have to maintain a register of the customers with whom transactions or the business relationship has been terminated (under the circumstances specified in Article 15 of the AML Law or under other circumstances related to violations of the procedure of money laundering and/or terrorist financing prevention). Considering the fact, that this Article seems to be limited to keeping a register of the customers with whom transactions or the business relationship has been terminated, this provision raises concerns for the evaluators relating to the completeness of the record-keeping requirements for the advocates.

862. According to the requirements of Paragraph 11 of the Government Resolution No 562, in all cases the registers shall be maintained electronically.

Effectiveness and efficiency

863. Overall, the meetings with the private sector demonstrated that the awareness and understanding of the CDD and record-keeping requirements varies to a great extent depending on the obliged DNFBP sector considered. It can be stated that the awareness and effective implementation in relation to the CDD requirements appears to be low in the majority of the relevant sectors.

864. In practice, verification is not part of the customer due diligence procedure in several cases, most service providers interviewed in the course of the on-site visit seem to be unaware of the real meaning of the beneficial ownership. Furthermore very few of the representatives of the service providers interviewed knew about the implications of CDD measures in relation to PEPs.

865. The Guidelines issued by the competent authorities for the different DNFBP sectors could be a useful basis for the effective implementation of CDD and record keeping obligations. However, in the view of the evaluators there is a need for further awareness raising, especially there is an urgent need for a broad outreach to the sector of notaries.

866. The situation of auditors seemed somewhat better and those met by the evaluators were generally aware of their obligations. The identification and verification of the client is complete, and compliant with the standard. The awareness in this sector seems to be higher than in the other DNFBP sectors.

867. Although the legal framework for the DNFBPs to apply record-keeping requirements exists and in the view of the evaluators the service providers appear to be aware of their obligations. The evaluators consider, based on the interviews conducted with the representatives of the different sectors during the on-site visit, that those measures are not being fully applied in practice. Furthermore, it is worth mentioning that in some cases (notaries and advocates) the record-keeping requirements are met mainly due to the fact that provisions of sector specific laws governing their activities provide also record keeping obligations.

868. Notwithstanding the explicit requirement to maintain the registers electronically, some representatives of the DNFBP sector (e.g. dealers in precious metals and precious stones and notaries) informed the evaluators that they keep the registers in a paper-based form, which can negatively affect the proper implementation of the record-keeping obligation and give rise to concerns over the effectiveness.

869. As mentioned above, the evaluators were informed by the representatives of the casino that the content of the paper-based register in relation to the customers who exchanges cash into chips or chips into cash is recorded in an electronic database regularly. However it remains unclear whether the casinos have an on-line electronic system that can search a database of the exchange transaction being carried out.

4.1.2 Recommendations and comments

870. With regard to all DNFBPs the Lithuanian authorities should apply recommendations and comments made under Recommendations 5, 6 and 10-11 in relation to the financial institutions.

Applying Recommendation 5

871. The Lithuanian authorities should rapidly improve the situation as regards the gaming sector and in particular: a) review and clarify the scope of the AML Law in relation to companies organizing gaming and the extent of the CDD requirements applicable for these service providers; b) review and clarify the wording of the AML Law regarding the required CDD measures for casinos; c) review the relationship between the registration requirement (in relation to the customers who exchanges cash into chips and chips into cash) according to the Gaming Law and the respective obligation under the AML Law, as well as eliminate the discrepancy between the two relevant legal acts; d) clarify the legal and market situation concerning "on-line casinos"; e) strengthen effective implementation of the CDD requirements with regard to casinos.

872. The AML Law needs urgent amendment as regards real estate agents (persons engaged in economic and commercial activities covering trade in immovable property items), who should be generally subject to the Law and not just when they are involved in cash transactions above the threshold.

873. The Lithuanian authorities should ensure the effective implementation of the CDD requirements by all DNFBPs, including real estate agents, notaries and dealers in precious metals and dealers in precious stones.

874. Lithuania should review and clarify the wording of the AML Law regarding the scope of the legal privilege for advocates.

875. Lithuania should also rapidly clarify the legal and market situation with regard to the so-called "trust and company service providers" sector in order to enforce the relevant AML/CFT obligations.

Applying Recommendation 6

876. The Lithuanian authorities should strengthen the awareness and implementation of CDD measures in relation to PEPs (setting aside the auditors).

Applying Recommendation 8

877. The Lithuanian authorities should require DNFBPs explicitly to have policies in place or to take measures to prevent the misuse of technological developments in ML or TF schemes.

Applying Recommendation 9

878. The Lithuanian authorities should:

- require DNFBPs to satisfy themselves that the third party is supervised (not only regulated) in accordance with the respective FATF standard
- review and clarify the wording of the AML Law regarding the ultimate responsibility for CDD (the AML Law should refer to information of every kind of third party, instead of third country information).

Applying Recommendation 10

879. The Lithuanian authorities should:

- review the relationship between the registration requirement for the casino (in relation to the customers who exchanges cash into chips and chips into cash) according to the Gaming Law and the respective obligation under the AML Law, as well as eliminate the discrepancy between the two relevant legal acts (see also Recommendation 5);
- review and clarify the record-keeping requirements with regard to advocates;
- strengthen effective implementation of the record-keeping requirements with regard to DNFBPs (setting aside the auditors).

Applying Recommendation 11

880. The Lithuanian authorities should strengthen effective implementation regarding paying attention to unusual and complex transactions.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**	• The same concerns (legal deficiencies) in the implementation of Recommendations 5, 6 and 10-11 apply equally to DNFBPs. **Applying Recommendation 5** • There is a need to clarify the provisions of the AML Law regarding the scope, as well as the CDD requirements in relation

		to casinos. • Scope of the AML Law regarding real estate agents differs from the standard. • There is a need to review and clarify the scope of the legal privilege for advocates. • Serious concern regarding the company service providers. • Weakness in effective implementation of CDD requirements as regards casinos, real estate agents, dealers in precious metals, dealers in precious stones and notaries. **Applying Recommendation 6** • Weakness in effective implementation of CDD requirements in relation to PEPs (except auditors). **Applying Recommendations 8 and 9** • No explicit requirement to have policies in place or to take measures to prevent the misuse of technological developments in ML or TF schemes. • No explicit requirement for the service providers to satisfy themselves that the third party is supervised (not only regulated) in accordance with the standard. • There is a need to clarify the provisions of the AML Law regarding the ultimate responsibility for CDD. **Applying Recommendation 10** • There is a need to review and clarify the legal provisions for the record-keeping requirements with regard to advocates. • Weakness in effective implementation of record-keeping requirements (except auditors). **Applying Recommendation 11** • Weakness in effective implementation regarding paying attention to unusual and complex transactions.

4.2 Suspicious transaction reporting (R. 16)
(Applying R.13 to 15 and 21)

4.2.1 Description and analysis

881. As described in the 3rd round report, Lithuania was rated "Partially Compliant" for Recommendation 16. The 3rd round report provided the following underlying factors for this rating: there was a need to clarify the definition of a "financial operation" as opposed to that of a "transaction" in relation to reporting; exceptions in AML Law to legal profession; no direct obligation to report suspicion of transactions related or linked to financing of terrorism; development and implementation of internal controls; need to establish legal or other mandatory obligations for DNFBPs to pay special attention to relationships and transactions with AML/CFT non-compliant countries. In this assessment round Recommendation 16 was reviewed again according to all the criteria of the Methodology.

882. The AML Law has introduced changes aimed at implementing the requirements under Recommendation 15 (Article 19 of the AML Law). In addition, the following Resolutions are relevant in this context: Government Resolution No. 677 (conditional features of the criteria on

the basis whereof a monetary operation or transaction is to be regarded as suspicious shall be established by financial institutions and other entities on coordination with the FCIS) and Government Resolution No. 562 (financial institutions and other entities as well as the Lithuanian Bar Association, in coordination with the FCIS, shall establish the procedure of register filling and administration, including the requirements regarding organizational and technical measures intended to protect the register data from illegal destruction, alteration and use or any other type of unlawful handling).

883. DNFBPs are in principle subject to the same reporting obligations as the financial institutions. Some exceptions, in particular with regards to the legal profession, do however exist. Notwithstanding, DNFBPs are required to report suspicious transactions whilst being protected for breach of professional secrecy. DNFBPs are prohibited from 'tipping off' a person upon whom a suspicious report has been submitted or who is the subject of an investigation. This prohibition is extended also to informing third parties. Hence, and in order to fully ensure compliance with the law, DNFBPs are also required to develop effective internal controls to prevent ML/FT, again with the exception of the legal profession.

884. The findings for the financial sector as detailed under Section 3 of this Report are also applicable to DNFBPs. However, in the course of the evaluation, further weaknesses and shortcomings have been identified in relation to DNFBPs which call for the attention of the Lithuanian authorities to consider and address.

885. The following paragraphs therefore must be read in addition to the findings in Recommendation 13.

Recommendation 16 (rated PC in the 3rd round report)

Applying Recommendations 13-15

Requirement to Make STRs on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBPs)

886. The reporting obligations set out in Recommendation 13 also apply to DNFBPs which, as per Article 2(10) of the AML Law, include the following:

- auditors;
- bailiffs or the persons entitled to perform the actions of bailiffs;
- undertakings providing accounting or tax advisory services;
- notaries and other persons entitled to perform notarial actions, as well as lawyers and assistant lawyers, when acting on behalf of and for the customer and when assisting the customer in the planning or execution of transactions for their customer concerning the purchase or sale of real property or business entities, management of customer money, securities or other property, opening or management of bank or securities accounts, organisation of contributions necessary for the establishment, operation or management of legal entities or other organisations, emergence or creation, operation or management of trust and company forming and administration service providers and/or related transactions;
- providers of the services of trust or company forming or administration;

- the persons engaged in economic and commercial activities covering trade in immovable property items, precious stones, precious metals, items of movable cultural property, antiques or other property the value whereof exceeds EUR 15 000 or the corresponding sum in a foreign currency, to the extent that payments are made in cash; and
- the companies organising gaming.

887. Article 2(14) of the AML Law defines "trust and company forming and administration service provider" as any natural or legal person which by way of business provides any of the following services to third parties:

- forming of companies or other legal entities;
- acting as or arranging for another person to act as a director of a company or occupy another senior position, a partner of a partnership or a similar position in relation to another legal person (natural person);
- providing a registered office, business address, correspondence or administrative address or other related services for a company, a partnership or any other legal person;
- acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;
- acting as a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards or arranging for another person to act as a nominee shareholder.

888. The definition of DNFBPs provided in the AML Law does not however cover 'internet casinos' whereas the law is narrower in scope in relation to 'real estate agents' since they are only subject to the AML Law where the value of an immovable property exceeds EUR 15 000 in cash. Real estate agents should be subject to the law irrespective of the amount of the property and whether or not the property is paid in cash.

889. Article 14 of the AML Law provides that DNFBPs must report to the FCIS about the suspicious or unusual monetary operations and transactions identified, with the exception of the legal profession which are required to report to a self-regulatory organisation which will in turn report to the FCIS.

890. The following table includes the number of STRs received by the FCIS from DNFBPs during the period 2009 – 2011:

	2009	**2010**	**2011**
Auditors	0	0	1
Bailiffs	0	3	1
Accounting or tax advisory services	0	0	0
Notaries	31	31	33
Lawyers and assistant lawyers	1	0	1
Trust or company forming or administration	0	0	0
Traders in immovable	0	0	0

property items, precious stones, precious metals, items of movable cultural property, antiques or other property the value whereof exceeds EUR 15 000			
Gaming companies	24	7	12

891. The non-submission of STRs by certain DNFBPs could indicate an uneven level of awareness on reporting obligations among the different segments of DNFBPs. This was also noted during the meetings held with representatives of DNFBPs. It is also surprising that no threshold-based transactions have been reported.

Legal Privilege

892. Article 14, Paragraph 11 of the AML Law stipulates that Paragraphs 2 and 8 of this Article shall not apply to advocates and advocate's assistants when they assess their customer's legal position or defend their customer, or represent him in judicial proceedings or on his behalf, including the consultations provided for the commencement of judicial proceedings or avoidance thereof.

No Reporting Threshold for STRs (c.16.1; applying c. 13.3 to DNFBPs)

893. In principle, there are no legal limits provided for in the AML Law for reporting purposes except, as indicated for financial institutions (see R.13 in Chapter 3) where certain criteria for mandatory reporting are defined by reference to a threshold in the Government Resolution N°677 or one of the sector specific list of criteria.

894. There is one exception, however, namely for professionals who fall under the category of DNFBPs designated as "*persons engaged in economic and commercial activities covering trade in immovable property items, precious stones, precious metals, items of movable cultural property, antiques or other property the value whereof exceeds EUR 15 000 or the corresponding sum in a foreign currency, to the extent that payments are made in cash".* This exception for dealers in precious metals and precious stones is in line with the FATF requirements (the exception as regards real estate intermediaries, who are also captured by this provision, was discussed earlier).

895. Moreover Paragraph 2 of Article 14 stipulates that whenever a suspicious operation or transaction is detected the obliged person shall suspend the operation disregarding the amount and report. There is no such explicit requirement for unusual operations or transactions in the law. At the same time the conditional features provided to the evaluators list a number of thresholds to complement the criteria adopted by the Government in Resolution No. 677 and aim to clarify both criteria for unusual and suspicious operations. It is understood that reporting is required by the Law in any case of suspicion associated with ML or TF (as provided in the definitions). However, as already pointed out under R.13, there is a risk that the way the distinction is designed might create grounds for ambiguous interpretation of the legislation and application of the reporting mechanism.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 16.1; applying c. 13.4 to DNFBPs)

896. Under the Lithuanian AML Law, there are no such limitations for DNFBPs nor financial institutions as already indicated under R.12.

Reporting through Self-Regulatory Organisations (c.16.2)

897. In Lithuania advocates and advocate's assistants are allowed to submit their suspicious transaction reports to the Lithuanian Bar Association as a self-regulatory organisation. Articles 14(2) and 14(8) of the AML Law state that on establishing that a customer is performing a suspicious monetary operation or transaction or on receipt of information that the customer intends or will attempt to perform a suspicious or unusual monetary operation or transaction, advocates and advocate's assistants are to notify the Lithuanian Bar Association instead of the FCIS. This is also stated in the Government Resolution No. 677. Reporting to the Lithuanian Bar Association should ensure confidentiality of customer information.

898. Upon receipt of the information from advocates and their assistants, the Lithuanian Bar Association is obliged to communicate the information to the FCIS within three working hours, as per the normal reporting time.

899. Article 14(11) of the AML Law also provides for an exemption for advocates and advocate's assistants, in relation to the above, when they assess their customer's legal position or defend their customer, or represent him in judicial proceedings or on his behalf, including the consultations provided for the commencement of judicial proceedings or avoidance thereof.

900. In order for the Lithuanian Bar Association to receive STRs from advocates and their assistants, the Lithuanian Bar Association and the FCIS should have established a way of co-operating between them. However the Lithuanian Bar Association is the only self-regulatory organisation which had not yet entered into an agreement with the FCIS at the time of the on-site visit.

Legal Protection and No Tipping-Off (c. 16.3; applying c. 14.1 to DNFBPs), Prohibition against Tipping-Off (c. 16.3; applying c. 14.2 to DNFBPs)

901. According to Article 14(15) of the AML Law, other entities (referring to DNFBPs) shall not be responsible to a customer for the non-fulfilment of contractual obligations and for damage caused in performing the duties and actions specified in the same article. The article further states that employees of DNFBPs who in good faith report to the FCIS any suspicious or unusual transactions performed by customers shall not be held liable. This article does not however extend to directors and officers of DNFBPs. Although this article does not extend to directors and officers of financial institutions and DNFBPs, the Lithuanian authorities confirmed that the interpretation of "employees" also extends to directors and officers.

902. Moreover Article 20(9) of the AML Law specifies that submission of information outlined in the law to the FCIS shall not be viewed as disclosure of an industrial, commercial or bank secret.

903. Article 20(3) of the AML Law specifically prohibits competent authorities and self-regulatory organisations entrusted with the AML/CFT supervision, their employees, as well as

DNFBPs and their employees from notifying a customer or other persons that information about their operations or transactions has been submitted to the FCIS. This prohibition does not however apply to advocates and advocate's assistants when they attempt to convince the customer not to pursue unlawful activity. Although this article does not extend to directors and officers of financial institutions and DNFBPs, the Lithuanian authorities confirmed that the interpretation of "employees" also extends to directors and officers.

904. Such provisions are also outlined in the guidelines issued for the respective sectors.

Establish and Maintain Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPS)

905. Article 19 of the AML Law imposes certain responsibilities on DNFBPs in relation to internal controls. Article 19(1) of the AML Law requires other entities to establish appropriate internal control procedures concerning the identification of customers and beneficial owners, submission of reports and information to the FCIS, safekeeping of information as specified in this law, risk assessment, risk management, management of enforcement of requirements and communication. DNFBPs must also ensure that their employees are familiar with and properly trained in the measures for the prevention of ML/FT as specified in the AML Law and other legal acts.

906. Furthermore DNFBPs must appoint an employee at management level responsible for organising the implementation of measures for the prevention of ML/FT and to liaise with the FCIS as per Article 19(2) of the AML Law. The appointment of such designated employee must be notified to the FCIS in writing, although the evaluators could not confirm whether the FCIS has been informed accordingly in all cases related to the appointment of compliance officers.

907. The AML Law however exempts advocates and advocate's assistants from adhering to the provision of Articles 19(1) and 19(2) of the AML Law.

908. The AML Law falls short of defining the powers of the compliance officer established under Article 19(2) to have full and unhindered timely access to any relevant internal information, including customer identification data and transaction records that would assist in meeting the responsibilities under the law and in assessing internal suspicious transactions. However the guidelines issued for the respective sectors outline such provisions.

Independent Audit of Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.2 to DNFBPs)

909. The provisions of the AML Law do not specify the requirement for DNFBPs to maintain an adequately resourced and independent audit function to test compliance of procedures, policies and controls.

Ongoing Employee Training on AML/CFT Matters (c. 16.3; applying c. 15.3 to DNFBPs)

910. DNFBPs must take the relevant measures to ensure that their appropriate employees are informed of the provisions established on the basis of the AML/CFT law. Such measures shall cover participation of the relevant staff in special on-going training programmes to help them recognise transactions which may be related to ML/FT and to instruct them as to how to proceed in such cases, as per Article 19(3) of the AML Law.

911. The AML Law however exempts advocates and advocate's assistants from adhering to the provision of Article 19(3) of the AML Law.

Employee Screening Procedures (c. 16.3; applying c. 15.4 to DNFBPs)

912. Although there are no specific provisions in general, the relevant competent supervisory authorities appear to be cautious when recruiting staff members and ensure an appropriate screening at all levels prior to recruitment.

Additional Element—Independence of Compliance Officer (c. 16.3; applying c. 15.5 to DNFBPs)

913. The provisions of the AML Law do not specify the requirement for the compliance officer to be able to act independently and to report to senior management above the compliance officer's next reporting level or the board of directors.

Applying Recommendation 21

Special Attention to Persons from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBPS)

914. Article 14(14) of the AML Law states that when performing on-going monitoring of a customer's business relationship, including investigation of the transactions concluded in the course of such relationships, DNFBPs must take into account any activity which they regard as likely, by its nature, to be related to ML/FT and business relationships or monetary operations with customers from third countries in which ML/FT prevention measures are insufficient or do not correspond to international standards. The results of the investigation and the purpose of performance of such operations or transactions must be substantiated by documents and must be stored for ten years.

915. Government Resolution No. 942 provides a list of criteria based on which a threat of ML/FT is to be considered high. One of the criteria under paragraph 2.4 states that if customers constantly reside in a country that is not a member of the FATF, or of an international organisation with an observer status at FATF, the threat of ML/FT shall be considered to be high and therefore monitored closer.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.2 to DNFBPS)

916. Article 14(14) of the AML Law further states that when performing ongoing monitoring of a customer's business relationship, including investigation of the transactions concluded in the course of such relationships, DNFBPs must take into account complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose and business relationships or monetary operations with customers from third countries in which ML/FT prevention measures are insufficient or do not correspond to international standards. The results of the investigation and the purpose of performance of such operations or transactions must be substantiated by documents and must be stored for ten years.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBPS)

917. Government Resolution No. 942 provides a list of criteria based on which a threat of ML/FT is to be considered high. One of the criteria under paragraph 2.4 states that if customers constantly reside in a country that is not a member of the FATF, or of an international organisation with an observer status at FATF, the threat of ML/FT shall be considered to be high and therefore monitored closer.

918. Article 11 of the AML Law provides instances where enhanced due diligence is to be applied, one such instance being where there is a high risk of ML/FT as per Subparagraph 4 of the Article 11(1). The same article then outlines the measures to be applied in relation to enhanced due diligence.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

919. Article 2 of the AML Law specifically outlines, under the definition of 'other entities', the DNFBPs subject to AML/CFT obligations. Auditors and undertakings providing accounting or tax advisory services fall under the scope of the AML Law under Subparagraph 1 of Article 2(10) and Subparagraph 4 of Article 2(10) respectively, and therefore are subject to AML/CFT obligations including reporting.

Additional Elements – Reporting of All Criminal Acts (c. 16.6)

920. As indicated under the discussion of R. 13.1 in the Chapter on financial institutions, the current system of reporting is based on the suspicion of ML, and not – as required under the FATF standards – that the monies are proceeds from a crime, it being understood that Lithuania follows an all crime approach and considers any offence as a predicate offence for the prosecution of ML. The weaknesses of the reporting system, including its complexity and risks of inconsistencies when it comes to the articulation between the legal requirements, the general mandatory criteria, and the sector-specific and optional criteria for the identification of suspicious transactions (leading representatives from the subjected entities to sometimes believe that they do not have to report suspicions which do not fulfil the criteria) have already been pointed out.

Effectiveness and efficiency

Applying Recommendation 13

921. The clear reluctance of a significant part of the DNFBPs in fully implementing the internationally accepted AML/CTF standards as transposed in Lithuania, the need to reconsider the exceptions for the legal profession and the need to raise awareness among the DNFBPs were noted in the 3rd round MER.

922. Taking into consideration the aforementioned discussion in regard to the reporting procedures and requirements for the DNFBPs, the absence of reporting by the vast majority of DNFBPs with the exception of notaries and casinos confirms that the situation has not fundamentally evolved in the last 5 years. No transactions above thresholds have even been recorded, which is definitely surprising in the case of certain types of entities.

923. During the interviews with DNFBP representatives, it was clear that the already limited reporting awareness was mostly related to the threshold transaction and not to the concept of suspicious or unusual transactions. Moreover it is not clear whether reporting by other DNFBPs (apart from notaries) is made obligatory through electronic means. During the interviews with some of the DNFBPs, it was also clear the awareness of suspension and reporting duties in respect of certain transactions was very limited. The evaluators also observed the phenomenon already mentioned under R.13 for financial institutions, to delegate the responsibility for reporting on someone else (banks which are involved in the final stage of transaction settlements); this shows once again, the potential weaknesses also in other area of supervision, internal procedures, awareness-raising etc.

924. It was also disappointing to note that basic technical issues had not been addressed. For instance since internet casinos are not covered under the AML Law and the law is narrower in scope in relation to real estate agents, the obligations of the AML Law are not being applied by these entities and therefore such entities are not in a position to report suspicious transactions to the FCIS. Furthermore, while the reporting by legal professionals to the Lithuanian Bar Association, instead of the FCIS, is acceptable, a lack of a formal written agreement between the two supervisory authorities outlining their respective responsibilities might result in a lack of co-operation and co-ordination between the two entities.

Applying Recommendation 14

925. The evaluators did not come across any obstacles to the effective and efficient implementation of this Recommendation.

Applying Recommendation 15

926. Lawyers and assistant lawyers, although falling under the scope of the AML Law, are exempt from establishing appropriate internal control procedures concerning the identification of customers and beneficial owners, submission of reports and information to the FCIS, safekeeping of information as specified in this law, risk assessment, risk management, management of enforcement of requirements and communication, as well as training of employees. The legal professionals are further exempt in appointing an employee at management level responsible for organising the implementation of measures for the prevention of ML/FT and to liaise with the FCIS.

927. This derogation of the AML Law to advocates and their assistants can result in an excellent vehicle for money launderers seeking to establish companies in Lithuania in order to hide behind the professional secrecy laws.

928. Although the guidelines of the respective sectors provide the power to compliance officers to have full and unhindered timely access to any relevant internal information, in the case of DNFBPs the evaluators are not certain as to the awareness of the compliance officers concerning their powers and duties in practice.

Applying Recommendation 21

929. The evaluators did not detect any obstacles to the effective and efficient implementation of this Recommendation.

4.2.2 Recommendations and comments

Applying Recommendation 13

930. As already noted for the financial sector, the reporting system should be reviewed, made clearer, more consistent and more user-friendly and it should clearly reflect the FATF standards as regards the suspicion that assets are proceeds from a criminal activity or meant for FT in the meaning of those standards.

931. Lithuanian supervisors need to take urgent measures to ensure the reporting system becomes effective as regards the various categories of DNFBPs.

932. The Lithuanian authorities should amend the AML Law in order to include internet casinos as well as widen the scope of the law in relation to real estate agents so that they become subject to the AML Law irrespective of the amount of the property and whether or not the property is paid in cash.

933. A formal written agreement between the FCIS and the Lithuanian Bar Association should be drawn up in order to outline their respective responsibilities.

Applying Recommendation 14

934. It is recommended that the protection offered by the AML Law against possible consequences of reporting or disclosure of information to the FCIS, is extended to protect also directors and officers of DNFBPs from any civil or criminal liability when they report and disclose information in good faith to the authorities.

Applying Recommendation 15

935. The Lithuanian authorities should amend the AML Law to remove the exemptions provided to advocates and advocate's assistants in relation to internal control procedures, training of employees and the appointing of an employee at management level responsible for organising the implementation of measures for the prevention of ML/FT. This should minimise the possibility of the legal profession being utilised for ML/FT purposes.

936. Although the guidelines of the respective sectors outline the powers of the compliance officer to have full and unhindered timely access to any relevant internal information, it is suggested that this provision is also included in the AML Law for consistency purposes.

937. The Lithuanian authorities should insert provisions in the AML Law requiring DNFBPs to maintain an adequately resourced and independent audit function to test compliance of procedures, policies and controls.

938. The provisions of the AML Law should specify that compliance officers are to be able to act independently and to report to senior management above the compliance officer's next reporting level or the board of directors.

Applying Recommendation 21

939. The evaluators consider the recommendation to be fully observed.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	***Applying Recommendation 13*** • As for the financial sector, the reporting system for DNFBPs is unnecessarily complex; it lacks clarity and consistency and it does not reflect the basic requirements of the standards (that funds are proceeds of crime etc.); • internet casinos do not fall under the scope of the AML Law; • the AML Law is excessively narrow in scope for real estate agents; • there is no appropriate form of co-operation between the FCIS and the Lithuanian Bar Association (given that STRs are sent by legal professionals to the Lithuanian Bar Association); • clear lack of effectiveness and uneven level of awareness across the different sectors regarding reporting obligations. ***Applying Recommendation 15*** • Lawyers and assistant lawyers are exempt from having internal control procedures in place, providing training to employees and appointing an employee to implement the ML/FT preventive measures; • no requirement for an independent audit functions to test compliance of procedures, policies and controls. • no requirement for compliance officers are to be able to act independently and to report to senior management. ***Applying Recommendation 21*** • (-)

4.3 Regulation, supervision and monitoring (R. 24)

4.3.1 Description and analysis

Recommendation 24 (rated PC in the 3rd round report)

940. Article 2 of the AML Law specifically outlines, under the definition of 'financial institutions' and 'other entities', the financial and non-financial institutions subject to AML/CFT supervision which for the most part includes the DNFBPs listed in the FATF Recommendations.

941. Moreover Article 3 of the AML Law lists a number of competent authorities or self-regulatory organisations entrusted with the responsibility to prevent money laundering and/or terrorist financing, whereas Article 4 of the AML Law further outlines which competent authority or self-regulatory organisation is responsible for the supervision of the different DNFBPs and their responsibilities as supervisory authorities or self-regulatory organisations.

942. Apart from the competent authorities or self-regulatory organisations mentioned in Article 3 of the AML Law, the FCIS is also responsible to supervise the activities of all DNFBPs in relation to the implementation of ML/FT prevention measures as well as provide such entities with methodological assistance, as stated in Article 4(9) of the AML Law. The FCIS is in fact the authority ultimately responsible for ensuring compliance of the AML/CFT measures by supervised entities.

943. In practice however the FCIS relies fully on the supervisory work carried out by the competent authorities or self-regulatory organisations due to lack of resources. Consequently, the FCIS does not have control of the type and frequency of the compliance examinations carried out by the competent authorities or self-regulatory organisations although it is notified of any AML/CFT breaches identified during such visits.

944. If important issues of non-compliance by DNFBPs are identified by the FCIS, the evaluators were informed that the FCIS can decide to conduct a focused AML/CFT examination itself on such DNFBPs. However focused visits were carried out sparingly by the FCIS during the past years.

945. Supervisory authorities are empowered by their respective laws to impose sanctions. However such sanctions can only be applied in relation to prudential measures with respect to the provisions of the relevant laws. No supervisory authority, not even the FCIS, is empowered to impose sanctions for breaches of non-compliance with the AML Law. The FCIS is only enabled to initiate proceedings with the Court as described under Recommendation 29.

946. The impossibility for the FCIS, as the main supervisory authority on AML/CFT, to impose administrative sanctions in cases of non-compliance with the AML Law and the requirement by the Court to impose such sanctions, might result in a hindrance in the actual imposition of sanctions.

Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

947. Casinos, referred to as 'companies organising gaming', fall under the scope of the AML Law under the definition of 'other entities' in Article 2 of the AML Law. The competent authority entrusted with the responsibility of AML/CFT supervision of casinos rests with the Gaming Control Authority which is also the authority responsible to licence and regulate the activities of casinos and other gaming entities in Lithuania, as stated in Article 4 of the Gaming Law. In order to conduct gaming in Lithuania, a public or private limited liability company is to be established as per the requirements of the Law on Companies.

948. Internet casinos are however not captured as licensable entities under the Gaming Law. In this regard the Gaming Control Authority informed the evaluators that the operation of internet casinos is prohibited in Lithuania. Nevertheless, at the time of the on-site examination, the evaluators noted that websites for 'online casinos' were set up in Lithuania. The real situation of internet casinos remains unclear to the evaluators (such as location of the servers, applicable legal provisions, supervision etc).

949. Prior to issuing a licence, the Gaming Control Authority must receive the conclusions of the State Security Department, the FCIS and the Police Department as per Article 4(2) of the Gaming Law. Such conclusions emanate from checks carried out on the conformity to the requirements of certain provisions of the Gaming Law [mainly Articles 10(4); 10(11); 10(14) and 11(1)] as well as checks carried out on the source of funds used for obtaining the registered shares.

950. In order to ensure that the Gaming Control Authority is kept informed about any changes in the shareholding structure of the gaming companies, Article 10(12) of the Gaming Law states that any change of shareholders should be notified to the Gaming Control Authority within 30 days of such change. Moreover, the Law on Companies states that companies are obliged to inform the Register of Legal Persons whenever a change of ownership occurs.

951. As at the end of 2011 there were 12 gaming companies operating in Lithuania. Two gaming companies have operated only in casinos while a further two companies have operated both in casinos and in gaming machine halls.

952. Article 4(3) of the AML Law provides that the Gaming Control Authority shall adopt instructions intended for gaming companies aimed at preventing ML/FT, supervise the activities of these companies related to the implementation of ML/FT prevention measures, and give advice to companies on issues relating to the implementation of the mentioned instructions.

953. In fact, the AML Law is supplemented by guidelines issued by the then State Gaming Control Commission in December 2008 for gaming companies, entitled 'Instructions for Gaming Companies Aimed at Prevention of Money Laundering and/or Terrorist Financing'.

954. Given that the gaming sector has two supervisors in relation to ML/FT prevention, the Gaming Control Authority and the FCIS, Article 4(12) of the AML Law requires the Gaming Control Authority to co-operate with the FCIS according to the mutually established procedure and exchange information on the results of the inspections carried out in relation to the prevention of ML/FT on entities falling within their remit. In this regard, the FCIS and the Gaming Control Authority have entered into an agreement in June 2009 outlining their respective responsibilities.

955. The Gaming Control Authority claims that an AML/CFT component is included when on-site examinations are conducted on casinos, and whenever a breach of the AML/CFT provisions is identified, the Gaming Control Authority informs the FCIS of such breaches. When questioned, the FCIS was not able to inform the evaluators about the major AML/CFT violations of casinos identified during the on-site examinations by the Gaming Control Authority and also stated that no violations had been identified.

956. During the period 2007 – 2011 the State Gaming Authority carried out the following on-site examinations on gaming operators which included an element of AML/CFT supervision:

Year	Number of Inspections on Casinos
2007	6
2008	1
2009	6
2010	11
2011	2

957. Based on discussions held with a casino operator, the evaluators were informed that although the Gaming Control Authority conducts on-site examinations on casinos, during the examination no aspects of AML/CFT is examined except for ensuring that a register is retained of persons who either exchange cash for tokens or place a stake or collect a winning in excess of LTL 3,500 (approximately EUR 1 000), as per Article 20 of the Gaming Law. Such register is then only provided to the FCIS if requested.

958. With regards to the register to be retained by casinos, a discrepancy exists between the Gaming Law and the AML Law. Whereas the Gaming Law requires casinos to keep a register for exchanges in excess of LTL 3,500, the AML Law requires verification to be carried out irrespective of the amount. Therefore a register would, in this case, be retained for exchanges of LTL 1 upwards. Moreover, the Gaming Control Authority informed the evaluators that some casinos are actually applying the AML Law in this regard whereas the FCIS was convinced the Gaming Law is being applied in this case. The casino operator informed the evaluators that in practice a register is retained for amounts in excess of LTL 3,500. The casino operator also explained that a separate register is retained for exchanges over EUR 15 000.

959. The FCIS further informed the evaluation team that on-site examinations are not being carried out by the FCIS on casinos since the discrepancy between the two laws results in a violation of the AML Law and such violation cannot be taken to Court for sanctioning due to the inconsistencies in the legislations.

960. In view of the above, the evaluators express their concern that the supervisory authorities are not aware as to what is being done in practice and therefore the concerns of the evaluators are further increased as to what AML/CFT checks are actually being carried out during on-site examinations on casinos. Moreover once the discrepancy was identified, the supervisory authorities should have taken remedial steps to eliminate such discrepancy.

961. The Gaming Control Authority did however provide the evaluators with AML/CFT breaches identified by the Gaming Control Authority following the on-site examinations carried out, together with information on the type of breach and whether information on the breach was forwarded to the FCIS.

962. The following table provides the number of casinos identified as having AML/CFT breaches following an on-site examination carried out by the Gaming Control Authority for the period 2007 – 2011. Information on such breaches were forwarded to the FCIS:

Years	Number of Gaming Operators	Number of Inspections on Gaming Operators	Breaches identified and sent to the FCIS
2007	15	19	4
2008	16	82	1
2009	16	56	3
2010	12	32	1
2011	12	25	2

963. Only 7 AML/CFT sanctions were imposed by the Court on casinos and these were imposed in the year 2009. The sanctions on these 7 casinos were imposed for lack of customer due diligence measures. The Lithuanian authorities were not forthcoming to provide information on the sanction amounts imposed by the Court in relation to each sanction.

Monitoring and Enforcement Systems for Other DNFBPS-s (c. 24.2 & 24.2.1)

Auditing companies

964. Auditors fall under the scope of the AML Law under the definition of 'other entities' in Article 2 of the AML Law. The self-regulatory organisation entrusted with the responsibility of AML/CFT

supervision of auditors rests with the Chamber of Auditors. Auditors may commence their auditing activities only after having been entered in the list of audit firms following the decision of the Chamber of Auditors as per Article 17 of the Law on Audit. As at the time of the on-site examination there were 407 auditors listed as audit firms.

965. Article 4(6) of the AML Law provides that the Chamber of Auditors shall approve instructions intended for auditors aimed at preventing ML/FT, supervise the activities of auditors related to the implementation of ML/FT prevention measures and give advice to auditors on the issues relating to the implementation of the mentioned instructions.

966. In fact, the AML Law is supplemented by guidelines issued by the Chamber of Auditors in October 2009.

967. Given that this sector has two supervisors in relation to ML/FT prevention, the Chamber of Auditors and the FCIS, Article 4(12) of the AML Law requires the Chamber of Auditors to co-operate with the FCIS according to the mutually established procedure and exchange information on the results of the inspections carried out in relation to the prevention of ML/FT on entities falling within their remit. In this regard, the FCIS and the Chamber of Auditors have entered into an agreement in September 2009 outlining their respective responsibilities.

968. The evaluators were informed by the Chamber of Auditors that control reviews are carried out every 3 years on audit companies which carry out audit on public interest companies and every 6 years on the other type of auditors. If any deficiencies are found during a quality review, another review will be carried out within 3 years. The Chamber of Auditors stated that such control reviews also include an element of AML/CFT.

969. The following are the number of examinations carried out on auditors and audit companies during the period 2008 – 2011:

Year	Number of auditors	Number of audit companies
2011	21	24
2010	16	65
2009	30	54
2008	30	42

970. Following the examinations carried out by the Chamber of Auditors, auditors were not found in breach of the AML Law and therefore no sanctions on auditors were imposed. The Chamber of Auditors confirmed that if any AML/CFT violations are identified, the FCIS will be informed accordingly.

Lawyers

971. Lawyers and assistant lawyers fall under the definition of 'other entities' in Article 2 of the AML Law. The self-regulatory organisation entrusted with the responsibility of AML/CFT supervision of lawyers and their assistants rests with the Lithuanian Bar Association. All lawyers are to join the Lithuanian Bar Association as per Article 56(3) of the Bar Law and as at the time of the on-site examination, there were 1.799 such lawyers registered with the Association. In

Lithuania, legal advice can be provided by anyone, not just by lawyers, however only the latter can practice in Court.

972. Article 4(4) of the AML Law provides that the Lithuanian Bar Association shall approve instructions intended for advocates and advocate's assistants aimed at preventing ML/FT, supervise the activities of advocates and advocate's assistants related to the implementation of ML/FT prevention measures and give advice to lawyers and assistant lawyers on the issues relating to the implementation of the mentioned instructions.

973. In fact, the AML Law is supplemented by guidelines issued by the Lithuanian Bar Association in July 2009 for lawyers and assistant lawyers, entitled 'Rules for the Prevention of Money Laundering and Terrorist Financing'.

974. Given that this sector has two supervisors in relation to ML/FT prevention, the Lithuanian Bar Association and the FCIS, Article 4(12) of the AML Law requires the Lithuanian Bar Association to co-operate with the FCIS according to the mutually established procedure and exchange information on the results of the inspections carried out in relation to the prevention of ML/FT on entities falling within their remit. However the Lithuanian Bar Association and the FCIS have not entered into an agreement in order to outline their respective responsibilities.

975. The evaluators were informed that the Lithuanian Bar Association has not carried out any on-site examinations on advocates and their assistants and the Bar Law does not provide them with the right to carry out such examinations. The Lithuanian Bar Association also informed the evaluators that the FCIS is not permitted to conduct on-site examinations on advocates or advocate's assistants in view of the confidentiality issues. In this regard Article 7(1)(1) of the AML Law states that the FCIS can obtain data and documents on monetary operations and transactions necessary for the performance of its functions, except from advocates and advocate's assistants. This is in contradiction to Article 4(9) of the same law which provides the powers to the FCIS to supervise activities of all DNFBPs.

976. No violations of AML/CFT measures have been identified in this sector and therefore no sanctions were imposed.

Notaries

977. Notaries and other persons entitled to perform notarial actions, as well, fall under the definition of 'other entities' in Article 2 of the AML Law. The self-regulatory organisation entrusted with the responsibility of AML/CFT supervision of notaries is the Chamber of Notaries. All notaries are to join the Chamber as per Article 8 of the Law on the Notarial Profession. As at the time of the on-site examination there were 266 notaries registered with the Chamber of Notaries.

Article 4(5) of the AML Law provides that the Chamber of Notaries shall approve instructions intended for notaries aimed at preventing ML/FT, supervise the activities of notaries related to the implementation of ML/FT prevention measures and give advice to notaries on the issues relating to the implementation of the mentioned instructions.

978. In fact, the AML Law is supplemented by guidelines issued by the Chamber of Notaries in June 2009 for notaries, entitled 'Instructions for Notaries to Prevent Money Laundering and (or) Terrorist Financing'.

979. Given that this sector has two supervisors in relation to ML/FT prevention, the Chamber of Notaries and the FCIS, Article 4(12) of the AML Law requires the Chamber of Notaries to co-operate with the FCIS according to the mutually established procedure and exchange information on the results of the inspections carried out in relation to the prevention of ML/FT on entities falling within their remit. In this regard, the FCIS and the Chamber of Notaries have entered into an agreement in February 2010 outlining their respective responsibilities.

980. The evaluators were informed by the Chamber of Notaries that the FCIS carries out on-site examinations on notaries with the Chamber notified of the FCIS's findings. The last on-site examinations carried out by the FCIS on notaries dates back to 2010 when 17 examinations were carried out.

981. Out of the 17 notaries inspected in 2010, 11 notaries were sanctioned for not having appointed a person responsible for AML/CFT, for not having reported transactions over EUR 15 000 and for not having internal rules. The Lithuanian authorities were not forthcoming to provide information on the sanction amounts imposed by the Court in relation to each sanction.

Dealers in precious metals and precious stones

982. Persons trading in precious metals and precious stones fall under the scope of the AML Law under the definition of 'other entities' in Article 2 of the AML Law. The competent authority entrusted with the responsibility of AML/CFT supervision of persons trading in precious metals and precious stones rests with the Lithuanian Assay Office. As at the time of the on-site examination there were 1.150 licensed dealers.

983. Article 4(8) of the AML Law provides that the Lithuanian Assay Office shall approve instructions intended for persons trading in precious stones and/or precious metals aimed at preventing ML/FT, supervise the activities of these persons related to the implementation of ML/FT prevention measures and give advice to such persons on the issues relating to the implementation of the mentioned instructions.

984. In fact, the AML Law is supplemented by guidelines issued by the Lithuanian Assay Office in May 2009 for persons trading in precious metals and precious stones.

985. Given that this sector has two supervisors in relation to ML/FT prevention, the Lithuanian Assay Office and the FCIS, Article 4(12) of the AML Law requires the Lithuanian Assay Office to co-operate with the FCIS according to the mutually established procedure and exchange information on the results of the inspections carried out in relation to the prevention of ML/FT on entities falling within their remit. In this regard, the FCIS and the Lithuanian Assay Office have entered into an agreement in September 2009 outlining their respective responsibilities.

986. The evaluators were informed by the operators in this sector that upon obtaining a licence to be able to trade in precious metals and precious stones, the FCIS is to be notified of this by the licensed entity. Furthermore the evaluators were informed that although the Lithuanian Assay Office carries out examinations at the premises of the operators in this sector, AML/CFT checks are carried out by the FCIS. The FCIS carried out the last examinations in 2011 when 8 real estate agents, dealers in precious metals and precious stones, persons trading in movable cultural properties and/or antiques or other property over a value of EUR 15 000 in cash were inspected.

987. No AML/CFT sanctions were imposed on dealers in precious metals and precious stones.

Other DNFBPs

Bailiffs:

988. Bailiffs or persons entitled to perform the actions of bailiffs also fall under the definition of 'other entities' in Article 2 of the AML Law. The self-regulatory organisation entrusted with the responsibility of AML/CFT supervision of bailiffs rests with the Chamber of Bailiffs.

989. Article 4(7) of the AML Law provides that the Chamber of Bailiffs shall approve instructions intended for bailiffs or persons authorised to perform the actions of bailiffs aimed at preventing ML/FT, supervise the activities of these persons related to the implementation of ML/FT prevention measures and give advice to such persons on the issues relating to the implementation of the mentioned instructions.

990. In fact, the AML Law is supplemented by guidelines issued by the Chamber of Bailiffs in June 2009 for bailiffs or persons authorised to perform the actions of bailiffs.

991. Given that this sector has two supervisors in relation to ML/FT prevention, the Chamber of Bailiffs and the FCIS, Article 4(12) of the AML Law requires the Chamber of Bailiffs to co-operate with the FCIS according to the mutually established procedure and exchange information on the results of the inspections carried out in relation to the prevention of ML/FT on entities falling within their remit. In this regard, the FCIS and the Chamber of Bailiffs have entered into an agreement in July 2009 outlining their respective responsibilities.

992. Following the visit the evaluators were informed that the FCIS carried out 6 examinations on bailiffs or persons authorised to perform the actions of bailiffs in 2011 while during the year 2012, a total of 57 bailiffs were examined. No AML/CFT sanctions were imposed on such persons.

Persons trading in movable cultural properties and/or antiques:

993. Persons trading in movable cultural properties and/or antiques also fall under the definition of 'other entities' in Article 2 of the AML Law. The self-regulatory organisation entrusted with the responsibility of AML/CFT supervision of these persons rests with the Department of Culture Heritage Protection under the Ministry of Culture of Lithuania.

994. Article 4(2) of the AML Law provides that the Department of Culture Heritage Protection shall approve instructions intended persons trading in movable cultural properties and/or antiques aimed at preventing ML/FT, supervise the activities of these entities related to the implementation of ML/FT prevention measures and give advice to these entities on the issues relating to the implementation of the mentioned instructions.

995. In fact, the AML Law is supplemented by guidelines issued by the Department of Culture Heritage Protection in February 2010 for persons trading in movable cultural properties and/or antiques.

996. Given that this sector has two supervisors in relation to ML/FT prevention, the Department of Culture Heritage Protection and the FCIS, Article 4(12) of the AML Law requires the Chamber of Bailiffs to co-operate with the FCIS according to the mutually established procedure and exchange information on the results of the inspections carried out in relation to the prevention of ML/FT on

entities falling within their remit. In this regard, the FCIS and the Department of Culture Heritage Protection have entered into an agreement in October 2009 outlining their respective responsibilities.

997. In 2011 the FCIS carried out examinations on 8 real estate agents, dealers in precious metals and precious stones, persons trading in movable cultural properties and/or antiques or other property over a value of EUR 15 000 in cash.

998. No AML/CFT sanctions were imposed on persons trading in movable cultural properties and/or antiques.

Providers of accounting services and tax advising
Providers of the services of trust or company formation or administration
Intermediation in real estate transactions
Dealers in property over a value of EUR 15 000 in cash

999. Providers of accounting services and tax advising, providers of the services of trust or company formation or administration, intermediation in real estate transactions and dealers in property over a value of EUR 15 000 in cash all fall under the scope of the AML Law under the definition of 'other entities' in Article 2 of the AML Law.

1000. In relation to these DNFBPs, it is the FCIS which shall approve instructions intended for these entities aimed at ML/FT prevention, supervise the activities of these entities related to ML/FT prevention and provide them with methodological assistance as per Article 4(9) of the AML Law.

1001. In fact, the AML Law is supplemented by two guidelines issued by the FCIS in January 2009 for accounting undertakings or undertakings providing tax advice services and for persons engaged in economic-commercial activities related to trade in real estate, other property the value of which is in excess of EUR 15 000 or an equivalent sum in a foreign currency when payment is made in cash. The evaluators were informed that trusts, although incorporated in the AML/CFT legislation, are not set up in Lithuania and company formation entities are not required to be licensed or regulated. On 1 June 2012, after the on-site visit, the FCIS approved guidelines for company service providers.

1002. In view of the above, various professionals appear to be involved in the provision of company formation services, including accountants and advocates, although the number of businesses and self-employed professionals offering company formation services are unknown in Lithuania. Furthermore it appears that the AML/CFT requirements are unknown to these professionals. In this regard, during an ad hoc meeting held by the evaluators with a company formation entity, it was evident that the professional was unaware of his obligations under the AML/CFT legislation which could expose the professional to a higher risk of ML/FT. Since the number of professionals offering company formation services have not be identified by the FCIS, supervision on such entities cannot be conducted. During a meeting with another entity providing incorporation, start-ups, accounting, directorship and possibly nominee services, it was confirmed that the market is somewhat unclear and that licensing of the profession would bring some clarity and discipline in the business[22].

[22] After the evaluation visit, the FCIS carried out examinations on some company service providers.

1003. The following on-site examinations were conducted by the FCIS during the period 2009 – 2011 (these are new figures provided after the visit, which differ significantly from those at the time of the visit):

DNFBPs	2009	2010	2011
Casinos	8	-	-
Real estate agents, dealers in precious metals and precious stones, persons trading in movable cultural properties and/or antiques or other property over a value of EUR 15 000	13	8	8
Notaries	-	17	-
Car Dealers	16	-	3
TOTAL	**37**	**25**	**11**

1004. As a result of on-site examinations carried out by the FCIS, the following AML/CFT sanctions were imposed during the period 2009 – 2011:

DNFBPs	2009	2010	2011
Casinos	7	-	-
Car Dealers	8	-	2
Notaries	-	11	-
Real Estate Companies	-	-	9
TOTAL	**15**	**11**	**11**

1005. The above statistics reveals that most DNFBPs examined, such as casinos, notaries and real estate companies, were all found to have violations in relation to the AML/CFT legislation although such violations were mainly in relation to lack of internal rules. The FCIS informed the evaluators that the car dealers examined were also unaware of their AML/CFT obligations. The Lithuanian authorities were not forthcoming to provide information on the sanction amounts imposed by the Court in relation to each sanction.

Adequacy of resources supervisory authorities for DNFBPs (R. 30)

1006. In general the supervisory authorities and self-regulatory organisations mentioned above seem to be adequately resourced in order to allow them to carry out their legal obligations within the respective sectors.

1007. Since not all the posts at the FCIS have been filled, the current staff members of the FCIS are required to divide their work on the analysis of STRs, on the supervision of the financial and non-financial sectors as well as provide training to the industry. More time is allocated on analysis than on the supervisory function of the FCIS resulting in a low number of on-site examinations conducted by the FCIS on the financial and non-financial sectors. As indicated earlier in this report, the Lithuanian authorities formally disagree with the approach taken by the evaluators when considering that the core functions of and FIU are performed by the MLPD and not by the FCIS as a whole.

Effectiveness and efficiency (R. 24)

1008. Lithuania has AML/CFT legislation in place to regulate DNFBPs and a number of competent authorities/self-regulatory organisations have been entrusted with the responsibility to prevent money laundering and/or terrorist financing in relation to their sphere of competence.

1009. The fact that different authorities/self-regulatory organisations have been entrusted with the obligation to supervise DNFBPs, also in relation to the aspect of AML/CFT, is a good measure towards efficient use of resources. Although the FCIS has delegated its AML/CFT supervisory responsibilities to other supervisory authorities, the latter are not always aware of their supervisory function as AML/CFT supervisors or are unable to carry out this function due to legal limitations, as in the case of advocates and advocate's assistants.

1010. The lack of clear commitment by all supervisory authorities to this supervisory work is further illustrated by the low number of violations in relation to the AML/CFT requirements identified in recent years, and the subsequent low number of sanctions imposed. On the whole, the Lithuanian supervisory authorities need to have a more proactive role in this respect.

1011. Moreover the contradictions present in the legislation, as is the case for the registration of cash in casinos and the powers to supervise advocates and advocate's assistants by the supervisory authorities, hinders the effective implementation of the legislations and results in the inability to carry out proper supervision on these sectors.

1012. In relation to professionals offering company formation services, the Lithuanian authorities are not in a position to supervise such entities in view of the fact that the number of businesses and self-employed professionals offering company formation services is not totally known in Lithuania. This is particularly worrying. Representatives of the Centre of Registers have apparently pointed out that they are increasingly confronted with businesses offering company service providers which do establish companies and sell their shares. The Centre had reportedly raised this as a serious issue.

1013. Internet casinos are not captured as licensable entities under the AML Law.

1014. The evaluators consider the development of the sector specific guidelines as a positive development that should further contribute to enhance the awareness of the sectors.

1015. The impossibility for the FCIS, as the main supervisory authority on AML/CFT, to impose administrative sanctions in cases of non-compliance with AML/CFT measures goes against the Recommendations. Moreover, the requirement by the Court to impose such sanctions might result in a hindrance in the actual imposition of sanctions and might explain the low number of sanctions imposed over the years.

1016. Overall, the evaluators are disappointed by the situation after so many years of AML/CFT policies. It was striking to see that the supervisors acknowledge the existence of risks in certain sectors (e.g. gaming, real estate) but that basic AML/CFT steps are hindered by various factors. It is surprising that the supervisors do not know the market situation in relation to all the various sectors of activities (number of professionals operating – e.g. real estate intermediaries -, type of services offered e.g. company service providers, lawyers etc.).

4.3.2 Recommendations and comments

Recommendation 24

1017. Although the FCIS, as the ultimate supervisor of AML/CFT, places full reliance on the supervisory authorities or self-regulatory organisations to carry out AML/CFT supervision, it is recommended that the FCIS evaluates the findings identified by these supervisory authorities or self-regulatory organisations during visits in order for the FCIS to be able to understand the major violations of AML/CFT measures present in Lithuania in relation to DNFBPs, as well as understand instances were a focused visit would be required.

1018. The FCIS should also ensure that supervisory authorities and self-regulatory organisations entrusted with supervisory functions are actually aware of their supervisory function and that the supervisory function can be carried out without any legal limitations, as in the case of advocates and advocate's assistants. Moreover it is recommended that the FCIS draws up a plan of action to ascertain that examinations are carried out in a consistent manner on all the DNFBP sectors. This will aid the supervisory authorities in determining which sectors lack awareness of their AML/CFT obligations, reduce the risk of ML/FT currently present within these sectors and direct training and awareness sessions accordingly.

1019. The evaluators also recommend that an analysis of risks (global or sector-specific) is carried out by the supervisory authorities to assist them in focusing supervisory efforts on areas identified as problematic due to higher risks.

1020. Moreover, the contradictions present in the legislation, as is the case for the registration of cash in casinos and the powers to supervise advocates and advocate's assistants by the supervisory authorities, need to be addressed immediately in order to enable the supervisory authorities to monitor and supervise these sectors as required under the AML Law.

1021. The FCIS and the Lithuanian Bar Association should enter into an agreement to outline their respective responsibilities.

1022. In relation to professionals offering company formation services, the Lithuanian authorities should consider the urgent need to clarify the situation and to effectively subject the professionals concerned to appropriate registration (or even licensing) and effective AML/CFT compliance.

1023. Internet casinos are not captured as licensable entities under the AML Law. The Lithuanian authorities should ensure that these are captured under the legislation.

1024. The Lithuanian authorities should consider revising their position in order to provide the adequate power to the FCIS, as the main supervisory authority on AML/CFT, to impose sanctions, fines and disciplinary actions in cases of non-compliance with AML/CFT measures.

4.3.3 Compliance with Recommendation 24

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	• The importance of certain activities or professions (such as company services providers) is unknown and – in the absence of any sector-specific regulations and licensing/authorisation – they are strongly exposed to risks of ML/FT; • there are certain legal limitations for supervisory authorities and self-regulatory organisations to carry out their supervisory function, as in the case of lawyers and assistant lawyers; • internet casinos are not captured as licensable entities under the AML Law; • effectiveness issue: - besides the low figures on controls, the FCIS is not aware of the importance of certain activities such as company service providers present in Lithuania; - several supervisory authorities and self-regulatory organisations entrusted with supervisory functions are not fully aware of their supervisory function; - weak or no supervision at all, applied in respect of all DNFBP sectors; - no risk analysis carried out by supervisory authorities to identify the risk areas within the DNFBP sectors.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

Recommendation 33 (rated PC in the 3rd round evaluation report)

5.1.1 Description and analysis

Summary of reasons for the rating in the MER of 2006

1025. Lithuania was rated partially compliant in respect of R.33 in the third round report on account of the absence of information on ownership and shareholding entered into the register of legal entities.

General

1026. The Centre of Registers (http://www.registrucentras.lt/index_en.php) is a central entity where information on all legal persons is centralised for the whole country, and entered into a register. The Register of Legal Persons keeps basic data and documents, which are listed in Art. 2.66 of Civil Code, and additional data and documents listed in different laws regulating separate legal forms of legal persons (Art. 12 of Company Law, Art. 6 of Partnerships Law, Art. 5 of Individual Enterprise Law and etc.). The scope of the data registered on companies was determined taking into account the provisions of the First Council Directive 68/151/EEC.

1027. The Register keeps this basic data and information about all legal persons:

- data concerning the identification of the legal person: code of a legal person; name; legal form; seat (address), dates of registration and withdrawal from the Register;
- data concerning persons involved in activities of a legal entity: bodies of a legal person; data on members of management bodies and restrictions of their activities, data on representatives; quantitative representation – data on persons who act jointly; data on the procurator; data on administrator in bankruptcy; data on a liquidator; data on an administrator of a legal person;
- data on activities of legal persons: types of activities and restrictions of activities, the name of institution which made a decision to restrict activity of legal person and the date of restriction;
- data on branches and representative offices: code, name, seat (address), term of activities, type of activities, data on members of management bodies and restrictions of their activities.

1028. Companies are also required to submit the following additional data to the Register: data on members of supervisory board as well as data on shareholders.

1029. Pursuant to Part 2 Art. 2.64 and Part 4 of Art 2.66 of the Civil Code, companies have to disclose:

- the statutes (regulations) and every subsequent amendment (it has to be disclosed within 30 days after approved amendments),
- the Act of incorporation,
- balance sheet for each year,
- profit (loss) account,
- cash flow account,
- audit report,
- any decision of shareholders to increase, decrease capital or appoint new members of management bodies and other documents.

1030. Before 2009 the information regarding the shareholders of private limited liability companies was provided together with minutes of shareholders meeting (the Register received the list of shareholders who participated in the meeting).

1031. On 15 December 2009, the Parliament adopted the Law amending Articles 2, 4, 7, 10, 11, 12, 14, 17, 18, 26, 26(1), 32, 34, 35, 37, 41, 45, 47, 48, 53, 57, 62, 63, 65, 72, 73, 74, 75, 77, 78 and supplementing Article 411 of the Law on Companies. This law (with some exceptions) entered into force on 1 March 2010. According to the new provisions and Article 411 of the Law on Companies, private limited liability companies are now required to draw the list of their shareholders' and to submit it to the Register (within 5 days from the date of the drawing up of the list). Whenever data included in the shareholders' list changes, the whole new list has to be submitted to the Register of Legal Persons (within the same deadline as above).

1032. Managers of private limited liability companies are responsible for drawing up the shareholders' list and submitting it to the Register. In case of non-compliance with the terms set by the Register or of submitting a list which does not meet the requirements of the aforementioned Law (e.g. submitting a list which contains incorrect data), a penalty between 100 LTL and 5000 LTL (i.e. between 29 and EUR 1 450) can be applied in accordance with Article 172 (2) of the Code of Administrative Law Violations.

1033. The particulars of the members of certain legal persons (e.g. the owner of an individual enterprise) have to be submitted to the Register as well.

Measures to prevent the unlawful use of legal persons (C.33.1); Possibility for competent authorities to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons (C.33.2)

1034. At the time of the visit, there was a total of 195 000 entities recorded in the Register (which is almost 30 000 more than at the time of the 3rd round visit). The register also gives an indication of companies engaged in a liquidation procedure and at the time of the visit there were more than 23 000 of such entities.

1035. It was indicated that since registration can now be done on-line and in maximum 3 working days (sometimes it is much faster), the number is increasing rapidly and there would be about 10 000 new entities created every year. According to specific data requested by the evaluators, and provided by the Lithuanian authorities, there are 5 392 foreigners (both legal and natural persons) that own companies as single shareholders, 560 foreign natural persons who own individual companies, 1 392 foreign legal personas which are owners of branches and

representative offices. This data seems to confirm the reputation of Lithuania (as a non-off-shore financial centre).

1036. The above register is one of the examples of relevant positive measures mentioned in the FATF Methodology. It should be stressed that the Register is accessible on-line publicly and for free and provides in that context all the basic details on companies: code, name, legal form and status (reorganisation, bankruptcy, liquidation etc.) and possible restrictions of activity. All other information can be obtained by any person for a limited administrative fee (copy of documents etc.). Investigative bodies thus have at their disposal a useful tool.

1037. The evaluators took note of further positive features. For instance, there are no bearer shares in Lithuania (Article 40 (2) of the Company Law provides the obligation to issue only shares in nominative and registered form) nor certain forms of entities which could be problematic like silent partnerships, according to the representatives of the Register.

1038. The evaluators could not find out whether measures were in place to limit the phenomenon of shell companies. It was indicated that there is no obligation for a newly created entity to start its activity within a certain deadline, nor for an entity to conduct activities in practice. No information was available on the importance of possible "dormant" or "shadow" companies. The liquidation procedures are said to take a long time. After the visit, the Lithuanian authorities indicated that draft legislation was now in Parliament with a view to simplifying and speeding-up the procedure for liquidating and deregistering companies. The current situation characterised by lengthy proceedings, was described as problematic.

1039. There is some uncertainty as to whether the owners or beneficiaries of a legal entity are all identifiable, in principle, from the Register. According to information gathered on-site during discussions with representatives of the Register, the latter would keep such information on four types of entities only: a) individual companies, b) general and limited partners of partnerships, c) shareholders of private limited companies, d) professional partnerships (for instance lawyers).

1040. The Lithuanian authorities disagree with this and they indicated after the visit that the Register collects data of the owner of a) individual companies, b) general and limited partners of partnerships, c) single shareholder of public and private limited companies, d) shareholders of private limited companies, e) owner of budgetary institutions, f) state and municipal enterprises, g) members of European Economic Interest Grouping, h) members of professional partnership of lawyers, i) members of European Groupings of Territorial Cooperation, j) establishers of branches and representative offices of foreign legal persons.

1041. There is also uncertainty as to the above registration of information where a proxy is involved. According again to the discussions with the Register representative, where such proxies are involved, there is no obligation to communicate the identity of the shareholders and the shareholder structure to the Register. The information is thus available only from the proxy. As indicated earlier (see the chapter on DNFBPs), company service providers do exist in Lithuania. The businesses and professionals concerned (established as legal professionals, accountancy service providers, business service providers or sometimes as a multitasked business) intervene in company formation. Company service providers are listed as DNFBPs in the AML Law and they are normally required to keep all data concerning their customers and to apply all CDD measures in respect of the beneficial ownership or control of a legal person. Particular problems with this profession have been identified: they are not licensed, not effectively supervised nor really involved in the AML/CFT efforts and the importance of this sector of activity

is unknown to the AML/CFT authorities. Since company services are also provided by lawyers, and since the latter enjoy broad legal privileges, this can be an obstacle to the access to information on a legal person, as indicated earlier in this report. Under these circumstances, the evaluators would prefer to see that the list of owners/beneficiaries/shareholders is communicated to the Register in all cases, whether or not a service provider is involved.

1042. The Lithuanian authorities disagree also with the above analysis and in their opinion, the ownership structure is always to be communicated to the Register, whether or not an intermediary is involved in formation/domiciliation of legal entities etc.

1043. Neither the evaluators nor the Lithuanian authorities have an explanation for the above discrepancies. It could be that the information gathered by the evaluators refers to the situation in practice whereas the authorities refer to the general principles and legal texts. From the point of view of the evaluators, there are nevertheless some concerns as regards the full implementation of C.33.1 and C.33.2, although again, they appreciate very much the general arrangements concerning the Register and the various efforts in favour of increasing accessibility to information.

Situation of legal persons issuing bearer shares (C.33.3)

1044. As indicated above, Article 40 (2) of the Company Law provides the obligation to issue only shares in nominative and registered form.

Additional elements (C.33.4)

1045. The Lithuanian authorities indicated that measures are currently being taken by the Manager of the Register to re-design the information system so as to make the database more effective for the purposes of research and cross-reference, as well as to enable legal persons to communicate electronically the particulars of the participants, whether the board members or shareholders. The information will be accessible on-line. This will also make access of the FIU and other authorities easier. The evaluators welcome this and hope that additional measures will be taken to ensure the reliability of the information stored (for instance the Register employees being systematically informed concerning the outcome of judicial decisions and their consequences for the information in the Register). The full information will be available on-line through restricted access to tax authorities and law enforcement agencies as (is already the case). For the time being the information regarding the list of shareholders must be searched manually from PDF documents. For instance, since in accordance with the Law on Companies, the Register of Legal Persons receives a scanned list of shareholders (when there is more than one shareholder in private limited company), the Register is not able to summarize particulars on shareholders of private limited companies. This option will appear when new information system for communication of members of legal personas is installed.

Effectiveness of implementation of Recommendation 33 and overall compliance assessment

1046. The Staff of the Register seem to apply a certain level of vigilance and they send reminders to entities which forget or omit to provide information as requested. It would appear that proceedings have been initiated to also impose administrative fines. The evaluators regret that since the Register does not follow-up on these proceedings ("we send the case to court and our

job stops there") they do not know about the outcome of proceedings and it remains unclear how they would draw any possible consequences from a court decision. They clearly need to play a more active role in this follow-up.

1047. It was also pointed out that the employees of the Register are increasingly confronted with company service providers which do establish ready-made companies and sell their shares. The Centre had reportedly raised this as a serious issue but no measures appear to have been taken to date.

1048. Since no further measure seems to be provided in case of a legal entity not complying with the communication/declaration requirements, the level of administrative fines would not be effective, proportionate and dissuasive enough against an entity which would pursue criminal activities underground. In the light of the description of the organised crime situation in the introductory part (where reference is made to the use of legal entities for ML and other illegitimate purposes), further measures need to be envisaged.

5.1.2 Recommendations and comments

1049. Again, the evaluators very much welcome the existence of this central Register of legal persons. Lithuania should continue its efforts to facilitate the accessibility of information on major shareholders and beneficiaries of legal persons (those who own a certain percentage of the capital) and to ensure the information is accurate and easily retrievable (information should be kept more generally in an electronic format in the Register).

1050. In the above context, Lithuania should clarify the reasons for the perceived discrepancy between the information gathered on-site and the official views when it comes to the categories of entities for which information on the ownership/beneficiary structure is kept by the Register, whether or not proxies are involved in the creation process.

1051. The existing sanctions for false or non-submission of information should be increased and further measures introduced to prevent the creation/misuse of legal persons for ML and other criminal purposes (obligation to start activity within a certain time-frame etc.).

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• Despite recent positive measures for the communication of shareholders for limited liability companies, it remains unclear whether the Register keeps information on the ownership/shareholder for all relevant forms of legal entities; • computerisation is not complete and information on ownership therefore not available systematically in electronic form; • concerns raised by the low level of penalties for non- or false declaration of information; • concerns in connection with service providers used as front-structures in practice.

5.2 Non-profit organisations (SR.VIII)

5.2.1 Description and analysis

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

Summary of reasons for the rating in the MER of 2006

1052. This recommendation was rated "partially complaint" due to weaknesses in the oversight system for NPOs.

General legal framework

1053. As indicated in the 3rd evaluation round, non-profit organisations are governed by the Law on Charity and Sponsorship. NPOs have to be registered in the same way as private companies, with the register of legal persons.

1054. In addition, they have to register as a sponsorship recipient (art. 15 of the Law). According to Art. 7(1), the following entities registered in the Republic of Lithuania may be the recipients of sponsorship:

1) charity and sponsorship funds;
2) budget-financed institutions;
3) associations;
4) (repealed on 12 January 2006);
5) public agencies;
6) religious communities, associations and religious centres;
7) divisions (chapters) of international public organisations;
8) other legal persons whose activities are regulated by special laws and which participate in not-for-profit activity, while the profit received may not be allocated to their participants.

1055. There have been changes in the supervision of associations since the 3rd round evaluation.

Review of the adequacy of domestic laws and regulations relating to non-profit organisations (C.VIII.1); Measures to promote supervision and monitoring of non-profit organisations (C.VIII.3)

1056. As indicated in the 3rd round report, Lithuania has not carried out a formal general review of the adequacy of its laws and regulations with regard to FT issues. Instead, reliance was placed on the above registration procedure and on tax controls and the situation was, to some extent, reviewed in that context[23]. The Lithuanian authorities provided information reiterating the comprehensiveness of taxation supervision in respect of NPOs (especially those operating as official charities).

[23] As a result of a review of the laws governing NPOs, major amendments were made to the Law on Charity and Sponsorship through the Law No. X - 461 of 20 December 2005. These amendments provided for additional obligations of sponsors except for natural persons and legal persons entitled to receive sponsorship to submit to the State Tax Inspectorate not only annually but also monthly reports on sponsorship provided/received and the utilisation of such monies. Monthly reports are to be submitted only in cases when the amount of sponsorship granted to one beneficiary or the amount of sponsorship received from one sponsor exceeds LTL 50,000, starting from the beginning of the calendar year. The Law expanded the list of grounds for cancelling the beneficiary status, including where a person is subject to final sentence for a crime against the economy, business or financial system, or a person committed a breach of the AML Law.

1057. In order to take into account the findings of the 3rd evaluation round, and as a result of discussions within the AML/CFT Coordination Group, the agreement between FCIS and the STI of 2006 was revised in 2010 (Order No. V–85/V–267). The FCIS can immediately obtain upon request any data from STI about activities of a specific NPO and its related persons, the received/granted support, etc. As indicated in the introduction, the Risk Analysis Centre was established in 2011 as an interdepartmental working group consisting of employees from FCIS and STI. If it is necessary, suspicious activities of any NPO are immediately discussed in the Risk Analysis Centre and information and data possessed by both institutions is evaluated and further actions discussed.

1058. Under the terms of the above agreement, the FCIS informed the STI of the list of the criteria (Order V-46 of 15 February 2011) to evaluate in the context of tax controls if activities of NPOs have features of possible ML/TF.

LIST OF CRITERIA FOR DETERMINING THE SIGNS OF POSSIBLE MONEY LAUNDERING AND (OR) TERRORIST FINANCING IN THE ACTIVITIES OF NON-PROFIT INSTITUTION OR ORGANISATION

1. Criteria serving the basis for determining the signs of possible money laundering and (or) terrorist financing in the activities of a non-profit institution or organisation shall be as follows:

1.1. monetary operations or transactions of a non-profit institution or organisation (hereinafter – NPI) are inconsistent with the types of activities specified in its founding documents, e.g., monetary operations of a sports club are not related with sports activities;

1.2. monetary operations or transactions are carried out with natural or legal persons from regions of North Africa, Near East, South-East Asia and North Caucasus;

1.3. monetary operations are carried out or transactions are concluded by NPI with legal persons or other organisations registered in the target territories as defined in the Republic of Lithuania Law on Corporate Income Tax (Valstybės žinios (Official Gazette) No 110-3992, 2001);

1.4. the type of monetary operations or transactions are carried out by NPI allows suspecting the attempts to avoid the need of notifying about such monetary operations or transactions the Financial Crime Investigation Service under the Ministry of the Interior in cases established in paragraphs 1 to 3 of Article 17 of the Republic of Lithuania Law on the Prevention of Money Laundering and Terrorist Financing Valstybės žinios (Official Gazette) No 64-1502, 1997; No 10-335, 2008) (e.g., the same person carries out several monetary operations in the amount up to EUR 15 000);

1.5. regularly carried out monetary operations involve disbursement of funds to natural persons including persons who are not permanent residents of the Republic of Lithuania;

1.6. it is difficult or impossible to determine further use of withdrawn funds of NPI;

1.7. natural persons repeatedly deposit cash to the account of NPI and later funds are transferred to the accounts of natural or legal persons or other organisations opened with the Lithuanian or foreign credit institutions (own or others');

1.8. cash in the amount of EUR 25 000 or larger amount or its equivalent in another currency is credited to or withdrawn from NPI account within 7 calendar days during one or several monetary operations;

1.9. the frequency of crediting small amounts (up LTL 5 000) to NPI account increases;

1.10. the operations carried out in NPI account are limited only to crediting and withdrawal operations.

2. The terms used in the List of Criteria correspond to the terms used in the Republic of Lithuania Law on the Prevention of Money Laundering and Terrorist Financing (Valstybės žinios (Official Gazette) No 64-1502, 1997; No 10-335, 2008).

1059. These criteria are taken into account when selecting tax payers for control actions as well as performing control actions of NPOs. The above list has been made available to the auditors of STI. Further information was provided on cooperation between the FCIS and STI.

1060. The evaluators discussed the above-list on-site. They pointed out that FT-related issues were not concretely addressed, that the focus was on tax fraud and possible ML, and that no reference was even made to the international sanctions under the UNSC resolutions. It also turned out that the geographical criteria under 1.2 of the list is of little use in practice (examiners enquired as to how the concept of Near-East was to be understood and the answer was that it covers in fact the whole of Asia). The evaluators would have expected, besides clear references to the UN and EU

sanction systems, more specific references to CFT-related matters (see all the international discussions after September 11 on the various forms of support provided in practice to terrorist organisations and activities, informal remittance systems etc.).

1061. It would also appear that the attention of Lithuanian authorities have so far focused on charity organisations, whereas there are more structures than that, especially religious communities and organisations, as the table below shows:

Type of business	Supervisor	Registered institutions
a) Associations, registered in the Central Register of Associations	The State Tax Inspectorate – supervision is limited to general tax control, other state and municipal institutions have also responsibilities in the fields conferred to them by law.	15491
b) Foundations, registered in the Foundations Register	The State Tax Inspectorate – supervision is limited to general tax control, other state and municipal institutions have also responsibilities in the fields conferred to them by law.	1334
c) Registered churches and religious communities	The Ministry of Justice as much as it concerns the registration of churches and religious communities; supervision of the State Tax Inspectorate is limited to general tax control, other state and municipal institutions have also responsibilities in the fields conferred to them by law.	1268

1062. The evaluators very much welcome the increased attention paid to NPOs, given the information available on possible misuse for criminal purposes including ML presented in the introductory chapter of this report (see situation of organised crime). It is clear that these are likely to contribute also to the detection of possible FT, or at least to make the NPO sector more resistant to FT influences. However, in the absence of a sufficient focus on FT-related issues, the evaluators confirm the findings of the 3rd round that the current supervisory efforts are not adequate enough to respond to SR.VIII. A review in order to assess possible risks of using NPOs for FT purposes is still needed and this should concern the various categories of NPOs, whether or not they are recognised as charities.

Measures to protect the NPO sector from terrorist financing abuse (C.VIII.2)

1063. This criterion is about outreach activities conducted to inform NPOs about FT risks and promoting general integrity and quality of management within the NPO. The measures reported by the Lithuanian authorities are not related to the above, for instance the inclusion of information on risks of misuse of NPOs in the context of training provided to the business sectors subjected to the AML Law. The discussion on site confirmed that no pertinent measures from the perspective of C.VIII.2 have been taken.

Requirement to maintain information on the purpose and objectives of NPOs' stated activities and the identity of persons who own, control or direct their activities (C.VIII.3.1); Licensing or registration (C.VIII.3.3)

1064. As seen above, all NPOs are normally required to Register and to submit all information to the Register. As indicated in the Section on legal persons, access to the Public Register is easy and a lot of information can normally be obtained from there. The comprehensive information supplied to the STI gives an important opportunity for tax authorities and other authorities like the FCIS, to remain informed about the whereabouts of NPOs including its managers, sponsors, activities etc. NPOs, as public entities, are also subject to the Law on public entities and therefore required to produce an annual activity report which shall be publicly available. The report contains the following information: 1) information about aims and nature of public

entity's activities, results of its activities during the financial year; 2) the members and value of contributions made by each of them at the beginning and at the end of the financial year; 3) funds received by the public entity and their sources during the financial year; use of these funds under types of expenditure; 4) information of the property acquired and transferred by the public entity during the financial year; 5) expenditure of the public entity during the financial year, including expenditure for salaries; 6) number of employees at the beginning and at the end of the financial year; etc. All this is in line with the above criteria.

Measures to sanction violations of oversight measures or rules by NPOs or persons acting on their behalf (C.VIII.3.2)

1065. The Lithuanian authorities referred to the existence of sanctions under the tax regulations, for the submission of false declarations and information or for not conforming with other tax requirements. The sanction is a warning or a fine of 200 to 500 LTL (approx. 60 to EUR 150) according to article 172(1) and 172(2) of the Code of Administrative Law Violations. Reference was also made to the seizure of property in case of tax debts, and other enforcement measures. These sanctions do not preclude the imposition of criminal sanctions under the general provisions of the CC and the STI or any other public authority would then refer the matter to the law enforcement institutions. In the opinion of the evaluators, since this criterion is concerned with specific sanctions applicable in case of non-compliance with the earlier discussed criteria, possibilities to apply sanctions are limited apart from fiscal and criminal matters. The level of fines is, in any event, too low in the area of taxation offences. There is thus a lacuna from the perspective of this criterion.

Maintenance of records of domestic and international transactions (C.VIII.3.4)

1066. Tax payer's activity documents are retained according to provisions of the Lithuanian Law on Documents and Archives and retention periods set out by the Archive Department under the Government of the Republic of Lithuania. Minimal retention period of documents related to financial activities (e.g. annual financial statements, tax returns) is 10 years, according to Order No. V-100 of 2011/03/09 *of the Office of the Chief Archivist of Lithuania regarding approval of the Index of Retention periods of Documents*). This applies also to all evidentiary documents such as bills, records of transactions etc.

Investigatory powers and sharing of information on NPOs (C.VIII. 4, C.VIII.4.1, C.VIII.4.2 and C.VIII.4.3)

1067. As indicated above and earlier in this report, cooperation agreements and legal provisions are in place to facilitate access of the investigative bodies to all sources of information and exchange of knowledge in those areas. The evaluators did not come across any particular issue in that context, that would concern these criteria in particular.

Points of contact and procedures to respond to international requests for information concerning NPOs (C.VIII 5)

1068. Lithuania has not taken any particular measure in this respect. However, the evaluators understand that international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support would be dealt with by the judicial authorities in the case of international letters rogatory or by the FCIS in the case of requests received from other financial intelligence units. This is in line with C.VIII.5.

Effectiveness of implementation of Special Recommendation VIII and overall compliance assessment

1069. The existence of a register of legal persons that applies equally to NPOs is a positive step. However, according to the information obtained during the visit, the staff in charge of the Register apparently does not perform any verifications on NPOs and there is no designated authority for any form of general oversight in respect of this category of legal entities.

1070. The current oversight relies to a large extent on the taxation supervision. The recent increased involvement of the FCIS, given allegations of NPOs being involved in fraud and ML schemes, is a positive development. For the time being, FT-related risks are not clearly addressed in that context.

1071. There has been no formal review of the legal framework applicable to NPOs, nor outreach activities. It would appear that NPOs which do not qualify for/receive public subsidies or sponsorships are not subject to any oversight.

5.2.2 Recommendations and comments

1072. The authorities should review the suitability of the legal framework relating to non-profit organisations to ensure that it meets financial transparency requirements, ranging beyond the specific measures provided for where an organisation is in receipt of public subsidies and sponsorships. This would give an opportunity to review the requirements concerning financial transparency, the updating of identification data in the event of any change in the founders or persons managing the activities of NPOs, including identification of the main managers, governing board members or directors. Appropriate penalties should therefore be established to sanction non-compliance with these requirements: at present, they appear not to be effective, proportionate and dissuasive enough in the case of infringements to tax law requirements.

1073. Effective monitoring of NPOs' compliance with their legal obligations should be established in all cases. It would also be desirable to involve the Government legal office in charge of the Associations and Foundations Registers in the implementation of the requirements of SR.VIII, so as to ensure for instance, that adequate outreach initiatives to the NPO sector are taken.

1074. Measures should also be taken to ensure that non-registered NPOs cannot carry out financial transactions in their own name through the financial system.

5.2.3 Compliance with Special Recommendation VIII

	Rating	Reasons underlying the rating
SR VIII	**PC**	• Lithuania has not performed a formal general review to identify any weaknesses in this sector that could give rise to terrorist activities; • no awareness-raising measures have been taken in respect of NPOs regarding the risks of their being misused for terrorist purposes and the protective measures available; • the legal framework governing the requirements in respect of financial transparency and record keeping and updating is not fully satisfactory, in particular as there is a limited possibility of imposing sanctions; • effectiveness of implementation not established in all cases and partial oversight exercised by the authorities regarding this sector only where taxation aspects come into play.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31 and R. 32)

6.1.1 Description and analysis

Recommendation 31 (rated LC in the 3rd round report)

1075. This recommendation was rated "largely compliant" in the 3rd round report due to the lack of effectiveness of existing mechanisms.

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1); Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS)(c. 31.2)

General cooperation and coordination

1076. As indicated in the introductory part of the present report, a new joint steering group was established on 22 September 2009 by the order of the director of the FCIS to replace an earlier established structure. It consists of the representatives of competent state institutions and professional associations responsible for implementation of measures of prevention of money laundering and terrorist financing. The main tasks of joint steering group include:

- providing suggestions for the FCIS concerning for development of the AML/CFT system
- putting together information on methods used for the laundering of money or property obtained in criminal a way and to submit proposals for consideration by state institutions, financial institutions and other entities responsible for the prevention of money laundering
- coordinating the cooperation between State institutions, financial institutions and other subjects of the AML Law implementing prevention measures
- drafting new legal acts or amendments to legal acts.

1077. A number of other initiatives understood by the evaluators to provide priorities for the operative work of law enforcement authorities have been implemented. The recently established Risk Analysis Center (order No V-161/V-392 of the Director of the FICS and the Head of STI aims) is focused on the study of threats to the State financial system and to the collection of taxes. An initiative was adopted in 2010 to enforce the combating of smuggling of excise goods and the illegal turnover of goods for 2010, implementing the plan of measures of the Governmental Commission for coordination of cooperation between the state economic and financial control and the law enforcement institutions. In 2010 the Criminal Information Analysis Centre (CIAC) was founded, which is a permanently operating inter-institutions working group of the parties, targeted at the development of cooperation, analyzing the information collected by the parties related to different offences, concerning the social, legal, economic and other reasons and conditions of crimes and violations. Pursuant to the Plan for the Implementation of Measures in Priority Fields of Activities of the Prosecution Service for the Years 2010-2011 No. 17-3.-106 signed by the Prosecutor General of the Republic of Lithuania on 27/08/2010, the priority fields of activities of the prosecution service in the sphere of financial crime investigation is the investigation of fraud – appropriation of the EU structural funds, value added tax and state social insurance funds, also pre-trial investigation of criminal

acts associated with smuggling (smuggling, illegal non-export of goods or production from the Republic of Lithuania, customs fraud, illegal disposal of excise-taxed goods).

1078. The focus on money laundering and especially terrorist financing in any of those initiatives, although highly commendable on their own, is either insufficient/absent or no information was provided by Lithuanian authorities on any relevant outcome in regard to assessment of the AML/CTF system or combating specifically money laundering and terrorist financing. In fact the impression of the evaluators during the interviews was that those initiatives were better known and taken into account, given that they were introduced based on government decisions and priorities. Provided that there is no overall strategy against money laundering and terrorist financing in Lithuania as mentioned during the on-site visit and that the international standards were cited to be enough to provide guidance to the authorities engaged in AML/CFT coordination, there is a risk that the coordination mechanism for AML/CTF proper (the joint steering group) could be subsumed under the other priorities of the Lithuanian government.

1079. The role of the MLPD within FCSI also contributes to the mentioned risk. The Head of the Division is entitled to represent the Service in its cooperation with other authorities and organisations of the Republic of Lithuania and foreign countries on the matters of competence of the Division. It is assumed that the MLPD would be the most competent unit to implement the AML/CFT coordination as required pursuant to Order, considering also the numerous other priorities for the law enforcement authorities based on the aforementioned initiatives of the Lithuanian government. At the same time its internal position in the FCIS and the decision-making mechanisms discussed in the relevant section of the report on Recommendation 26, could be an issue of concern in regard to the proper functioning of the coordination mechanism.

1080. The setting up of the joint steering group – by an Order of the Director of FCIS and not by government decision (which was explained by the Lithuanian authorities, to be a consequence of the need for speedy changes) – might also be detrimental to the overall effort in the AML/CFT field in Lithuania, considering the other priorities adopted by the government or the Prosecutor's Office (which has a leading role in directing the investigations). It is highly unlikely that the money laundering issues will receive the same attention as the other priorities stipulated by the government.

1081. Paragraph 12 of Article 4 of the AML Law provides that the responsible institutions included in Article 3 of the AML Law and the FCIS shall cooperate according to the mutually established procedure and shall exchange information on the results of the performed inspections of the entities' activities related to prevention of money laundering and/or terrorist financing. The mentioned provision is not applicable to other law enforcement authorities with the exception of the State Security Department and has a limited scope of application in regard to the operational cooperation with law enforcement.

1082. Article 8 of the AML Law provides that law enforcement and other state institutions must report to the FCIS about any noticed indications of suspected money laundering and/or terrorist financing, violations of the AML Law and the measures taken against the perpetrators. The information which must be communicated by state institutions to the FCIS, and the procedure for communicating this information shall be established by the Government. The obligation to co-operate and inform other competent authorities in order to combat money laundering and terrorist financing is stated in Article 2 of the Government Resolution No 942. Law enforcement agencies and other public authorities, having noticed indications of possible money laundering and/or terrorist financing, violations of the Law on Prevention of Money Laundering and/or Terrorist Financing, must, as soon as possible but no later than within 3 working days from the

moment when such data or information becomes known, notify the Financial Crime Investigation Service under the Ministry of the Interior in writing.

1083. In addition to the aforementioned provisions an Agreement of entities of operational activities and the Prosecutor's General Office on the change of the agreement of 2 February 2001 on the cooperation of entities of operational activities and coordination of operational activities was signed on 1 March 2012. The Agreement entitles the submission of information to each of the entities of operational activities according to their competence, including the submission of information related to money laundering to the FCIS and the submission of information related to terrorism posing threat to national security to the State Security Department. It is additionally clarified in the agreement that the State Security Department (understood as the main recipient of the terrorism-related information) transmits the information on criminal acts related to terrorism that are prepared, committed or being committed to the Lithuanian Criminal Police Bureau.

1084. The aforementioned mechanism also provides for the setting up of joint teams. Information was provided in regard to several such joint investigations in the framework of the Risk Analysis Center and the Criminal Information Analysis Centre but without information on actual cases of joint investigations of money laundering. However considering the focus of those groups and the legal obligation for the FCIS to provide information strictly on monetary operations and transactions and given its main competence in money laundering investigation might hinder the proactive investigation of the money laundering aspects of a significant number of acquisitive crimes (that fall outside the competence of the FCIS).

1085. Thus the scope of application of the mentioned provisions remains limited to certain information to be provided to the FCIS. The cooperation requirement could still be compromised by the insufficient training of some institutions to find "indications of possible money laundering and/or terrorist financing" which should be reported to the FIU, the own competences of the institutions and the different priorities as described above. Moreover there is no explicit legal provision that would oblige all law enforcement authorities to provide feedback with regard to the outcome of the notifications resulting from the reporting system under the AML Law.

<u>In the area of AML/CFT supervision specifically</u>

1086. The Joint steering group discussed above could be considered as a venue for the consultation between competent authorities, the financial sector and other obliged persons under the AML Law. Article 4 of the AML Law determines the duties of the institutions responsible, within the sphere of their competence, for the prevention of money laundering and/or terrorist financing. These institutions (supervisory authorities) have to approve the instructions intended for the supervised service providers and give advice to these service providers on the issues relating to the implementation of the mentioned instructions.

1087. The Lithuanian authorities informed the evaluators that certain professional associations are member of the joint steering group and the group held its meeting with the participation of these associations' representatives. Furthermore different training courses, conferences and consultations concerning AML/CFT related issues are regularly organized with the participation of the different authorities and service providers, in order to facilitate the informal information and experience exchange.

1088. Article 3 of the AML Law lists those institutions responsible (within the sphere of their competence) for the prevention of money laundering and/or terrorist financing. According to Article 4 (12) of the AML Law the responsible institutions and the FCIS have to cooperate (due to the mutually established procedure) and exchange of information on the results of the performed inspections of service providers' activities related to prevention of money laundering and/or terrorist financing.

1089. The FCIS signed memoranda of understanding (cooperation agreements) with all the competent supervisory authorities designated under the AML Law (except with the Lithuanian Bar Association) in 2009-2010; these provide for modalities of cooperation and exchange of information, as well as coordination of supervision between the FCIS and the supervisory authorities:

- on 16 June 2009 with the State Gaming Control Commission;
- on 23 July 2009 with the Chamber of Bailiffs;
- on 14 September 2009 with the Chamber of Auditors;
- on 14 September 2009 with the Lithuanian Assay Office;
- on 16 September 2009 with the Lithuanian Securities Commission;
- on 21 October 2009 with the Insurance Supervisory Commission;
- on 26 October 2009 with the Culture Heritage Department under the Ministry of Culture of the Republic of Lithuania;
- on 24 November 2009 with the Bank of Lithuania;
- on 10 February 2010 with the Chamber of Notaries.

1090. In the course of the on-site visit, the FCIS informed the evaluation team that negotiations with the Lithuanian Bar Association were in progress in order to sign a cooperation agreement.

1091. Furthermore the collaboration agreement between the Gaming Control Authority and the State Tax Inspectorate was also signed on the 31 July 2009 (in order to encourage voluntary tax payment, to reduce tax payment avoidance in the gaming and national lottery operation branch and to share available information, etc.)

1092. Although the FCIS signed the mentioned MoUs with all competent state institutions (supervisory authorities), except the Lithuanian Bar Association, there does not appear to be much formal *coordination* (in terms of formal agreements, sharing of information, etc.) between all the supervisory authorities mentioned in Article 4 of the AML Law.

Overall

1093. Although formal cooperation and coordination mechanisms have now been in place for many years, and numerous agreements exist to support effective cooperation, the evaluators cannot conclude that these are effective from the point of view of AML/CFT.

1094. The present report contains a number of indications under each chapter, showing that many fundamental issues have not been addressed, for instance: the still ineffective detection and prosecution of ML offences, the persistent absence of an adequate statistical tool on criminal proceedings and confiscation/temporary measures, the many insufficiencies identified – at the time of the visit – concerning DNFBPs, the fact that the Customs seem to use an outdated version of the AML Law as regards cross-border movements of cash (this is the case of the

version of the law published on their website), the absence of any published activity report that would provide official views on the phenomenon of ML/FT etc.

1095. The evaluators would also have expected that such a forum discusses a strategy and risk analysis on AML/CFT taking into account for instance, risks connected with cash transactions and the importance of the shadow economy, risks in connection with the real estate sector and company service providers (the number of which was even unknown at the time of the visit). All this raises questions from the view point of C.31.1 and 31.2, as it is difficult to conclude that effective mechanisms for consultation are in place.

Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)

1096. The Joint steering group mentioned above is considered by the Lithuanian authorities to provide the mechanism for a regular review of the AML/CFT system. There were some specific examples of issues dealt with in the steering group including the cooperation in regard to non-profit organizations (and the resulting agreement between FCIS and STI), as well as further measures that need to be taken in regard to credit unions.

1097. No information was provided by the Lithuanian authorities on any overall review of the system and any assessment based on comprehensive statistical data gathered. The deficiencies described above and elsewhere in this report – for instance as regards statistical tools and the on-going keeping of such data –and the concerns expressed as regards the actual results of cooperation and coordination demonstrate that there is no other appropriate alternative in place to compensate for the lack of a formal review mechanism. C.32.1 is not met.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1098. On the basis of the aforementioned discussion, the resources at the policy-making level are understood to be tightly related to the resources of the respective institutions involved in the process. As indicated earlier, the FCIS – as the main policy maker – is far from being fully staffed (many positions are not filled). This concerns the MLPD and the immediate structure to which it belongs, but apparently FCIS as a whole. Professional standards and training applicable to FCIS staff have been discussed earlier.

1099. In this regard, it is important to note the absence of specific AML/CFT training for a number of law enforcement authorities (apart from the general trainings on fraud, tracing proceeds of crime and financial crime). No further information was provided by the Lithuanian authorities on allocation of other resources to demonstrate that the requirements under Recommendation 30 are effectively met.

1100. The FCIS, as the ultimate supervisor of AML/CFT, conducts AML/CFT training programs to financial institutions and to DNFBPs. In this context, special AML/CFT training programs were conducted also for supervised entities in the period 2009 – 2011; it was indicated that the following areas had been covered: the legal AML/CFT basis; the latest AML/CFT trends and typologies; new technologies and their involvement in ML schemes; ML/FT indicators; the international sanctions list, UN Resolutions and the EU Common Positions; e-money; the CDD process and the identification of PEPs; record keeping; the requirement for reporting suspicious transactions; the FCIS as the FIU of Lithuania and the international organisations set up to combat ML and FT.

1101. As also indicated earlier, the financial supervision was consolidated within the hands of the Bank of Lithuania which is a way to increase the rational use of resources.

Effectiveness and efficiency

1102. As indicated in the above paragraphs, cooperation and coordination does not appear to lead to the results that one should expect after so many years of AML/CFT policies. Consultation channels and mechanisms are in place but the effectiveness of the dialogue and its outcome remain questionable.

6.1.2 Recommendations and Comments

Recommendation 31

1103. Lithuania should put in place a cooperation and coordination mechanism that is effective also in the AML/CFT area. Mechanisms are in place for domestic cooperation and coordination, but it cannot be concluded that they lead to meaningful results from the viewpoint of AML/CFT policy-making. The evaluators understand that given the current financial situation in Europe, Lithuania has among its main priorities the fight against tax fraud and the shadow economy. The evaluators believe that these would also take advantage from increased cooperation and coordination in the area of AML/CFT.

1104. The existing mechanisms for consultation between the FIU on the one hand, and the financial sector and other business sectors listed in the AML Law should be used effectively to ensure all sectors exposed to risks are adequately regulated, involved in AML/CFT policies and supervised. Existing draft agreements should be finalised (for instance between the FCIS and the Lithuanian Bar Association) and further formal agreements should be concluded as appropriate. Lithuania should then ensure all professional bodies and supervisors are involved in the consultation mechanisms.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

1105. Lithuania should clearly introduce such a review of the effectiveness of the AML/CFT systems on a regular basis. This could be done in conjunction with the production of an annual report on AML/CFT issues by the FIU, which is also still missing.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1106. Given that the FCIS is the main policy maker and coordinating agency for AML/CFT-related matters (the responsibility is shared to some extent with the Ministry of Foreign affairs and other Ministries as regards the implementation of international sanctions), the question of resources, professional standards and training are closely related to the deficiencies identified earlier as regards the position of the MLPD within FCIS. These have an impact also here.

1107. Lithuania needs to ensure that once measures have been taken to establish the MLPD as an FIU meeting the international standards, it has the powers, responsibilities and means to deal with policy-making matters on its own.

6.1.3 Compliance with Recommendations 31, 30 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**PC**	• No "effective mechanisms" in place for domestic cooperation and coordination in AML/CFT in the sense of C.31.1; • consultation mechanisms are in place also with the industry but the outcome and effectiveness is questionable

6.2 UN conventions and special resolutions (R. 35 & SR. I)

6.2.1 Description and analysis

1108. Recommendation 35 was rated PC and Special Recommendation I rated NC in the 3rd round evaluation report. Concerning R.35, it was found that the key requirements were covered. The main lacuna derived from the limited criminalisation of terrorism financing and possible consistency issues as regards the legal framework for special investigative techniques (the provisions applicable to the operational phase seemed to be broader than those of the Criminal Procedure Code – which would normally be used for MLA - could be issues in the framework of international cooperation).

Signature, ratification and implementation of the Vienna Convention, the Palermo Convention and the Convention for the Suppression of the Financing of Terrorism

Recommendation 35

1109. As indicated in the 3rd round, the Republic of Lithuania has signed and ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988). It entered into force on 6 September 1998. Earlier developments in this report indicate that Lithuania has enacted legislation that encompasses the key requirements of the Vienna Convention. The trafficking in narcotics and other drug related offences are criminalized in Chapter XXXVII of Criminal Code "Crimes and Misdemeanours Related to Trafficking in Narcotic or Psychotropic, Toxic or similar Substance", including in particular Article 260 (Illicit Trafficking in Narcotic and Psychotropic Substances) and Article 266 (Illicit Trafficking in Precursors of Narcotic and Psychotropic Substances). Associated money laundering is also a criminal offence (See recommendations 1 and 2). The Criminal Code and the Criminal Procedure Code provide for the confiscation of proceeds derived from drug related offenses and narcotics and instrumentalities in drug related cases and associated money laundering (See Recommendation 3). Legislation in Lithuania also provides for extradition and mutual legal assistance. Lithuania can extradite both foreigners and its nationals on the basis of international treaties or Security Council Resolutions. Lithuania retains in principle exclusive competence for criminal acts committed on its territory, although crimes related to disposal of drugs and psychotropic substances and ML and are both extraditable offences (see Recommendation 36-39). Lithuania is a party and has signed a number of bilateral and multilateral agreements to facilitate international cooperation in matters covered by the Vienna Convention. Controlled delivery is available as a special investigation technique under Article 13 of Law on Operational Activities. Controlled delivery activities are also possible while using special investigative technique under Articles 158-160 Criminal Procedure Code. The issue of consistency of provisions on special investigative techniques was discussed earlier.

1110. The Republic of Lithuania has signed and ratified the United Nations Convention against Transnational Organised Crime (Palermo, 2000). It entered into force on 29 September 2003. The Palermo Convention has been implemented in the AML Law, the Criminal Code and the Criminal Procedure Code. Earlier developments in this report indicate that Lithuania has enacted legislation that encompasses the key requirements of the Palermo Convention. The legislation criminalises the laundering of the proceeds of crime. The participation in an organised criminal group is also an offence under the Criminal Code, Article 249. (see also Recommendation 1 and 2). The Criminal Code and the Criminal Procedure Code provide for the confiscation of means, instruments and proceeds of crime (See Recommendation 3). MLA and extradition rules are set out in the Criminal Code and Criminal Procedure Code (see Recommendation 36-39). Law enforcement agencies have a full range of investigative techniques at their disposal including those found in the criminal procedure law. These include: searches, seizure, temporary restriction of property rights, monitoring of phone calls and other electronic communication, under cover operation, secret surveillance, etc. The issue of consistency of provisions on special investigative techniques was discussed earlier.

1111. The Republic of Lithuania has signed and ratified the United Nations Convention for the Suppression of the Financing of Terrorism (1999). It entered into force on 22 May 2003. Earlier developments in this report indicate that Lithuania has enacted legislation that encompasses the key requirements of this Convention. Lithuania has criminalised the financing of terrorism by virtue of Article 250 of the Criminal Code. These offences can be committed by both natural and legal persons. Insufficiencies regarding the criminalisation mechanisms have already been discussed. This offence is punishable by long terms of imprisonment, including life-time sentences. MLA and extradition rules are set out in the Criminal Code and Criminal Procedure Code (see Recommendation 36-39).

1112. The Republic of Lithuania has signed and ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990). It entered into force for the Republic of Lithuania on 1 October 1995. The Law of the Republic of Lithuania withdrawing Lithuania's reservation in respect of Article 2 of the Strasbourg Convention was adopted on 8 July 2004 and entered into force on 13 July 2005.

Special Recommendation I

1113. As indicated above, Lithuania has signed and ratified the United Nations Convention for the Suppression of the Financing of Terrorism (1999). It entered into force on 22 May 2003. The UN resolutions relating to the prevention and suppression of financing of terrorism are implemented in the Republic of Lithuania through a combination of national provisions and directly applicable EU regulations (EU Council Regulations (EC) N° 881/2002 and 2580/2001). The Government of the Republic of Lithuania adopted the Resolution No. 1281 (31 October 2001), by which implemented the commitments under UN Security Council resolutions: 1267 (1999), 1333 (2000), 1373 (2001), 1388 (2002) and 1390 (2002). Lithuania has implemented the United Nations Security Council Resolutions 1267(1999) and 1373(2001). To implement UNSCR 1267(1999) the Government of Lithuania has adopted resolution No. 1442 on 20 December 1999. To implement UNSCR 1333 (2000) and UNSCR 1373 (2001) the Government has adopted resolution No.1281 on 31 October 2001. To implement UNSCR 1388 (2002) and UNSCR 1390 (2002) the Government has adopted resolution No.820 on 4 June 2002. Lithuania has submitted 4 reports regarding the implementation of the UNSCR 1373(2001) to the UN

Counter-Terrorism Committee[24]. Lithuania has also submitted a report regarding the implementation of the UNSCR 1267(1999) to the UN.

1114. The main deficiencies identified in Chapter 2 have an impact on special recommendation I, i.e whether all entities required to implement the UN Resolutions have been given adequate information about their duties, whether communication mechanisms exist with all financial intermediaries and DNFBP, whether a clear and publicly known procedure is in place for initiating procedures for de-listing and unfreezing appropriate cases in a timely manner. It is also still unclear whether adequate monitoring is in place in practice to ensure compliance with the UNSC Resolutions. The evaluators are pleased to see that the webpage run by the Ministry of foreign affairs has become operational and includes the European lists. As at the time of the 3rd round, there is still no information available as to whether unreported assets have been detected, and on possible measures applied for non-compliance with the international sanctions. This points to the weaknesses already identified in Chapter 2 in respect of adequacy of supervisory arrangements currently in place.

6.2.2 Recommendations and Comments

1115. The examiners reiterate the fact that Lithuania has ratified all the relevant instruments and taken measures to implement some of their requirements. The main deficiencies regarding the implementation of these instruments (e.g. significant discrepancies between the criminalisation of terrorist financing in Lithuania and international standards, doubts as to the full effectiveness of the international sanctions mechanisms) have been discussed in earlier chapters.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	The shortcomings identified earlier (i.a. the ML offence should be modified to cover all aspects from Vienna and Palermo conventions, and to refer to both direct and indirect assets, limited criminalisation of terrorism financing, weaknesses as regards temporary measures) are relevant in the context of international cooperation.
SR.I	**PC**	Limited criminalisation of terrorism financing (see SR II). Efforts still needed to ensure adequate implementation and awareness of UNSC Resolutions (no clear procedure for freezing of funds on the basis of UNSCR 1267 or 1373). Weaknesses as regards temporary measures impact on SR I.

[24] A fifth report was presented in June 2006

6.3 Mutual legal assistance (R. 36 and SR. V)

6.3.1 Description and analysis

Recommendation 36 and Special Recommendation V (rated C in the 3rd round evaluation report)

Recommendation 36

1116. Lithuania was rated "compliant" in the 3rd round report with regard to Recommendation 36 and Special Recommendation V.

1117. Providing legal assistance is regulated by the CPC. As indicated in art. 66 para 1 of the CPC, the order of communication by the courts and the prosecutor's offices with the authorities of foreign countries and international organisations, as well as the procedure for execution of the requests of said authorities and organisations shall be laid down in this Code and in the international treaties of the Republic of Lithuania.

1118. Art. 67 para 1 of the CPC provides that when executing requests of authorities of foreign states and international organisations, the courts, prosecutor's offices and bodies of pre-trial investigation of the Republic of Lithuania shall carry out procedural actions stipulated by the CPC. When executing requests of the authorities of foreign states and international organisations in cases provided by an international treaty of the Republic of Lithuania, procedural actions which are not set out in CPC may also be carried out provided that the execution of such actions does not infringe the Constitution and the laws of the Republic of Lithuania and it does not contravene with the fundamental principles of criminal procedure of the Republic of Lithuania.

1119. Article 138 of the Constitution of the Republic of Lithuania stipulates that International treaties which are ratified by the Parliament are automatically part of the legal system of the Republic of Lithuania.

1120. Article 11 of the Law on Treaties emphasises that the treaties of the Republic of Lithuania which have entered into force shall be binding in the Republic of Lithuania. This Law also prescribes that the provisions of the treaty of the Republic of Lithuania shall prevail in cases where a ratified treaty of the Republic of Lithuania which has entered into force establishes norms other than those established by the laws and other legal acts of the Republic of Lithuania which are in force at the moment of conclusion of the treaty or which entered into force after the entry into force of the treaty. The provisions of these legal acts determine the possibility of direct application of ratified international treaties of the Republic of Lithuania in Lithuania and their superiority with respect to the national law.

1121. If a law or any other legal act has to be passed for the purpose of implementation of a treaty of the Republic of Lithuania, the Government of the Republic of Lithuania shall submit to the Seimas according to the established procedure a draft of the appropriate law or shall adopt an appropriate resolution of the Government or ensure according to its competence the passing of another legal act.

1122. Whereas mutual legal assistance is governed by the treaties, mutual legal assistance could be rendered subject to applicable declarations and reservations notified by Lithuania upon ratification.

1123. The Republic of Lithuania has concluded several bilateral treaties on legal assistance and legal relations, which include provisions on cooperation between law enforcement authorities in criminal matters, namely the agreements with the Russian Federation, the Republic of Moldova, the Republic of Uzbekistan, the Republic of Armenia, the Republic of Azerbaijan, People's Republic of China, United States of America, Republic of Kazakhstan, Ukraine, the Republic of Poland, the Republic of Belarus, the Republic of Latvia and the Republic of Estonia.

1124. The Republic of Lithuania has also concluded bilateral treaties on the transfer of sentenced persons, namely with the Russian Federation, the Republic of Azerbaijan and the Republic of Belarus.

1125. In addition to the Conventions already mentioned earlier, Lithuania is also a party to the following international conventions, including sectoral offense-related conventions which have specific provisions on mutual assistance:

I. Treaties of the Council of Europe:

- European Convention on Mutual Assistance in Criminal Matters of 1959 (CETS No. 030), which entered into force for Lithuania on 16 July 1997;
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1978 (CETS No. 099), which entered into force for Lithuania on 16 July 1997;
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 2001 (CETS No. 182), which entered into force for Lithuania on 1 August 2004;
- European Convention on the Transfer of Proceedings in Criminal Matters of 1972 (CETS No. 073), which entered into force for Lithuania on 24 February 2000;
- Convention on the Transfer of Sentenced Persons of 1983 (CETS No. 112), which entered into force for Lithuania on 1 September 1996;
- Additional Protocol to the Convention on the Transfer of Sentenced Persons of 1997 (CETS No. 167), which entered into force for Lithuania on 1 May 2001;
- European Convention on the International Validity of Criminal Judgements of 1970 (CETS No. 070), which entered into force for Lithuania on 9 July 1998;
- Criminal Law Convention on Corruption of 1999 (CETS No. 173), which entered into force for Lithuania on 1 July 2002;
- Convention on Cybercrime of 2001 (CETS No. 185), which entered into force for Lithuania on 1 July 2004;
- Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems of 2003 (CETS No. 189), which entered into force for Lithuania on 1 February 2007;
- European Convention on the Suppression of Terrorism of 1977 (CETS No. 090), which entered into force for Lithuania on 8 May 1997;
- Additional Protocol to the European Convention on Information on Foreign Law of 1978 (CETS No. 097), which entered into force for Lithuania on 20 August 2004.

II. Treaties of the United Nations:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000 (it entered into force for the

Republic of Lithuania on 25 December 2003);

- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000 (it entered into force for the Republic of Lithuania on 28 January 2004).

1126. Moreover, after Lithuania joined the European Union on 1 May 2004, the application of legal instruments of the European Union in the field of judicial cooperation in criminal matters have provided for a possibility of facilitated and expedited cooperation with the authorities of other states. Lithuania has implemented the Framework Decision FD 2006/783/JHA on 13 July 2012 by adopting the law No XI-2200, that amends corresponding articles of the CCP, with the new Articles 365^1 and 365^4, which set the rules of procedure of recognition and execution, within the EU context, of foreign courts decisions on confiscation orders in the Republic of Lithuania. These amendments will come into force on 1 January 2013.

1127. Although neither domestic law nor international treaties of the Republic of Lithuania provide any particular terms for the execution of requests for mutual legal assistance, such requests are always executed within the shortest possible period of time.

1128. The authorities point out that in every particular case the most effective and the most operative measures are chosen for the execution of a request for mutual legal assistance subject to the nature and urgency of this request. As a rule, the time limits to comply with a request which are established by the requesting authority are always taken into consideration. In cases of extreme urgency a response to the request for mutual legal assistance is forwarded by fastest means of communication – fax, e-mail, and later by post mail. Requests for mutual legal assistance are usually executed within the period of 1 month, but in very urgent cases, and if not particular practical problems are encountered, a request may be executed even within one or two weeks.

1129. The authorities are confident that a clear and effective system for the execution of request for mutual legal assistance has been established: receiving authorities – the Ministry of Justice of the Republic of Lithuania and the Prosecutor General's Office of the Republic of Lithuania, subject to the requested proceedings and stage of a criminal case shall forward the request for legal assistance to the competent court or prosecutor's office.

1130. Furthermore, after the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000 EU MLA Convention) came into force, the above mentioned centralised system of execution of requests was changed to a decentralized system when requests are made directly between the competent judicial authorities of the Member States of the EU.

1131. On 4 April 1995 the Republic of Lithuania ratified the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1978 (CETS No. 099) and undertook the obligation not to exercise the right to refuse assistance solely on the ground that the request concerns an offence which is considered a fiscal offence.

1132. Furthermore, under Article 18 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (CETS No. 141) and others, Lithuania would generally provide assistance even if the request relates to a fiscal offence. The Republic of Lithuania did not exercise the right established under Para 4 of Article 6 of the Convention to

declare that Para 1 of this Article applies only to predicate offences or categories of such offences specified in such declaration. Moreover, Lithuania's reservation in respect of Article 2 of the Convention was withdrawn by the Law of the Republic of Lithuania on Declaring as Invalid the Second Subparagraph of Paragraph 2 of the Decision of the Seimas of the Republic of Lithuania on the Ratification of the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 which was adopted on 8 July 2004 and entered into force on 13 July 2004. Thus, the presence of tax evasion data in a money laundering case under judicial investigation in the requesting jurisdiction does not prevent international cooperation by Lithuania.

1133. According to art. 155 of the CPC ("The Prosecutor's Right to Examine the Information"), which indicates that a prosecutor, upon passing a decision and having obtained consent of an investigating judge, to come to any State or municipality institution, public or private agency, enterprise or organisation and request to be provided for the examination of the necessary documents or any other appropriate information, make recordings or make copies of documents or receive written information if this is necessary for the investigation of a criminal act. A pre-trial investigation officer, under the prosecutor's instruction, may also examine the information in the manner specified in this Article.

1134. Also, Article 147 of CPC ("Seizure") provides for a possibility to affect the seizure of tangible objects or documents relevant for investigation, under a reasoned order of the pre-trial judge.

1135. In case when the participant of the pre-trial investigation consents that the information on the financial operations carried out by him would be provided in this investigation, a bank or any other credit institution may be required to provide this information under Article 97 of CPC ("Obtaining Objects and Documents Relevant for Investigation of a Criminal Act") without having obtained consent of an investigating judge. In such cases a written consent of the participant of the pre-trial investigation shall be attached to the request.

1136. It is recommended to comply with the same requirements when seeking to obtain information which is known to a bank or any other credit institution and which contains a commercial secret of this institution or its client, when such information is relevant for the investigation of a criminal act.

1137. Under Article 97 of CCP, officials of law enforcement authorities have the right to obtain information concerning facts if a certain natural or legal person is a client of a bank or any other credit institution (i.e. if a bank account was opened by this client, what type of account, it's number, if any financial services have been provided to this person (renting safe boxes, awarding a loan)) without disclosure of conditions and content of the services.

1138. The CCP and international treaties of the Republic of Lithuania provide for a possibility of application of the following mechanisms:

- when a national of a foreign state or another person who committed an offence in the territory of the Republic of Lithuania and after it left the Republic of Lithuania, the Prosecutor General's Office may decide to forward to the institution of a foreign state the request to initiate or to take the criminal prosecution (Para 3 of Article 68 of CPC);

- the Prosecutor General's Office by executing the request of the foreign authority or international organization may initiate or take the criminal prosecution against the Lithuanian national who committed a criminal act in a foreign state and returned to the Republic of Lithuania (Para 2 of Article 68 of CPC);

- the Republic of Lithuania may extradite or surrender from the Republic of Lithuania to a foreign state (or to the International Criminal Court) a person against whom the criminal proceedings have been initiated in this foreign state (Article 69 and 69^1 of the Code of Criminal Procedure of the Republic of Lithuania)

- the Ministry of Justice of the Republic of Lithuania or the Prosecutor General's Office of the Republic of Lithuania may request extradition (or surrender under the European Arrest Warrant) of person against whom the criminal proceedings have been initiated or a judgement of conviction was passed in the Republic of Lithuania (Article 69 and Article 70 of CPC).

1139. It is also to be noted that by the deadline of 15 June 2012, the EU Member States had to take the necessary measures to comply with the provisions of the Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings; the objective was to promote a closer cooperation between the competent authorities of two or more Member States conducting criminal proceedings.

Additional elements

1140. Direct transmission of requests for mutual legal assistance is possible when it is established under the international treaties of the Republic of Lithuania, e.g. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 2001 (CETS No. 182).

1141. At present the right to forward and execute requests for mutual legal assistance directly is also provided under a number of legal instruments adopted by the EU, e.g. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000 EU MLA Convention), Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, etc.

Special Recommendation V

1142. As indicated earlier, international treaties prevail over domestic legislation and their cooperation mechanisms are applicable by Lithuania as in the case of other countries. Lithuania has ratified a number of international instruments which contain MLA mechanisms. The country appears to have made a limited use of reservations, including restrictive declarations.

1143. Mutual legal assistance in connection to the offences relating to the financing of terrorism, terrorist acts and terrorist organizations is rendered on the basis of common rules and procedures established by the Criminal Code of the Republic of Lithuania, the Code of Criminal Procedure of the Republic of Lithuania as well as the international treaties of the Republic of Lithuania.

1144. Furthermore, as indicated earlier in this report, according to Art.7 of the Criminal Code, ML and FT are subject to softer dual criminality requirement as far as Lithuania is the prosecuting body (the country acknowledges extraterritorial competence for those crimes).

1145. International cooperation in the area of ML and FT could in some instances suffer from certain loopholes in the national legislation, in particular the definitions of ML and FT, and from some limits in the field of temporary or final measures. The examiners were assured that diverging definitions or criminalisation mechanisms in these fields are not a real obstacle for Lithuania to provide assistance, and the spirit of international treaties signed and ratified by Lithuania would prevail. The evaluators were not informed of particular problems as regards seizure and confiscation in cooperation with other countries, apart from the inability to execute civil confiscation orders.

1146. As far as information and intelligence is considered, the FCIS and SSD have a strong potential to be involved in such exchanges.

Effectiveness of implementation of Recommendation 36 and Special Recommendation V and overall compliance assessment

1147. The authorities provided the following statistics to demonstrate effectiveness of the mechanisms discussed above :

In 2009:

- The Ministry of Justice received 4668 letters and sent 3809 letters
- 143 European arrest warrants have been issued by the Ministry of Justice
- 70 sentenced persons have been transferred to Lithuania and 3 sentenced persons have been transferred from Lithuania to other foreign countries.

In 2010:

- The Ministry of Justice received 5309 letters and sent 4208 letters
- 111 European arrest warrants have been issued by the Ministry of Justice
- 51 sentenced persons have been transferred to Lithuania and 3 sentenced persons have been transferred from Lithuania to other foreign countries.

In 2011:

- The Ministry of Justice received 5502 letters and sent 3849 letters
- 109 European arrest warrants have been issued by the Ministry of Justice
- 59 sentenced persons have been transferred to Lithuania and 2 sentenced persons have been transferred from Lithuania to other foreign countries.

and they explained that: a) this statistical data does not include requests for mutual legal assistance which are sent directly between the judicial authorities or through the General Prosecutor's Office of the Republic of Lithuania; b) this data does not demonstrate the actual number of requests for legal assistance received and sent by the Ministry of Justice as it includes all the communication related to a certain request (including repeated requests); c) a few of these requests are related to money laundering offences, however, it is not possible to provide annual statistics on these specific offences as the statistical data is not categorised by

the legal qualification of the criminal act.

1148. Statistics are not kept on a regular basis and on separate offences.

Overall effectiveness

1149. From the information above, but mostly also made available to the evaluators during discussions, concerning the average time needed for processing, practical difficulties encountered in practice etc. it would appear that the positive situation that was noted in the 3rd round is overall confirmed in the present round.

1150. A series of countries responded to the request for feedback on mutual legal assistance, for the purposes of this evaluation of Lithuania. The input was very positive and no particular reservations were expressed.

6.3.2 Recommendations and comments

Recommendation 36 and SR V

1151. Lithuania has good tools at its disposal for international cooperation and the country appears to be overall committed to good cooperation.

Recommendation 32

1152. Lithuania should keep detailed statistics on an on-going basis and finalise the long awaited computerised data collection system for the judiciary in Lithuania.

6.3.3 Compliance with Recommendations 36 and 38 and Special Recommendation V

	Rating	Underlying factors (relating specifically to section 6.3) for the overall conformity assessment
R.36	**C**	
SR V	**C**	

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1 Description and analysis

Recommendation 40 (rated PC in the 3rd round report)

1153. Formal legal restrictions that potentially could hinder international information exchange by the FIU were established in the 3rd round MER and contributed to a "partially compliant" rating for Recommendation 40.

Legal framework

1154. The international cooperation and exchange of information of the FIU is currently based on the provisions of Article 5 of the AML Law (as amended in 2008) and Article 7 of the Law on FCIS. While Article 7 of the Law on FCIS has not been amended since the 3rd round evaluation of Lithuania and still refers only to cooperation, Article 5 of the AML Law was complemented. Under this revised provision, FCIS is authorised, within its sphere of competence, co-operate as well as exchange information with institutions of foreign states and international organisations implementing money laundering and/or terrorist financing prevention measures. The evaluators were told that in practice, FCIS does not engage in cooperation with foreign supervisory agencies. This means that for various DNFBP sectors for which there is no other supervisory body (e.g. real estate intermediaries, traders in precious metals and stones and other businesses), international cooperation cannot take place in practice. This could have an impact on the effective implementation of R.40.

1155. The powers of the Lithuanian Criminal Police Bureau and the State Border Guard Service in regard to the exchange of information are stipulated in the Law on Police Activities as well as the specific legislation for the respective law enforcement bodies. The mentioned legislation provides for the general requirement to observe the international agreements of Lithuania but, unlike the Law on FCIS, does not contain explicit provisions on international cooperation or the scope of specific measures and modes of exchange of operative information.

1156. With regard to the Lithuanian Customs Department, cooperation and exchange of information with the competent authorities of other countries is also based on the relevant international conventions (Naples II, Nairobi Convention). According to the Law on Customs (Article 13 (2)) Lithuanian customs cooperates with the customs authorities of other countries, other foreign institutions and the European Union customs authorities under the Community Customs Code and its implementing provisions of the Mutual Assistance Regulation, the Lithuanian international treaties and other legislation.

1157. The AML Law provides for extensive competence of the State Security Department in implementing terrorist financing prevention measures despite its lack of investigative powers (in the pre-trial phase). Article 6, Paragraph 1, Item 2 of the AML Law provides for the powers of the SSD to co-operate with foreign state institutions and international organisations gathering intelligence information about terrorist financing. Paragraph 2 of the same article authorizes the cooperation and exchange of information between the SSD and the FCIS. The procedure for the exchange of information pursuant to the mentioned article of the AML Law is regulated by Government Resolution No 527 of 1 June 2006.

1158. The current AML Law preserves the provision on the protection of the information submitted to the FCIS in Article 20, Paragraph 1.

1159. According to Article 46 of the Law on the Bank of Lithuania, the Bank of Lithuania (which is now the financial supervisor for the entire financial sector) may enter into agreements on cooperation in the area of financial market supervision with the authorities of other states performing the financial market supervision, the European Banking Authority, the European Insurance and Professional Pensions Authority, the European Securities and Markets Authority and other institutions of Lithuania and foreign states.

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1); Clear and effective gateways for exchange of information (c.40.2), Spontaneous exchange of information (c. 40.3)

FIU

1160. FCIS, as a member of the Egmont Group since 1999, exchanges information through the Egmont Secure Web encrypted channel. Lithuania participates also in the FIU.Net initiative concerning exchange of information between EU Member States. In addition to these channels the Lithuanian FIU as a police-type unit is also involved in the Europol AWF work. In practice the information exchange pursuant to Order No. V-21 of the Director of the Financial Crime Investigation Service under the Ministry of the Interior of 31 January 2011 is carried out by the MLPD within FCIS. There is no special sub-structure within the MLPD that would deal exclusively with foreign requests so the information exchange is performed by the officers within MLPD responsible for the analysis function of the reports received pursuant to the AML Law (the MLPD's position prevents the creation of further sub-structures).

1161. The Lithuanian FIU may exchange information pursuant to the provisions of the AML Law and without the need of a memorandum of understanding. Nevertheless, the Lithuanian FIU has entered into 14 such information exchange agreements with the FIUs of the following countries: Latvia, Poland, Ukraine, Italy, Portugal, Estonia, Belgium, Czech Republic, Finland, Croatia, Bulgaria, Slovenia, Serbia and the Russian Federation.

1162. According to the information provided by Lithuanian authorities the FIU has not refused any request for information exchange. Reasons for refusal of a request could be based on confidentiality required due to initiated pre-trial investigation or lack of sufficient background information to justify a request. This is in line with the Egmont Group Best Practices.

1163. The time needed to respond to foreign requests for information is between 7 days and 2 months (depending on the nature of the request).

1164. The FIU has access to and could provide, based on a foreign request, information from a wide range of sources that would be necessary to respond fully to an international request for information. However a limitation to the information that could be obtained by the FIU is the exception for obtaining information from the advocates and advocate's assistants.

1165. The numbers of requests sent to and received from foreign FIUs have significantly increased for the period 2009-2011 as can be seen from the statistics below:

	2009	2010	2011
Intelligence provided to foreign FIUs by MLPD	11	25	11
Requests send to foreign FIUs	97	136	184
Requests received from foreign FIUs	148	195	213

1166. At the same time, international information exchange is carried out by the FIU with a number of countries (more than 80 for the period 2004-2011). For the period 2009-2011 the number of countries to which requests were sent and from which requests were received regularly each year ranged between 31 and 37. Exchange of information is possible both spontaneously and upon request. The intelligence provided to foreign FIUs by the MLPD is considered as spontaneous information disclosed to foreign counterparts.

1167. Article 5 (9) of the AML Law provides that the FCIS shall co-operate, in accordance with the procedure laid down by laws and other legal acts of the Republic of Lithuania under Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, with European supervisory authorities and provide them with the entire information necessary for the achievement of their tasks. Furthermore, according to Article 5 (5) of the AML Law the FCIS shall cooperate and exchange information with institutions of foreign states and international organisations implementing ML/TF prevention measures.

Bank of Lithuania

1168. According to Article 65 (5) of the Law on Banks, the Bank of Lithuania can provide information (obtained for supervision purposes) for the European Central Bank, national central banks of the EU member states and other institutions performing similar functions if such information is necessary to perform their functions. On the basis of Article 70 (2), paragraphs 9-12, of the Law on Markets in Financial Instruments the Bank of Lithuania shall conclude agreements with the appropriate institutions of other states on cooperation and exchange of information, as well as shall cooperate and exchange required information with these institutions. Article 74-78 of the Law on Markets in Financial Instruments provide the detailed rules regarding the cooperation and exchange of information with foreign supervisory institutions. Furthermore the Law on Insurance also ensures the ability of international cooperation for the supervisory authority in Articles 200(8) and 201(1).

1169. On the basis of these provisions, the Bank of Lithuania has entered into a number of bilateral agreements (Memoranda of Understanding) on exchange of information with supervisory authorities of other countries.

1170. The Bank of Lithuania informed the evaluation team that it is able to provide the widest range of international cooperation to their foreign counterparts in a rapid, constructive and effective manner on the basis of the provisions of the mentioned legal acts and the concluded bilateral agreements. Moreover, on the basis of the legal acts and the bilateral agreements the exchange of information between the Bank of Lithuania and the foreign counterparts is possible both spontaneously and upon request.

1171. Furthermore the Bank of Lithuania has the right to initiate information exchange as the member of international organisations (e.g. IOSCO).

1172. In the case of the Bank of Lithuania (as the financial sector supervisory authority) there are adequate legal provisions in the mentioned legal acts providing gateways and mechanism to facilitate international cooperation and exchange of information, including the exchange of information in relation to AML/CFT issues.

1173. The Bank of Lithuania informed the evaluators on-site, that there was no cooperation and exchange of information in practice with foreign counterparts in the field of AML/CFT (shortly after the visit there was one case of cooperation with the Latvian financial supervisor on an AML related matter)

Supervisory authorities
(Chamber of Notaries, Gaming Control Authority, Chamber of Auditors, Lithuanian Bar Association)

1174. In the case of DNFBPs there do not appear to be any legal provisions in the sector specific acts (e.g. Law on the Notarial Profession, Gaming Law, Law on Audit) for cooperation and exchange of information with foreign counterparts, except the requirement of Article 72 of the Law on the Bar for the Lithuanian Bar Association.

1175. Most of the competent state institutions (supervisory authorities) met in the course of the on-site visit informed the evaluators, that they conduct international cooperation and exchange of information as member of the respective international organizations (e.g. the Gaming Control Authority in the GERF, the Chamber of Auditors in the IFAC and FEE, the Lithuanian Bar Association in the CCBE, etc.), but not specifically in the field of AML/CFT.

1176. The evaluators were not informed of any bilateral agreements (Memorandums of Understanding) on exchange of information with foreign counterparts.

Law enforcement authorities

1177. The Lithuanian Criminal Police Bureau performs the functions of a national contact point in the context of Interpol and Europol. Through these channels the exchange of information with foreign counterparts and Europol itself is being performed via secure internet connections.

1178. FCIS, as both a law enforcement agency and the Lithuanian FIU, is a member of two Analytical Work Files – SUSTRANS (concerning money laundering and terrorist financing crimes) and MTIC (Missing Trader Intra Community – concerning VAT fraud).

1179. The Lithuanian authorities did not make available further information on initiatives in which Lithuania participates, or statistics on the information exchange; under these circumstances, the effectiveness of this cooperation cannot be assessed. No information was provided by the Lithuanian authorities also in regard to the exchanged information by the Customs Department, the State Border Guard and the Special Investigation Service.

1180. Lithuania applies the provisions of Council Regulation (EC) No. 515/97 on mutual administrative assistance in customs matters. With regard to cooperation with third countries, Lithuanian Customs applies provisions of existing, bilateral "national" (between Lithuania and a third country) and "EU level" (between EU member states, of the one part, and a third country, of the other part), agreements on mutual assistance in the field of customs matters. Lithuanian Customs (Customs Criminal Service) cooperate and exchange information with the competent authorities of other countries also on the basis of international conventions (Naples II, Nairobi

Convention). During the pre-trial investigations exchange of information is based on agreements of mutual legal assistance in criminal matters and on the European Convention on Mutual Assistance in Criminal Matters. The Customs Department is also cooperating with the World Customs Organization (Regional Intelligence Liaison Office for Eastern and Central Europe) and OLAF.

Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

1181. According to Articles 69-71 of the Law on Banks, Article 79 of the Law on Markets in Financial Instrument, as well as Article 212 of the Law on Insurance the Bank of Lithuania has the right to conduct on-site inspections on behalf of foreign supervisory authorities (and the same provisions are included in the MoUs).

1182. There is no differentiation in the AML Law concerning the functions of the FIU, in the cases of international request, to obtain the necessary information for performing its functions (whether it acts as an FIU or as a supervisor or as a pre-trial investigative body). This includes also the case of cooperation and exchange of information with institutions of foreign states and international organisations implementing ML and TF prevention measures. This is also confirmed by the experience of the countries which provided responses to the MONEYVAL request for information on the exchange of information with Lithuania. There was no information provided by Lithuanian authorities with regard to the legal basis for conducting inquiries by the other law enforcement agencies.

1183. According to Article 3 of the Law on Police Activities (2012-10-02 No. VIII-2048) the police shall observe the Constitution, this and other laws of the Republic of Lithuania, international agreements of the Republic of Lithuania, the Police Service Statute and other legal acts. Similar provisions are available also for the State Border Guard Service, State Security Department and the Special Investigation Service in their respective laws. The International Relations Board of the Lithuanian police implements Council Decision 2009/371/JHA on the European Police Office (Europol) and the Europol National Unit tasks and coordinates Lithuanian police and other law enforcement authorities cooperation with Interpol, Europol and other countries of Interpol, Europol and Sirene national contact points. The Board Implements the practical cooperation with the foreign police and customs liaison officers accredited in the Republic of Lithuania, as well as with other law enforcement agencies and performs Interpol General Secretariat user database management functions. It also organises and carries out the extradition. The aforementioned mechanism is considered to ensure wide cooperation. The Criminal Police Bureau Regulation, approved by Order of the Commissary General on 7 September 2011, No. 5/V/807, designates the unit responsible for international cooperation of all police structures and the specific ways of cooperation.

1184. Concerning the conduct of investigations, article 67 CCP prescribes that when executing requests from foreign authorities and international organisations, the courts, prosecutor's offices and bodies of pre-trial investigation of Lithuania shall carry out procedural actions stipulated by the CCP. When executing foreign requests, procedural actions which are not explicitly provided for in the CCP may also be carried out provided that the execution of such actions does not infringe constitutional and other fundamental principles of Lithuania's criminal procedure.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6), Provision of assistance regardless of possible involvement of fiscal matters (c.40.7), Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8), Safeguards in use of exchanged information (c.40.9)

1185. As far as financial supervision is concerned, the evaluators were informed by the Lithuanian authorities, that no disproportionate or unduly restrictive conditions are imposed by the regulators with regard to the exchange of information with their foreign counterparts. The evaluators were further advised that the Lithuanian authorities cannot refuse the request for information from foreign counterparts on the ground that it is considered to involve fiscal matters, as well as do not refuse to execute requests for cooperation on the ground of legal acts that would impose secrecy or confidentiality requirements.

1186. The legal acts (e.g. Law on State and Official Secret, Law on the Bank of Lithuania, Law on Banks, Law on Insurance) provide requirements in order to ensure that the information received by the supervisory authorities is used only in an authorised manner (in line with the Lithuanian privacy, confidentiality and data protection measures).

1187. As for the FIU and police cooperation, the only reason for refusal discussed with the Lithuanian authorities was related to the necessity not to disclose information that could inhibit an already intitiated pre-trial investigation. Specific safeguards for the protection of information are included in article 6 of the Law on Police Activities as well as article 20 of the AML Law.

1188. Taking into consideration Article 20, Paragraphs 1 and 9 of the AML Law regarding the protection of information as well as the grounds for the refusal of a request discussed above, it is understood that requests cannot be refused on the grounds of laws that impose secrecy and confidentiality requirements on financial institutions and DNFBPs. It is however noted that an exception exists with regard to the powers of the FIU to obtain information from the advocates (as already pointed out earlier).

1189. The information exchanged by the FIU with foreign authorities is received and stored solely by MLPD within FCIS as the evaluators were advised during the visit. The MLPD is strictly abiding by the principles of information exchange and has physical and IT safeguards in place to ensure the protection of its databases and its use according to law. The protection of this information is regulated by a confidential internal order of the FCIS which is not available to the evaluators. In the absence of any further information provided by the Lithuanian authorities the evaluators are not in a position to assess the effectiveness of the measures in force for the law enforcement authorities in general (including the FCIS as a whole).

Additional elements – Exchange of information with non-counterparts (c.40.10 and c.40.10.1); Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

1190. As indicated earlier, the AML Law provides in Article 5 for the exchange of information with "institutions of foreign states" which is considered to be wide enough to cover relations with non-counterpart institutions, whatever their type (including self-regulatory bodies).

1191. At the same time, in the absence of information on other restrictions and protection of information for the law enforcement activities in general, it is not possible to assess whether the criteria is met. It is the understanding of the evaluators based on the information provided during

the on-site visit that provision of information on specific cases or suspicion to the supervisory authorities (e.g. for their licensing and prudential supervision purposes) by the FIU would not be possible. The AML Law specifies the obligation of the FCIS to notify financial institutions and other entities, law enforcement and other state institutions only about the results of analysis and investigation of their reports on suspicious or unusual monetary operations and transactions on the observed indications of possible money laundering and/or terrorist financing or violations of the AML Law. The FCIS, and an FIU, is able to obtain information from other authorities for fulfilment of a request for information. This is authorised by the AML Law and is done in practice except for the supervisory function of FCIS.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5) (rated LC in the 3rd round report)

1192. The Lithuanian FIU is empowered pursuant to the provision of Article 5 of the AML Law to exchange information with institutions of foreign states and international organisations which would include also information on terrorist financing. The SSD is also authorised pursuant to the AML Law to cooperate with institutions of foreign states and international organisations gathering intelligence information about terrorist financing. In the absence of statistics regarding the exchange of information by SSD and the requests for information processed by the FIU, the effectiveness of the system is not demonstrated although there was information provided during the evaluation visit in regard to checks for certain persons (partial matches related to designated persons). It should be mentioned that one case linked to providing assistance to a terrorist organisation implied international cooperation by the SSD and resulted in a (non-final) conviction in Lithuania. The evaluators note that since the SSD was recently deprived of investigative powers, international police cooperation in a case of FT would normally involve the SSD only as long as it is limited to information exchange; for operative measures, it is the criminal police which would be dealing with such a matter.

1193. The Bank of Lithuania has no practice in cooperation and exchange of information with foreign counterparts in the field of CFT.

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

1194. The discussion in regard to R. 40 is also relevant for SR. V.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1195. Detailed statistics were provided in regard to the exchange of information by the FIU including information about requests per country. No statistics were, however, provided in regard to international cooperation related to terrorist financing. The evaluators were informed that statistics on other formal requests for assistance made or received by law enforcement authorities relating to ML or FT are kept by the Prosecutor's Office but such statistics were not provided.

1196. As stated above, the Bank of Lithuania informed the evaluators on-site, that there was no cooperation and exchange of information in practice with foreign counterparts in the field of AML/CFT (with one exception mentioned earlier concerning cooperation with Latvia).

Effectiveness and efficiency

1197. The information available indicates an effective mechanism is in place for exchanging information at the level of the FIU. The FIU has the necessary powers to collect information from a wide range of sources to support its foreign counterparts' inquiries.

1198. In the absence of concrete statistics on the information exchange and international requests handled by the law enforcement authorities, the effectiveness of the system could not be fully demonstrated. The information provided by the Lithuanian authorities is also not sufficient to assess some aspects of the legal basis for the international cooperation.

1199. From the on-site discussions, the evaluators conclude that there was no cooperation and exchange of information with foreign supervisory authorities specifically in the field of AML/CFT: a) in practice, FCIS does not engage in cooperation with foreign supervisory agencies; b) the Bank of Lithuania informed the evaluators on-site, that there was no cooperation and exchange of information in practice with foreign counterparts in the field of AML/CFT (with the one exception shortly after the visit).

1200. Therefore, there are no statistics on the number of formal requests for assistance made or received. Due to the lack of practice and statistics it was not possible to assess the effectiveness of the system.

1201. The absence of involvement of FCIS in international cooperation for supervision in the AML/CFT area means also that for various DNFBP sectors for which there is no other supervisory body in Lithuania (e.g. real estate intermediaries, traders in precious metals and stones and other businesses), international cooperation cannot take place in practice.

6.4.2 Recommendation and comments

1202. The evaluators are pleased to see that cooperation with Lithuania is not limited by general restrictions concerning bank or commercial secrecy, or differences in the tax regime. In the case of the Bank of Lithuania there are adequate legal provisions to facilitate international cooperation and exchange of information, including the exchange of information in relation to AML/CFT issues.

1203. However, Lithuania should strengthen the effective implementation of the relevant legal provisions in relation to the international cooperation of the FCIS as a supervisory authority (for various DNFBP sectors), as well as Lithuania should clarify the relevant legal provisions in the sector specific acts regarding the other competent state institutions (supervisory authorities) for DNFBPs.

6.4.3 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	• Effectiveness issue: - For various DNFBP sectors, there is no international cooperation in practice (given the absence of involvement of FCIS in international cooperation with foreign supervisors); as regards other supervisory

		authorities for DNFBPs, there is no specific provision for cooperation with foreign counterparts); - Effectiveness of international cooperation could be affected by the resources of the unit within FCIS responsible for the FIU cooperation; - effectiveness of the law enforcement authorities in international cooperation is not demonstrated.
SR.V	**LC**	• Effectiveness is not demonstrated for the same reasons as above

7 OTHER ISSUES

7.1 Resources and Statistics

NOTE: The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains only the box showing the ratings and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	**LC**	• In relation to R.26/the FIU: lack of sufficient resources of the MLPD within FCIS; the requirements as to the background of MLPD staff are not based on the actual tasks of an FIU and in practice, financial/business knowledge does not fully contribute to the autonomous analysis function over the STR/CTR disclosures; • in relation to R.27: law enforcement personnel is still not familiar enough with the specificities of ML investigations; • in relation to SR.IX: Customs officers are not enough aware of AML/CFT-related matters • in relation to R.17 and 23: the FCIS staff is not sufficient for effective AML/CFT supervision • in relation to R.31: the MLPD, as the actual specialist AML/CFT body within FCIS, is in practice the main coordinator; but within the FCIS, it has no autonomy, authority and means to be effective (already pointed out as far as this is also the FIU)
R.32	**LC**	• No reliable and consolidated statistics kept on an on-going basis as regards matters addressed under R.3; • in relation to R.26/the FIU: reliable and sufficiently detailed statistics are not kept systematically; those related to the actual outcome of the reporting regime – in terms of investigations, prosecutions and convictions generated by the MLPD – are not available and a legal uncertainty exists as to the mechanism of collection of those statistics from the law enforcement/prosecution authorities other than the respective units of FCIS; • in relation to R.27: the information system of the Prosecutor's Office needs to be completed and made fully functional in order to usefully complement the police statistics • in relation to SR.IX: absence of detailed statistics on the various aspects of the implementation of mechanisms on cross-border movements of cash; • in relation to R.31: No formal overall review of AML/CFT measures; existing cooperation and coordination mechanisms do not offer satisfactory alternatives given the visible lack of effectiveness. • In relation to R.36, R40 and SR.V: detailed statistics are not kept on an on-going basis.

7.2 Other Relevant AML/CFT Measures or Issues

1204. Since the AML Law refers to trust services, the evaluators wondered whether this kind of services exists at present in Lithuania, as this could have justified taking up again this matter although the FATF recommendation 34 was rated "not applicable" in the 3rd evaluation round report.

1205. As indicated in the introductory developments, the Lithuanian authorities have explained that the above reference in the AML Law was a consequence of EU harmonisation around the third EU Directive. From the information gathered, it would appear that trust services still do not exist in Lithuania. "Trust-like" services are offered, in which the representation and assets-management relationship is based on a power of attorney exclusively. Therefore, trust services as understood in the FATF methodology (implying a transfer of ownership) still do not exist under Lithuania law and R.34 is still "N.A".

7.3 General Framework for AML/CFT System (see also section 1.1)

1206. There were no other matters to raise in this context. All concerns of the evaluators have been addressed under the relevant parts of the present report.

IV. TABLES

Table 1: Compliance with FATF recommendations
Table 2: Recommended action plan to improve the AML/CFT system
Table 3: Authorities' response to the evaluation (if any)

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 Lithuania.

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[25]
Legal systems		
1. Money laundering offence	**PC**	• the offence of laundering does not cover the acquisition, possession or use of criminal assets; there is also an excessive limitation generated by the fact that ML is constituted only where it involves financial transactions, economic or commercial activities or false declarations about the origin of assets • Uncertainties as to whether the laundering offence actually *extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime* • Although the law does not specify that a conviction is needed for a predicate offence, case-law has not confirmed this as yet • Preparation (conspiracy) of ML is provided in connection with article 189 CC only where assets are worth more than EUR 9 000. • Effectiveness: (1) weak proactive approach; (2) modest results with regard to prosecutions, particularly in view of the disparities between the

[25] These factors are only required to be set out when the rating is less than Compliant.

		extent of criminal activity on the one hand, and the numbers of proceedings and convictions on the other hand.
2. Money laundering offence Mental element and corporate liability	*LC*	
3. Confiscation and provisional measures	**LC**	• Confiscation and temporary measures are generally available, although temporary measures are still subject to a time limitation for lesser offences (including elements of ML if article 189CC is used). • Access to information for the purposes of the FIU's work needs to be reviewed as regards information held by lawyers • Effectiveness: modest results overall and in comparison with the criminal activity present in the country
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• no harmonisation of the provisions under the respective laws lifting confidentiality; • no explicit requirement enabling the disclosure of AML/CFT related information between the supervisory authorities.
5. Customer due diligence	**PC**	• Lack of explicit requirement to understand the ownership and control structure of the customer where the customer is a legal person; • lack of explicit requirement for the review of the existing records for higher risk categories of customers or business relationships; • lack of explicit requirement that the content of the internal control procedure regarding the application of the risk based approach has to be consistent with the guidelines; • the legal provisions for the timing of verification are not clear. Furthermore there is no requirement to adopt risk management procedure in the insurance business concerning the conditions where the customer is permitted to utilise the business relationship prior to verification; • the legal provisions for failure to complete CDD before commencing the business relationship are not clear. Furthermore there is no explicit requirement to terminate the business relationship and to consider making an STR where the business relationship has been already commenced and the financial institution is unable

		to carry out the CDD measures; • Weakness in the effective implementation of the beneficial owner identification and verification, as well as the various implications of the new CDD approach introduced in 2008.
6. Politically exposed persons	**LC**	• The definition of PEP slightly differs from the standard (it does not cover all categories of senior government officials and excludes the Lithuanian citizens entrusted with prominent public functions abroad). • Lack of explicit requirement to obtain senior management approval to continue the business relationship if the customer subsequently becomes a PEP. • Weakness in effective implementation of the requirements in relation to PEPs.
7. Correspondent banking	*C*	
8. New technologies and non face-to-face business	*LC*	*Not addressed by all sectors of the financial sector except for the banking sector*
9. Third parties and introducers	*LC*	*Though the full concept of third party and introduced business is not present, yet the elements of the customer/agent identification procedures do not meet all essential criteria.*
10. Record keeping	**LC**	• No requirement to maintain records of accounts files and the business correspondence. • No provision to ensure that the mandatory record-keeping period may be extended in specific cases upon request of competent authorities.
11. Unusual transactions	**C**	
12. DNFBPS – R.5, 6, 8-11	**PC**	• The same concerns (legal deficiencies) in the implementation of Recommendations 5, 6 and 10-11 apply equally to DNFBPs. ***Applying Recommendation 5*** • There is a need to clarify the provisions of the AML Law regarding the scope, as well as the CDD requirements in relation to casinos. • Scope of the AML Law regarding real estate agents differs from the standard. • There is a need to review and clarify the scope of the legal privilege for advocates. • Serious concern regarding the company service providers.

		• Weakness in effective implementation of CDD requirements as regards casinos, real estate agents, dealers in precious metals, dealers in precious stones and notaries. ***Applying Recommendation 6*** • Weakness in effective implementation of CDD requirements in relation to PEPs (except auditors). ***Applying Recommendations 8 and 9*** • No explicit requirement to have policies in place or to take measures to prevent the misuse of technological developments in ML or TF schemes. • No explicit requirement for the service providers to satisfy themselves that the third party is supervised (not only regulated) in accordance with the standard. • There is a need to clarify the provisions of the AML Law regarding the ultimate responsibility for CDD. ***Applying Recommendation 10*** • There is a need to review and clarify the legal provisions for the record-keeping requirements with regard to advocates. • Weakness in effective implementation of record-keeping requirements (except auditors). ***Applying Recommendation 11*** • Weakness in effective implementation regarding paying attention to unusual and complex transactions.
13. Suspicious transaction reporting	**PC**	• The reporting regime is not based on a suspicion that the funds are proceeds of crime, but on the suspicion that they constitute ML • Complex reporting arrangements, with risks of inconsistencies • Serious effectiveness issues in practice, both quantitatively and qualitatively
14. Protection and no tipping-off	*LC*	*No adequate protection when reporting, that would meet the requirements of criterion 14.1*
15. Internal controls, compliance and audit	*LC*	*There is no legal obligation for financial institutions to develop CFT internal control programmes*
16. DNFBPS – R.13-15 & 21	**PC**	***Applying Recommendation 13*** • As for the financial sector, the reporting system for DNFBPs is unnecessarily complex; it lacks clarity and consistency and it does not reflect the

		basic requirements of the standards (that funds are proceeds of crime etc.); • internet casinos do not fall under the scope of the AML Law; • the AML Law is excessively narrow in scope for real estate agents; • there is no appropriate form of co-operation between the FCIS and the Lithuanian Bar Association (given that STRs are sent by legal professionals to the Lithuanian Bar Association); • clear lack of effectiveness and uneven level of awareness across the different sectors regarding reporting obligations. ***Applying Recommendation 15*** • Lawyers and assistant lawyers are exempt from having internal control procedures in place, providing training to employees and appointing an employee to implement the ML/FT preventive measures; • no requirement for an independent audit function to test compliance of procedures, policies and controls; • no requirement for compliance officers are to be able to act independently and to report to senior management. ***Applying Recommendation 21*** • (-)
17. Sanctions (in relation to R.23,24,29)	**PC**	• The FCIS is not empowered to impose sanctions, fines and disciplinary actions (for both financial institutions and DNFBPs); • sanctions cannot always be imposed on legal persons; • disciplinary actions cannot always be imposed; • the range of sanctions which can be imposed is not broad enough to fulfil the various requirements of the AML/CFT Law; • the maximum amount of sanctions which can be applied is not proportionate, effective and dissuasive enough for infringements committed by larger economic entities • no supervisory authority is empowered to impose administrative sanctions in relation to DNFBPs.
18. Shell banks	*C*	
19. Other forms of reporting	*C*	
20. Other DNFBPS and secure	*C*	

transaction techniques		
21. Special attention for higher risk countries	*LC*	*Mainly addressed for banking sector but restricted to customers of credit institutions only and no specific obligation to examine background of large, complex transactions.*
22. Foreign branches and subsidiaries	**LC**	• The measures applicable to the insurance sector do not fully reflect the provisions of the Recommendation.
23. Regulation, supervision and monitoring	**LC**	• Effectiveness issue: - no focused examinations are carried out on financial institutions by the FCIS; - no risk analysis has been carried out by supervisory authorities to identify the risk areas within the financial industry; - weak supervision has been carried out on the insurance and securities sectors.
24. DNFBPS - Regulation, supervision and monitoring	**PC**	• The importance of certain activities or professions (such as company services providers) is unknown and – in the absence of any sector-specific regulations and licensing/authorisation – they are strongly exposed to risks of ML/FT; • there are certain legal limitations for supervisory authorities and self-regulatory organisations to carry out their supervisory function, as in the case of lawyers and assistant lawyers; • internet casinos are not captured as licensable entities under the AML Law; • Effectiveness issues: - besides the low figures on controls, the FCIS is not aware of the importance of certain activities such as company service providers present in Lithuania; - several supervisory authorities and self-regulatory organisations entrusted with supervisory functions are not fully aware of their supervisory function; - weak or no supervision at all, applied in respect of all DNFBP sectors; - no risk analysis carried out by supervisory authorities to identify the risk areas within the DNFBP sectors.
25. Guidelines and Feedback	*LC*	*- Although various guidance and instructions are available to the various sectors, there is no one body that ensures consistency (25.1 financial sector).* *- Although various guidance and instructions have been issued to the various sectors there are*

		inconsistencies and inapplicabilities. No guidance issued to the legal profession (25.1 DNFBP).
Institutional and other measures		
26. The FIU	**PC**	• insufficiently clear legal framework regarding the structure and position of the Department performing the actual FIU functions in view of the practical implementation of the AML/CTF regime; • lack of legal safeguards for the operational independence of the unit responsible for the practical implementation of the core functions of an FIU; • inconsistent legal basis for the FIU to obtain additional information from advocates and advocate's assistants; • concerns regarding the absence of fully fledged analysis of FT by the FIU and overlapping competence of the SSD and the FIU when it comes to the elaboration of guidance on FT; • concerns over legal uncertainty as regards the protection of information within the FIU and the purposes it is used for; • no periodic reporting meeting the standards of C.26.8: the annual report of the FIU does not provide detailed information on the core activities of the entity actually performing FIU functions and does not include detailed statistics and information on typologies and trends; • lack of effectiveness which are likely to result from the current approach to ML, the analytical working methods, the background of staff, shortage of staff, lack of follow-up on cases generated; insufficient focus of the FIU on ML and TF; the focus on the offences which fall within FCIS' competence and the system being mainly used to detect such individual offences.
27. Law enforcement authorities	**LC**	• Effectiveness: - no proactive approach to money laundering investigations in a significant number of the predicate crimes investigations; - the number of investigations for money laundering by law enforcement is still low.
28. Powers of competent authorities	**C**	
29. Supervisors	**C**	
30. Resources, integrity and training	**LC (consolida-ted)**	• In relation to R.26/the FIU: lack of sufficient resources of the MLPD within FCIS; the requirements as to the background of MLPD staff are not based on the actual tasks of an FIU and in practice, financial/business knowledge does not fully contribute to the autonomous analysis function over the STR/CTR disclosures;

		• in relation to R.27: law enforcement personnel is still not familiar enough with the specificities of ML investigations; • in relation to SR.IX: Customs officers are not enough aware of AML/CFT-related matters • in relation to R.17 and 23: the FCIS staff is not sufficient for effective AML/CFT supervision • in relation to R.31: the MLPD, as the actual specialist AML/CFT body within FCIS, is in practice the main coordinator; but within the FCIS, it has no autonomy, authority and means to be effective (already pointed out as far as this is also the FIU)
31. National co-operation	**PC**	• No "effective mechanisms" in place for domestic cooperation and coordination in AML/CFT in the sense of C.31.1 • Consultation mechanisms are in place also with the industry but the outcome and effectiveness is questionable
32. Statistics	**LC**[26]	• No reliable and consolidated statistics kept on an on-going basis as regards matters addressed under R.3; • in relation to R.26/the FIU: reliable and sufficiently detailed statistics are not kept systematically; those related to the actual outcome of the reporting regime – in terms of investigations, prosecutions and convictions generated by the MLPD – are not available and a legal uncertainty exists as to the mechanism of collection of those statistics from the law enforcement/prosecution authorities other than the respective units of FCIS; • in relation to R.27: the information system of the Prosecutor's Office needs to be completed and made fully functional in order to usefully complement the police statistics • in relation to SR.IX: absence of detailed statistics on the various aspects of the implementation of mechanisms on cross-border movements of cash; • in relation to R.31: No formal overall review of AML/CFT measures; existing cooperation and coordination mechanisms do not offer satisfactory alternatives given the visible lack of effectiveness.

[26] 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 Recommendation 38 and 39.

		• In relation to R.36, R40 and SR.V: detailed statistics are not kept on an on-going basis.
33. Legal persons – beneficial owners	**PC**	• Despite recent positive measures for the communication of shareholders for limited liability companies, it remains unclear whether the Register keeps information on the ownership/shareholder for all relevant forms of legal entities, whether or not a proxy is involved in the formation; • computerisation is not complete and information on ownership therefore not available systematically in electronic form ; • concerns raised by the low level of penalties for non- or false declaration of information; • concerns in practice in connection with service providers used as front-structures in practice
34. Legal arrangements – beneficial owners	*NA*	*The concept of trusts or other legal arrangements (other than corporate) is not known under the laws of Lithuania.*
International Co-operation		
35. Conventions	**PC**	The shortcomings identified earlier (i.a ML offence should be modified to cover all aspects from Vienna and Palermo conventions, and to refer to both direct and indirect assets, limited criminalisation of terrorism financing, weaknesses as regards temporary measures) are relevant in the context of international cooperation.
36. Mutual legal assistance (MLA)	**C**[27]	
37. Dual criminality	*C*	
38. MLA on confiscation and freezing	*LC*	*No arrangements for coordinating seizure and confiscation actions with other countries*
39. Extradition	*C*	
40. Other forms of co-operation	**LC**	• Effectiveness issue: - For various DNFBP sectors, there is no international cooperation in practice (given the absence of involvement of FCIS in international cooperation with foreign supervisors); as regards other supervisory authorities for DNFBPs, there is no specific provision for cooperation with foreign counterparts);

[27] The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 28.

		- Effectiveness of international cooperation could be affected by the resources of the unit within FCIS responsible for the FIU cooperation; - effectiveness of the law enforcement authorities in international cooperation is not demonstrated.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Limited criminalisation of terrorism financing (see SR II). Efforts still needed to ensure adequate implementation and awareness of UNSC Resolutions (no clear procedure for freezing of funds on the basis of UNSCR 1267 or 1373). Weaknesses as regards temporary measures impact on SR I.
SR.II Criminalise terrorist financing	**PC**	• No offence as such of terrorist financing, as provided for in the CFT treaties and many gaps in the incrimination including a) the fact that terrorist acts are defined narrowly (essentially by reference to the threat to use, or to the actual use of explosive devices), b) the financing of individual terrorists or terrorist organisations is not covered; c) the concept and modalities of financial support are not defined systematically etc. • It is doubtful whether objective factual circumstances are actually applicable in connection with FT (and ML)
SR.III Freeze and confiscate terrorist assets	**PC**	• the mechanisms actually applicable to challenge domestic and EU decisions are unclear • Insufficient public information and guidance on the specificities of the international sanctions mechanisms (as opposed to the STR system) • Effectiveness of supervision, coordination and monitoring of implementation is not demonstrated; authorities are themselves not familiar with the applicable rules as these could not be explained to the evaluators.
SR.IV Suspicious transaction reporting	**PC**	• Reporting of FT is still not covered in line with the standards; current rules do not focus enough on this matter; • complex reporting arrangements
SR.V International co-operation	**LC**	• Effectiveness is not demonstrated for the same reasons as in R.40
SR.VI AML requirements for money/value transfer	***LC***	*Money Transfer service provided by Post Office needs to be better monitored and controlled by the*

services		*relevant authorities.*
SR.VII Wire transfer rules	**LC**	• No explicit provisions in the Lithuanian legal texts to determine the competent authorities for the purpose of the Regulation (shortcoming in the national implementation). • No explicit provisions in the Lithuanian legal texts to establish the appropriate monitoring, enforcement and penalties regime for the purpose of the Regulation (shortcoming in the national implementation).
SR.VIII Non-profit organisations	**PC**	• Lithuania has not performed a formal general review to identify any weaknesses in this sector that could give rise to terrorist activities; • no awareness-raising measures have been taken in respect of NPOs regarding the risks of their being misused for terrorist purposes and the protective measures available; • the legal framework governing the requirements in respect of financial transparency and record keeping and updating is not fully satisfactory, in particular as there is a limited possibility of imposing sanctions; • Effectiveness of implementation not established in all cases and partial oversight exercised by the authorities regarding this sector only where taxation aspects come into play.
SR.IX Cross Border declaration and disclosure	**PC**	• Differences in the definition of cash in regard to the application of various aspects of the cash control regime (e.g. for the purpose of sanctioning according to the CALV, definition in regard to intra-EU disclosures); • inconsistencies in the secondary legislation regarding the cash control regime; • the mechanism for restraining cash - especially in cases of suspicion of ML/TF – is not applicable in a swift and effective manner. Doubts about the application of the mechanism through the general obligations for the prevention of crime; • potential risks exist in relation to the mechanism for notifying the FIU of detected violations; • effectiveness and dissuasiveness of sanctions particularly at the external EU borders cannot be assessed; • specific cooperation in regard to ML/TF detection and investigation should be extended; • limited overall effectiveness in practice and lack of involvement of the Customs in the detection of ML/FT

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

Note: for the recommendations which were not included in the present review, reference is made in brackets and italics to the action plan appended to the Third Round Evaluation report.

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• The incrimination of money laundering, under article 216 CC, needs to be aligned with the international standards as set out in the Palermo and Vienna Conventions; • additional initiatives (test cases etc.) need to be taken to support the development of appropriate case-law on the autonomy of the ML offence • *(see 3rd round for R.2)*
2.2 Criminalisation of Terrorist Financing (SR.II)	• Financing of terrorism needs to be separately incriminated in line with all the requirements of SR II
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Lithuania needs to adopt further measures to encourage the effective use of confiscation and temporary measures, and to improve access to information held by lawyers
2.4 Freezing of funds used for terrorist financing (SR.III)	• There is a need to review the mechanisms in place for the implementation of international sanctions; Lithuania should ensure that a mechanism is in place that requires the immediate and automatic freezing of assets of terrorists and terrorist organisations, • Lithuania needs to ensure that the rules for the freezing/unfreezing and for the challenging of decisions – whether at EU level or UN level – are known by obliged entities and by any person potentially affected by such measures
2.5 The Financial Intelligence Unit and its functions (R.26)	• Lithuania needs to amend the current arrangements in place, in order to ensure an FIU is in place that meets the requirements of R26, that focuses on AML/CFT matters, with appropriate operational independence, powers, analytical methods and means; • the FIU needs to produce periodic AML/CFT-specific reports.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• Further measures need to be taken to increase the effectiveness of the various law enforcement agencies in dealing with criminal assets and identifying money laundering in the context of their investigations • *(see 3rd round for R.28)*
2.7 Cross Border Declaration & Disclosure (SR.IX)	• A review of the rules in place is needed to ensure consistency of the definitions of "cash" and of the cash control regimes in the secondary legislation;

	• Lithuania should also ensure the mechanisms in place allow for the restraint of cash in a swift and effective manner in case of ML/FT suspicion, and that the regime of sanctions is in line with SR IX; • measures are needed to improve the effectiveness of the system in place and to involve more actively the Customs in the AML/CFT effort
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	• The industry needs to be made more aware of the full implications of the recently introduced risk-based approach
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• Rules on CDD measures need to be fully aligned on international standards for various technical issues which a) are not explicitly covered, particularly – for instance – the requirement to understand the ownership and control structure of legal persons, the requirement to review existing records for higher risk categories of customers and relationships, the requirement to apply a risk-based approach in internal control procedures, the requirement to terminate the business relationship and to consider making an STR when the CDD process cannot be completed after the commencement of the business relation; b) need clarification, in particular concerning the failure to complete the CDD process before commencing the customer relationship, the timing of verification; • the definition of PEPs needs to be reviewed (in order to cover all relevant categories of senior officials and Lithuanian citizens entrusted with prominent functions abroad) and there is a need for explicit provisions on the obtaining of senior management approval to continue the business relationship id the customer subsequently becomes a PEPs; • measures are needed to ensure the effective implementation of the beneficial owner identification and verification, and the various implications of the new CDD approach introduced in 2008 (R.5) as well as requirements related to PEPs (R.6)*(see 3rd round for R.7+R.8)*
3.3 Third parties and introduced business (R.9)	• *(see 3rd round)*
3.4 Financial institution secrecy or confidentiality (R.4)	• There is a need for harmonisation of the various rules (particularly concerning lifting of confidentiality and disclosure of AML/CFT information between supervisors)
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• The rules currently in place should be complemented with requirements to maintain records of account files and business correspondence, and with possibilities to extend the record-keeping period in specific cases; explicit provisions should be introduced to give full effect to the Regulation on wire-transfers (e.g. as regards the designation

	of competent authorities, appropriate enforcement and appropriate penalties)
3.6 Monitoring of transactions and relationships (R.11 & 21)	• - *(see 3rd round for R.21)*
3.7 Suspicious transaction reports and other reporting (R.13-14 & SR.IV)	• The system should be amended and financial institutions required to report where they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity or are related to terrorist financing, in line with FATF standards • The reporting regime – which appears to be complex and often misunderstood – should be made more effective in respect of the various business sectors concerned • *(see 3rd round for R.14)*
3.8 Internal controls, compliance, audit (R.15)	• *(see 3rd round)*
3.9 Shell banks (R.18)	• *(see 3rd round)*
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17)	• The overall effectiveness of supervision should be increased with focused AML/CFT examinations and risk analysis by the supervisors, and important additional efforts specifically as regards the non-banking financial sector. The regime of sanctions should undergo important improvements (as regards the ability of the FIU to impose sanctions, the persons who can be sanctioned, the range of sanctions etc.)
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• In addition to the improvements mentioned for the financial institutions, sector-specific improvements should be introduced in the rules – for casinos, real estate agents, lawyers • effectiveness should overall be increased as regards most DNFBPs for all relevant standards (CDD, PEPs, R8 to R.11).
4.2 Suspicious transaction reporting (R.16)	• The reporting regime for DNFBPs also needs amending and being made more effective, as set out under R.13 • legal adjustments concerning reporting duties and internal procedures are needed as regards internet casinos, real estate agents, lawyers and all DNFBPs as regards specific matters (e.g. regarding audit function)
4.3 Regulation, supervision and monitoring (R.24-25)	• there is a need to abolish certain legal limitations (for instance lawyers and assistant lawyers) and to capture in legislation internet casinos as licensable entities under the AML Law • determined measures need to be taken to improve the supervision over DNFBPs as a whole; more outreach is required to familiarise most businesses concerned and even their supervisors with their AML/CFT obligations (the importance in practice of certain sectors, in particular

	company service providers, is even unknown
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	• Lithuania needs to complete the computerisation of the registry of legal persons, ensure data on (co-) owners/shareholders is available for all forms of entities whether or not a proxy is involved; • Lithuania should ensure effective, proportionate and dissuasive sanctions can be applied in case of non- or false declaration of information; • Lithuania should also exert utmost vigilance with regard to risks associated with service providers used as front structures.
5.3 Non-profit organisations (SR.VIII)	• A general review of legislation and arrangements on non-profit organisations, in line with SR.VIII, is urgently required • a review of supervisory arrangements (beyond those involving tax authorities), including sanctions applicable, is needed ; • Outreach activities need to be taken for NPOs as regards FT-related risks and the protective measures available
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• Lithuania needs to strengthen the effectiveness of the current coordination mechanisms
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• The UNSC resolutions (and the implementing EU regulations) need to be better understood and known domestically.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• Measures should be taken to ensure the implementation of SR.V is effective • *(see 3rd round for R.38)*
6.4 Extradition (R.39, 37 & SR.V)	• *(see 3rd round for R.37 and R.39)*
6.5 Other Forms of Co-operation (R.40 & SR.V)	• Lithuania should ensure that adequate arrangements on international cooperation are available to all sector-specific supervisors other than the FIU, and that these are effectively used; • Lithuania should also ensure that the FIU's ability to cooperate internationally is not impeded by practical issues (in particular lack of staff) and that existing mechanisms for international cooperation involving law enforcement are used effectively
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• The training provided to the various law enforcement agencies, including the police, the Customs, the SIS, should

	put greater emphasis on money laundering investigations.
7.2 Other relevant AML/CFT measures or issues	-
7.3 General framework – structural issues	-

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Lithuania 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	According to Art. 20 CC, a legal entity can be held liable for the criminal acts committed by a natural person where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he, while occupying an executive position in the legal entity, was entitled: 1) to represent the legal entity, or 2) to take decisions on behalf of the legal entity, or 3) to control activities of the legal entity. A legal entity may be held liable for criminal acts also where they have been committed by an employee or authorised representative of the legal entity as a result of insufficient supervision or control by the person indicated above. The Code of Administrative Infringements provides only for administrative liability for natural persons or in certain cases – executives of enterprises or institutions (for instance, Article 172-14 of the Code of Administrative Infringements, which establishes administrative liability for infringements of the Law on Prevention of Money Laundering and Financing of Terrorists). However, a legal entity can be held liable according to provisions of certain legislation, for instance, the Law on Administration of Taxes, the Law on Securities, etc. A new Draft Code of Administrative Breaches, which

	is currently under discussion in the Seimas (the Parliament) foresees administrative liability both to natural and legal persons. It should be stressed that criminal liability precludes application of administrative liability for the same act (*ne bis in idem*).
Conclusion	The evaluators understand that article 20 CC is applicable only insofar as a specific offence provides explicitly for it. This is the case for article 216 CC (as well as article 189 CC which is also used in practice for ML), and article 250 CC as far as FT is concerned. The transposition of the EU directive in respect of the AML/CFT requirements other than on incriminations is ensured through the AML Law. In which case, infringements should normally be sanctioned under administrative law. It remains unclear whether all requirements of the AML Law are sanctionable (the Code was not available in English to the evaluators) and whether sanctions are effective, proportionate and dissuasive enough in all cases (certain criminal sanctions may occasionally compensate for that): fines under administrative law generally appear quite low to sanction an entity carrying out primarily criminal activities.
Recommendations and Comments	Lithuania needs to introduce sanctions for both legal and natural persons in case of non-compliance with the various requirements of the AML Law, and to ensure these are effective, proportionate and dissuasive, including dissolution, restrictions and disqualifying measures for entities involved in criminal activities.
2.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Prohibition of anonymous accounts, anonymous passbooks and accounts in fictitious names is implemented by the provisions of the AML Law (and the Bank Guidelines). According to Article 19 (6) of the AML Law the financial institutions shall be prohibited from issuing anonymous passbooks, opening anonymous accounts or accounts in a fictitious name, also from opening accounts without requesting the customer to submit documents confirming his identity or when there is a motivated suspicion that the data recorded in these documents are false or fraudulent. (Furthermore this prohibition is also covered by Paragraph 12.2 of the Bank Guidelines.)
Conclusion	Lithuanian law neither allows for anonymous passbooks / accounts nor for accounts in fictitious names.
Recommendations and Comments	N/A
3.	**Threshold (CDD)**
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to

	EUR 15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of EUR 15 000 covered?
Description and Analysis	According to Subparagraph 2 of Article 9 (1) of the AML Law financial institutions and other entities must apply CDD measures and identify the customer and the beneficial owner before carrying out monetary operations or concluding transactions amounting to more than EUR 15 000 or the corresponding amount in foreign currency, whether the operation is carried out in a single operation or in several operations which appear to be linked, except in cases when the customer's and beneficial owner's identity has already been established.
Conclusion	(Occasional) transactions amounting to EUR 15 000 are not covered.
Recommendations and Comments	Lithuania should consider introducing a legal requirement for institutions and persons covered by the AML Law to apply CDD measures when carrying out occasional transactions amounting to EUR 15 000 or more.
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 defined in Article 2 (12) of the AML Law and is largely modelled on the definition set out by the Directive but also refers to the FATF definition. Beneficial owner shall mean a natural person who *ultimately owns* the customer (a legal entity or a foreign undertaking) or *controls* the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall be: 1. in the case of *corporate entities*: the natural person 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); also the

	natural person who otherwise exercises *control over the management* of a legal entity. 2. in the case of the *legal entity which administers and distributes funds* the beneficial owner shall be the natural person who is the beneficial owner of 25% or more of the property of a legal entity (where the future beneficial owners have already been determined); where the individuals that benefit from this legal entity have yet to be determined, the group of persons in whose main interest the legal entity is set up or whose interests legal entity represents; the natural person who exercises control over 25% or more of the property of the legal entity.
Conclusion	The legal definition of the beneficial owner included in the AML Law corresponds to the definition of the beneficial owner in the Directive.
Recommendations and Comments	N/A
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	Lithuania has not used the option given under Article 2 (2) of the Directive (and Article 4 of the Commission Directive 2006/70/EC). Therefore the AML Law (and other legal acts) does *not provide exemptions from the scope* for legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of ML or TF. However it has to be mentioned, that Article 10 (1) of the AML Law allows for the application of simplified CDD measures in relation to (among others) the *customer* representing a low risk of ML and/or TF. The Government Resolution No 942 provides the *list of criteria* based on which a customer shall be considered to pose a small threat of ML and/or TF, as well as provides details in relation to the application. According to Paragraph 1.2 of the Government Resolution No 942 one of the criteria for considering a customer to pose a small threat of ML and/or TF is the following: the activities or monetary operations of a customer that is a natural or

	legal person are rare or very limited (to be determined during regular customer relations monitoring by a financial institution or another entity) and the likelihood of them being used for ML and/or TF is small, and the customer meets all (for legal persons) or at least one (for natural persons) of the following criteria: 1. A customer declares provision of financial services or performance of monetary operations, yet this type of activity is only subsidiary and accounts for less than 5 per cent of its total operations turnover. 2. The activities are limited to transactions with a limited number of customers, and the value of such transactions does not exceed EUR 1000 or an equivalent in another currency. 3. A customer declares its turnover from financial activities over a calendar year at up to EUR 30 000 or an equivalent in another currency. 4. A customer's main activities are other than the activities carried out by the financial institution or another entity, except for those specified in Subparagraph 7 of Article 2 (10 of the AML Law. Based on the above mentioned provisions of the AML Law and the Government Resolution No 942, the application of the simplified CDD is allowed for customers who engage in a financial activity on an occasional or very limited basis and where there is little risk of ML/TF.
Conclusion	Lithuania does not provide exemptions from the scope of the AML Law for such activities and therefore does not need to implement Article 2 (2) of the Directive (and Article 4 of the Commission Directive 2006/70/EC).
Recommendations and Comments	N/A
6.	**Simplified Customer Due Diligence (CDD)**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	Article 10 of the AML Law allows for the application of simplified CDD measures in relation to the following *customers and products*: • *companies whose securities are admitted trading on a regulated market* in one or more EU Member States, and other companies from third countries whose securities are traded in regulated markets and which are subject to disclosure requirements consistent with EU legislation; • beneficial owners of *pooled accounts* held by notaries and other legal professionals from the EU MSs or from third countries,

	provided that they are subject to requirements to combat ML and/or TF consistent with international standards and are supervised by competent authorities for compliance with those requirements and provided that the information on the identity of the beneficial owner is available, on request, to the financial institutions which have such pooled accounts; • cases of *life insurance policies* where the annual premium is no more than EUR 1000 or the single premium is no more than EUR 2500 or the corresponding amount in foreign currency; • cases of *insurance policies for pension schemes* if there is no surrender clause and the policy cannot be used as collateral; • cases of a *pension, superannuation or similar scheme* that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme; • cases of *electronic money*, where, if the device cannot be recharged, the maximum amount stored in the device is no more than EUR 250, or the corresponding amount in foreign currency, or where, if the device can be recharged, a limit of EUR 2500, or the corresponding amount in foreign currency, is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1000, or the corresponding amount in foreign currency, or more is redeemed in that same calendar year by the owner; • if the customer is a *financial institution covered by the AML Law*, or a financial institution registered in another EU MS or in a third country which sets the requirements equivalent to those of the AML Law, and monitored by competent authorities for compliance with these requirements; • the *customer representing a low risk* of ML and/or TF. The Government Resolution No 942 provides the list of criteria based on which a *customer* shall be considered to pose a low threat of ML and/or TF: the customer is a public institutions (and complies with the criteria determined in the Resolution); the activities of the customer are limited and the likelihood of them being used for ML/TF is low (and the customer meets certain criteria determined in the Resolution) (further described under Point 5 of the Annex of Compliance with the 3rd EU AML/CFT Directive). However Lithuania does not implement Article 3 (3) of the Commission Directive 2006/70/EC and the AML Law does not allow for the application of simplified CDD measures in relation to any other *product or transaction* representing a low risk of ML or TF. According to Article 10 (3) of the AML Law the procedure for applying simplified CDD shall be established by the Government. Due to Section IV of the Government Resolution No 942, before the procedure of

	customer identification, a competent officer of a financial institution shall verify the existence of circumstances that allow simplified customer identification. If the financial institution decides to apply simplified customer identification, it shall (at its own discretion) select the customer identification measures, as well as their scope. In the instances for simplified CDD (established by Article 10 of the AML Law) the CDD measures are to be carried out when there are suspicions that the act of ML and/or TF is, was or will be performed (on the basis of Subparagraph 7 of Article 9 (1) of the AML Law). Simplified due diligence can neither be applied if a separate decision of the European Commission has been adopted on the issue (on the basis of Article 10 (2) of the AML Law).
Conclusion	The implementation of Article 3 of the Commission Directive 2006/70/EC does not go beyond the FATF Methodology 2004 regarding criterion 5.9.
Recommendations and Comments	N/A
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 Article 2 (19) of the AML Law and is modelled on the definition set out in the Directive. According to this provision of the AML Law politically exposed persons shall mean *foreign state citizens* who are or have been entrusted with prominent public functions and immediate family members or persons known to be close associates of such citizens. Article 2 (20) provides definition for "prominent public functions", Article 2 (1) for "close associate" and Article 2 (2) for "close family members" (further described under c.6.1). Lithuania implemented *Article 2 of the Commission Directive 2006/70/EC*, consequently financial institutions may (having assessed the threat of ML and/or TF) refrain from treating the person as a politically exposed person, if he stops performing the duties ("prominent public functions") for at least *one year* (on the basis of Article 11 (5) of the AML Law). *Article 13 (4) of the Directive* has been broadly implemented by Article (4)-(5) of the AML Law.

	The AML Law provides, that applying enhanced CDD measures, when transactions or business relationship are performed with PEPs, financial institutions and other entities must: a) receive the approval of the authorised manager to conclude business relationship with such customers; b) take appropriate measures to establish the source of property and funds connected with the business relationship or transaction; c) perform enhanced ongoing monitoring of the business relationship of politically exposed persons. Furthermore the financial institutions and other entities must set internal procedures (including a risk based approach) based whereon it shall be established whether the customer and the beneficial owner are PEPs.
Conclusion	Article 2 of the Commission Directive 2006/70/EC and Article 13 (4) of the Directive has been fully implemented.
Recommendations and Comments	N/A
8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Art. 13(3) of the Directive?
Description and Analysis	Article 13 (3) of the Directive has been implemented by Article 11 (3) of the AML Law. According to this Article, the application of enhanced CDD is limited to correspondent banking relationships with respondent institutions from third countries. The AML Law provides, that in respect of enhanced CDD measures, when performing cross-border correspondent banking relationships with third country credit institutions, credit institutions must: a) gather sufficient information about the credit institution receiving funds to fully understand the nature of its business and to determine from publicly available information the reputation of the institution and the quality of supervision; b)assess anti- money laundering and/or anti-terrorist financing controls of the credit institution receiving funds; c)obtain approval from authorised senior management before establishing new correspondent banking relationships; d)motivate by documents the respective responsibilities of each credit institution; e)be satisfied that the credit institution receiving funds has verified the identity of and performed ongoing due diligence on the customers having direct access to accounts of the correspondent, and that such institution is able to provide relevant customer due diligence data to the correspondent institution, upon request.
Conclusion	The requirements included in the AML Law are fully in line with Article 13 (3) of the Directive.
Recommendations and	N/A

Comments	
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	The Lithuanian authorities informed the evaluators, that Article 13 (6) of the Directive has been implemented by Article 11 (7) of the AML Law. According to this Article, financial institutions and other entities must pay attention to any threat of ML and/or TF which may arise due to the transactions in which it is sought to conceal the customer's or the beneficial owner's identity, as well as due to business relationship or transactions with the customer whose identity has not been identified, and if necessary, immediately take measures to put an end to using funds for the purpose of to ML and/or TF. Notwithstanding it remains unclear for the evaluators, whether Article 11 (7) of the AML Law also refers to "products or transactions that might favour anonymity" (or "new or developing technologies that might favour anonymity") and the relevant Government Resolution, as well as the Guidelines do not provide further guidance in this respect.
Conclusion	In the view of the evaluators there is no explicit requirement in the existing legislations that requires the financial institutions and other entities to pay special attention to any ML or TF threats that may arise from *products or transactions that might favour anonymity* and to take ECDD measures, if needed, to prevent their use for ML and TF purposes.
Recommendations and Comments	The authorities need to consider referring in Article 11 (7) of the AML Law to products or transactions that might favour anonymity.
10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	Article 13 of the AML Law has implemented Article 15 of the Directive. *All of the service providers* (financial institutions and other entities) under the scope of the AML Law may, when identifying the customer or the

	beneficial owner, make use of the information of the third parties about the customer or the beneficial owner. The service providers may identify the customer and the beneficial owner without his direct participation using of the information about the customer or the beneficial owner from other service providers or their representations abroad, when they comply with the requirements set for third parties in the relevant provision of the AML Law (Article 13 (1)-(2) of the AML Law). *Third party* shall mean a *financial institution, another entity* or a financial institution or another entity registered in another EU Member State or a state which is a non-EU Member State ("third country"), who meets the following requirements: a) they are subject to mandatory professional registration, recognised by law; b) they apply due diligence requirements and record keeping requirements in respect of customers and beneficial owners as laid down or equivalent to those laid down in the AML Law or they are situated in a third country which imposes equivalent requirements to those laid down in the AML Law (Article 2 (22) of the AML Law). Other requirements of the AML Law regarding third party reliance are further described under c.12.2 (Applying Recommendation 9). It has to be mentioned, that on the basis of these provisions of the AML Law *all of the service providers* (financial institutions and other entities) under the scope of the AML Law may use of the information of *financial institutions and other entities* about the customer or beneficial owner, so the AML Law does not provide distinct requirements regarding the financial institutions and other entities in this respect (according to Article 15 of the Directive).
Conclusion	The AML Law 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	N/A
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 Law covers auditors and undertakings providing accounting or tax advisory services (according to Subparagraph 1 and 4 of Article 2 (10)). They are subject to the same CDD, record-keeping and reporting requirements like financial institutions and other DNFBPs as described under Recommendation 5, 10 and 12.
Conclusion	The extent of the scope of the CDD, record-keeping and reporting obligation for auditors, accountants and tax advisors is in line with the Directive.
Recommendations and Comments	N/A
12.	**High Value Dealers**
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.
FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	According to Subparagraph 7 of Article 2 (10), the persons engaged in economic and commercial activities covering trade in immovable property items, *precious stones*, *precious metals*, items of movable cultural property, antiques or *other property* the value whereof exceeds EUR 15 000 or the corresponding sum in a foreign currency, to the extent that payments are made in cash are under the scope of the AML Law. On the basis of this provision the AML Law adopted the broader approach of the Directive and covers traders in precious metals and precious stones, as well as traders in goods where payments are made in cash in an amount of EUR 15 000 or more.
Conclusion	The AML Law adopted the broader approach of the Directive
Recommendations and Comments	N/A
13.	**Casinos**
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.

Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	In terms of Article 9 (4) of the AML Law the companies organizing gaming must verify the identity of the customer before *entering the casino* and register him, also register him when he exchanges cash into chips or chips into cash. Other requirements of the AML Law regarding casinos (and the concerns of the evaluators) are further described under c.12.1 (Applying Recommendation 5).
Conclusion	The AML Law requires identification and verification to be applied at the entrance of the casino, regardless of the amount of chips purchased. The AML Law is in line with Article 10 of the Directive.
Recommendations and Comments	N/A
14.	**Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU**
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	In Lithuania advocates and advocate's assistants are allowed to submit their suspicious transaction reports to the Lithuanian Bar Association as a self-regulatory organisation. Articles 14(2) and 14(8) of the AML Law state that on establishing that a customer is performing a suspicious monetary operation or transaction or on receipt of information that the customer intends or will attempt to perform a suspicious or unusual monetary operation or transaction, advocates and advocate's assistants are to notify the Lithuanian Bar Association instead of the FCIS. This is also stated in the Government Resolution No. 677. Upon receipt of the information from advocates and their assistants, the Lithuanian Bar Association is obliged to communicate the information to the FCIS within three working hours, as per the normal reporting time.
Conclusion	The legal professionals in Lithuania report to a self-regulatory body, which is in line with the option provided in the Directive.
Recommendations and Comments	N/A
15.	**Reporting obligations**
Arts. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop

	the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	Reporting obligations of financial institutions and DNFBPs are laid down in Article 14 of the AML Law which states that reporting to the FCIS must be made about suspicious or unusual monetary operations and transactions performed by the customer. The law further states that upon establishing that the customer is performing a suspicious monetary operation or transaction, financial institutions and DNFBPs must suspend the performance of the operation or transaction disregarding the amount of the monetary operation or transaction and, not later than within three working hours, report this operation or transaction to the FCIS, and advocates or advocate's assistants, to the Lithuanian Bar Association. The FCIS then has the power to suspend the operations or transactions for up to five working days. If the suspension of a monetary operation or transaction may interfere with the investigation of legalisation of funds or property derived from criminal activity, terrorist financing and other criminal actions relating to money laundering and/or terrorist financing, the FCIS must notify thereof a financial institution and other entity.
Conclusion	There is an obligation to report (*ex ante*) to the FCIS where reasons for suspicion of ML/FT exist in connection with the operations and transactions performed by customers and to refrain from carrying out the operation or transaction.
Recommendations and Comments	N/A

16.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and Analysis	According to Article 14(15) of the AML Law, financial institutions and DNFBPs shall not be responsible to a customer for the non-fulfilment of contractual obligations and for damage caused in performing the duties and actions specified in the same article. The article further states that employees of financial institutions and DNFBPs who in good faith report to the FCIS any suspicious or unusual transactions performed by customers shall not be held liable.

	Although this article does not extend to directors and officers of financial institutions and DNFBPs, the Lithuanian authorities confirmed that the interpretation of "employees" also extends to directors and officers.
Conclusion	Article 27 of the Directive has been implemented in the AML Law of Lithuania under Article 14(15).
Recommendations and Comments	N/A
17.	**Tipping off (2)**
Art. 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	Article 20 of the AML Law specifically prohibits competent authorities and self-regulatory organisations entrusted with the AML/CFT supervision, their employees, as well as financial institutions, DNFBPs and their employees from notifying a customer or other persons that information about their operations or transactions has been submitted to the FCIS. This prohibition does not however apply to advocates and advocate's assistants when they attempt to convince the customer not to pursue unlawful activity. Furthermore this prohibition shall not prohibit financial institutions and DNFBPs: *1) to exchange information among credit institutions, insurance undertakings engaged in life insurance activities and insurance brokerage firms engaged in insurance mediation activities related to life insurance and investment companies with variable capital registered within the territory of the European Union Member States, also registered in the territory of third countries which are subject to the requirements equivalent to those laid down by this Law, provided that these entities belong to the same group composed of the parent company, its subsidiaries and the undertakings where the parent company or its subsidiaries hold a share in capital as well as the undertakings which draw up a set of consolidated financial statements of a group of undertakings and a set of consolidated annual financial statements of a group of undertakings;* *2) to exchange information among the undertakings providing auditing, accounting or tax advisory services, notaries and the persons entitled to perform notarial actions as well as advocates and advocate's assistants registered within the territory of the EU Member States, as well as those registered in the territories of third countries which has established requirements equivalent to those laid down by this Law, if the said entities perform their professional activities as a single legal entity or as several entities which share common ownership and management or as several entities which are subject to common control; and*

	3) to exchange information among financial institutions, auditors, the undertakings providing accounting or tax advisory services, notaries and the persons entitled to perform notarial actions as well as advocates and advocate's assistants in the cases connected with the same customer and with the same transaction covering two or more mentioned entities, if they are registered within the territory of an EU Member State or the territory of a third country which has established requirements equivalent to those laid down by this Law and if they are from the same professional category and are subject to equivalent obligations as regards professional secrecy and personal data protection. In the cases specified above, exchange of information shall be permitted exclusively for the purposes of prevention of ML/FT.
Conclusion	The provisions of Article 20 of the AML Law correspond to the requirements of Article 28 of the Directive.
Recommendations and Comments	N/A
18.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	In terms of Article 19(4) of the AML Law financial institutions and DNFBPs are required to apply the requirements of the AML Law in their branches and majority-owned subsidiaries located in third countries. In this regard the AML Law outlines the duties of financial institutions and DNFBPs, one such duty, as outlined in Article 19(1), being the following: *Financial institutions and other entities, except for advocates and advocate's assistants, must establish appropriate internal control procedures concerning the identification of customers and beneficial owners, submission of reports and information to the Financial Crime Investigation Service, safekeeping of information specified in this Law, risk assessment, risk management (taking into account the type of the customer, the business relationship, product or transaction, etc.), management of enforcement of requirements and communication, which would prevent monetary operations and transactions related to money laundering and/or terrorist financing, and ensure proper preparation of the employees of financial institutions and other entities for and their familiarisation with money laundering and/or terrorist financing prevention measures specified in this Law and other legal acts.*
Conclusion	The obligation as provided under Article 34(2) of the Directive for credit and financial institutions is transposed under Articles 19(1) and 19(4) of the AML Law.

Recommendations and Comments	N/A
19.	**Branches and subsidiaries (2)**
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	The AML Law, under Article 19(4), states that where the legislation of the third country, for branches and majority-owned subsidiaries, does not permit the application of equivalent measures, financial institutions and DNFBPs shall immediately inform the FCIS and, in agreement with the FCIS, shall take additional measures to effectively decrease the threat of ML/FT. Government Resolution No. 942 provides a list of criteria based on which a threat of ML/FT is to be considered high. One of the criteria under paragraph 2.4 states that if customers constantly reside in a country that is not a member of the FATF, or of an international organisation with an observer status at FATF, the threat of ML/FT shall be considered to be high. Article 11 of the AML Law provides instances where enhanced due diligence is to be applied, one such instance being where there is a high risk of ML/FT as per Article 11(1)(4). Article 11(2) then outlines the measures to be applied in relation to enhanced due diligence when performing transactions or business relationships through the representative, or the customer is not physically present for identification purposes, or when there is a high risk of ML/FT. Financial institutions and DNFBPs must apply one or several additional measures: *1) use additional data, documents or information to establish the customer's identity;* *2) take supplementary measures to verify or certify the supplied documents or requiring confirmatory certification by the financial institution;* *3) ensure that the first payment is carried out through an account opened in the customer's name with the credit institution.*
Conclusion	In instances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches, credit and financial institutions are required to inform the FIU and apply enhanced due diligence measures. Article 31(3) of the Directive is implemented in Lithuania.
Recommendations and Comments	N/A
20.	**Supervisory Bodies**
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform

	the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	Article 25(1) of the Directive is implemented through Articles 4(12) and 8 of the AML Law. Article 4(1) places an obligation on supervisory authorities and self-regulatory organisations (as mentioned in the law) to co-operate with the FCIS according to the mutually established procedure and to exchange information on the results of the performed inspections of entities' activities related to prevention of ML/FT. Article 8 further states that law enforcement and other state institutions are required to report to the FCIS about any noticed indications of suspected ML/FT, violations of this law and the measures taken against the perpetrators. The information which must be communicated by state institutions to the FCIS and the procedure for communicating this information is established by the Government.
Conclusion	Article 25(1) of the Directive is implemented in Lithuania.
Recommendations and Comments	N/A
21.	**Systems to respond to competent authorities**
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Financial institutions and DNFBPs are required to introduce internal systems that would enable them to respond fully and rapidly to inquiries from the FCIS concerning submission of the information specified in this law and ensure submission of this information within 14 working days, unless, in certain cases, the law establishes shorter time limits.
Conclusion	The legislation in Lithuania requires credit and financial institutions to have systems in place to enable them to respond fully and promptly to enquiries from the FIU. The AML Law does not however require credit and financial institutions to provide information to 'other authorities' and does not outline that information or documentation can be requested by 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.
Recommendations and Comments	It is recommended that the AML Law is amended to enable credit and financial institutions to respond fully and promptly to enquires from other authorities, apart from the FIU, and to enable the FIU and other authorities to enquire from credit and financial institutions 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.
22.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	The provisions of the AML Law have been extended to other professionals other than those referred to in Article 2 (1) of the Directive, namely to bailiffs or the persons entitled to perform the actions of bailiffs. The evaluators were not informed by the Lithuanian authorities that formal risk assessment has been carried out in this respect.
Conclusion	Lithuania has implemented the mandatory requirement in Article 4 of the Directive. However, no formal risk assessment has been undertaken in this regard.
Recommendations and Comments	It is recommended that a formal risk assessment is carried out to determine which professional categories other than those specified in the AML Law are likely to be used for ML or TF purposes.
23.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	Pursuant to the Common Understanding between Member States on third countries equivalence under 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, the Government of Lithuania has approved the *List of states*, dependencies and regions that are not members of the European Union but are recognized as applying the requirements equivalent to those set out in the Law of Lithuania on the Prevention of Money Laundering and Terrorist Financing (Government Resolution No 1149).
Conclusion	The provisions of the AML Law on equivalent third countries correspond to the requirements specified in the Directive.
Recommendations and Comments	N/A

Annex to Compliance with 3rd EU AML/CFT Directive Questionnaire

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CVFT Directive 2005/60EC (3rd Directive)

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

Article 2
Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:
(a) heads of State, heads of government, ministers and deputy or assistant ministers;
(b) members of parliaments;
(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
(d) members of courts of auditors or of the boards of central banks;
(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
(f) members of the administrative, management or supervisory bodies of State-owned enterprises.
None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.

The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:
(a) the spouse;rd 3
(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.