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

REPUBLIC OF MOLDOVA

4 December 2012

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LIST OF ACRONYMS USED

ACPO	Anti-Corruption Prosecutor's Office
ABM	Banks Association of the Republic of Moldova
AML/CFT	Anti Money Laundering/Countering Financing of Terrorism
AML/CFT Banks' Regulation	Regulation on bank's activity regarding prevention and combat of money laundering and terrorist financing (Attachment to the Decision of the Council of Administration of the National Bank of the Republic of Moldova no. 172 of 4 August 2011)
AML/CFT Law	Law no. 190-XVI of 26 July 2007 on Prevention and combating money laundering and terrorism financing
AML/CFT NCFM Regulation	Regulation on measures to prevent and combat money laundering and terrorism financing on financial market" on 21 October 2011
C	Compliant
CC	Criminal Code
CCECC	Centre for the Combating of Economic Crime and Corruption
CID	General Criminal Investigation Directorate of the CCECC
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CPC	Criminal Procedure Code
CTR	Cash transaction report
DNFBP	Designated Non-Financial Businesses and Professions
EAW	European Arrest Warrant
EC	European Commission
ETS	Europe Treaty Series
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FEE Regulation	Decision of the Council of Administration of the NBM, no. 53 of 5 March 2009
FI	Financial institution
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GDP	Growth domestic product
GRECO	Group of States against Corruption
LC	Largely compliant
LiC	Licensing Chamber
LEA	Law enforcement agency

IT	Information technologies
KYC	Know your customer
MoJ	Ministry of Justice
MoF	Ministry of Finance
ML	Money Laundering
MLA	Mutual legal assistance
MLCO	Money Laundering Compliance Officer
MoU	Memorandum of Understanding
MVT	Money Value Transfer
NA	Non applicable
NBM	National Bank of the Republic of Moldova
NC	Non compliant
NCCT	Non-cooperative countries and territories
NCFM	National Commission of Financial Market
NPO	Non-Profit Organisation
OECD	Organisation for Economic Co-operation and Development
OFAC	Office of Foreign Assets Control (US Department of the Treasury)
OGBS	Offshore Group of Banking Supervisors
OPFML	Office for the Prevention and Fight against Money Laundering
PEP	Politically Exposed Persons
PC	Partially compliant
PCMLTF	Programme on prevention and combat of money laundering and terrorist financing
SIS	Service of Intelligence and Security of the Republic of Moldova
SR	Special recommendation
SRO	Self-Regulatory Organisation
SRNC	State Register of Non-commercial Organisations
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TCSP	Trust and company service providers
TF	Terrorism Financing
UN	United Nations
UNSCR	United Nations Security Council resolution

I. PREFACE

1. This is the twelfth report in MONEYVAL's 4th round of mutual evaluations, following up the recommendations made in the 3rd round. The evaluation of the anti-money laundering and combating the financing of terrorism regime of the Republic of Moldova was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF)[1] and was prepared using the AML/CFT Methodology 2004[2]. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 32, 35, 36 and 40, and SRI, SRII, SRIII, SRIV and SRV), whatever the rating achieved in the 3rd round.

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

3. The evaluation was based on the laws, regulations and other materials supplied by the Republic of Moldova, and information obtained by the evaluation team during its on-site visit to the Republic of Moldova from 20 to 26 November 2011, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in the Republic of Moldova. The report only covers those parts of Moldova under government control. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The assessment was conducted by an evaluation team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues and comprised: Mr. Lajos Korona (public prosecutor of the Metropolitan Prosecutor's Office Budapest, Hungary) who participated as legal evaluator, Ms. Karin Zartl (expert in International Affairs and European Integration, Austrian Financial Market Authority (FMA), Austria), Mr. Nedko Krumov (expert in Analysis Sector of the Financial Intelligence Directorate of the State Agency for National Security, Bulgaria) who participated as financial evaluators, Mr. Michael Stellini (senior Legal & International Relations Officer, Financial Intelligence Analysis Unit, Malta) who participated as a law enforcement evaluator and Ms Irina Talianu and Mr Dmitry Kostin, members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

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

[1] This report is not based on the revised FATF Recommendations, which were issued in February 2012.

[2] As updated in February 2009.

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

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

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 24th Plenary meeting – 10-14 September 2007), 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 currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2011 or shortly thereafter.

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

II. EXECUTIVE SUMMARY

1. Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in the Republic of Moldova at the time of the 4th on-site visit (20 to 26 November 2011) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of evaluations is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which the Republic of Moldova received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round report. This report is not, therefore, a full assessment against the FATF 40 Recommendations 2003 and 9 Special Recommendations 2001 but is intended to update readers on major issues in the AML/CFT system of the Republic of Moldova.

2. Key findings

2. In September 2010 the Republic of Moldova's authorities adopted a national strategy for prevention and combating of money laundering and financing of terrorism for 2010-2012 (the National Strategy). The authorities involved in the process of implementation of the National Strategy have set the main objectives for improving the AML/CFT system in the country: compliance with the relevant international standards, appropriate and viable legislation and efficient collaboration between law enforcement and supervision bodies in the area of AML/CFT. Some of the objectives were set as a result of recommendations issued by the specialised international organisations, including the recommendations stated in the 3rd round evaluation report of MONEYVAL.

3. The AML/CFT Law has been modified due to a 2010 Constitutional Court decision, the main adjustment being related to the specific provisions on the reporting regime and on the organisation of the Office for Preventing and Combating Money Laundering (OPFML) within the structure of the Centre for Combating Economic Crimes and Corruption (CCECC).

4. The Republic of Moldova has developed the criminal legislation since the 3rd round evaluation by bringing the money laundering offence more in line with the Vienna and Palermo Conventions. The money laundering offence, which was reformulated according to this standard, is generally understood and actually interpreted by practitioners so as to cover the laundering by the author of the predicate offence (self-laundering). Such laundering activities have actually been subject to prosecution in a number of criminal cases. Nonetheless, the continued judicial insistence on a prior conviction for the predicate offence as a precondition of prosecuting stand-alone money laundering is a major deficiency.

5. The terrorism financing offence now addresses the general concept of financing of terrorist organisations and individual terrorists. It was also positively noted that the Moldovan criminal substantive law appears to cover all offences within the scope of the nine treaties listed in the Annex to the TF convention. There has not been any investigation or prosecution for TF offences.

6. The structural characteristics of the confiscation and provisional measures regime in the Republic of Moldova remained largely the same since the previous round of evaluation. The fundamental principles of the constitution are thus unchanged and so is the structure by which the general rules of confiscation are provided in the Criminal Code (CC). Sequestration (i.e. seizure of goods) as the main provisional measure is prescribed in the Criminal Procedure Code (CPC).

7. As far as the freezing of assets of designated persons and entities pursuant to SR.III is concerned, the evaluation team noted some fundamental deficiencies in the domestic legislation. On the positive side, there is some legislation in place that regulates the publication of the respective lists as well as the possibility to elaborate national lists in this respect. The AML/CFT Law also requires, at least implicitly, the reporting entities to postpone transactions that involve assets of designated persons and entities. Notwithstanding all these measures, there is no specific legislation in the Republic of Moldova to provide for the actual freezing of these assets beyond the period of postponement (i.e. 5 days) nor are there any procedural rules for delisting, unfreezing etc. This in itself raises questions as to the meaning and purpose of the entire regime.

8. The Republic of Moldova's FIU (OPFML) is placed within the administrative structure and premises of the CCECC. The functions and responsibilities of the FIU, are set out in AML/CFT Law, and appear to sufficiently cover the core requirements set out in Recommendation 26. On a legislative level, the issue of the independence and autonomy of the FIU was resolved with the enactment of a series of amendments to AML/CFT Law brought into force in April 2011. Notwithstanding the fact that the OPFML continues to be situated within the operational structure of the CCECC, the AML/CFT Law now provides for the establishment of the OPFML as an independent subdivision with powers and functions which are clearly distinct from those of the CCECC.

9. There are various law enforcement authorities which are involved in the investigation of ML/FT cases. The authority which is mainly responsible for receiving disseminations by the OPFML is the Criminal Investigation Directorate (CID) within the CCECC. Although this Directorate has dedicated two sub-Directorates to deal with ML/FT cases, the level of knowledge related to the financial aspect of investigations, asset identification and tracing does not appear to be very comprehensive. Additionally, in spite of a number of steps taken (MoUs signed, joint working groups, etc.) there appears to be a lack of co-operation and co-ordination between the various law enforcement authorities in order to properly pursue and investigate ML/FT cases.

10. As evident from the statistical data provided, suspicious transaction reports (STRs) are to a very large extent reported by banks. This indicates a serious lack of awareness by some of the reporting entities, especially in the designated non-financial businesses and professions (DNFBP) sector.

11. The Republic of Moldova has taken significant steps in order to improve the AML/CFT legal and regulatory framework, as well as the supervisory system. The new AML legislation introduced the risk-based approach. The preventive measures are established by the AML/CFT Law, the Law on Financial Institutions, the Law on Foreign Exchange Regulation and various other sector specific Laws and regulations which provide a comprehensive legal framework including customer due diligence (CDD) and record keeping requirements.

12. The financial supervision is undertaken by the National Bank of Moldova (NBM) for banks and foreign exchange entities. The National Commission on Financial Market (NCFM) was established in 2007 and is the supervisory authority for the non-banking financial market. Both the NBM and the NCFM apply on-site and off-site supervisory measures, although their effectiveness was not fully demonstrated.

13. The Republic of Moldova has made a number of improvements in the legal framework in relation to the DNFBP. By amending the AML/CFT Law, the Moldovan authorities have now listed all the DNFBP as reporting entities, including independent accountants.

14. The AML/CFT Law provides the list of the authorities empowered to supervise the DNFBP. However, there is no specific provision to establish a clear link between every specific category of DNFBP and the specific authority empowered to supervise it. The allocation of supervisory powers over a specific DNFBP should be more clearly stated. The effective supervision over the DNFBP was not demonstrated.

15. The use of shell or "ghost" companies for money laundering remains an issue despite the current company registration rules.

16. Legal provisions for providing mutual legal assistance are laid down in domestic law, bilateral and multilateral treaties and apply both to ML and FT. According to the AML/CFT Law, the Moldovan judicial authorities are able to co-operate without concluding a treaty, since the national legislation allows co-operation on the basis of reciprocity and, to some extent, even in absence of it.

3. Legal Systems and Related Institutional Measures

17. The examiners note the developments achieved in the AML criminal legislation. The Moldovan authorities responded positively and effectively to almost all recommendations made by the third round evaluation team: completed the list of designated categories of offences, provided for the explicit coverage of foreign predicate offences, the implicit and practical coverage of self-laundering and amended the rules governing corporate criminal liability to meet the respective international standards. These achievements are welcomed by the evaluators. The only exception is the adoption of the term *"purchase"* instead of *"acquirement"* which appears more restrictive than the previous wording and therefore it should be remedied by legislation or, at least, by guiding jurisprudence.

18. What however needs to be criticised is the judiciary's apparent insistence on a prior conviction for the predicate offence as a precondition of prosecuting autonomous ML offences. Widespread application of this approach will necessarily make it impossible to secure a ML conviction in case of autonomous (third-party) ML offences in general. This is applicable not only in cases where the prior conviction could not be achieved by lack of evidence, but also where a proceeds-generating offence has been committed, but the perpetrator is dead, or has absconded. The efforts that the CCECC and other authorities have made in this respect are to be appreciated. Nevertheless, they have proved to be insufficient so far to effectively change the judiciary's approach and therefore the Moldovan authorities need either to further these efforts or to seek for other, possibly legislative solutions to overcome this obstacle.

19. Despite the improvement in statistics, especially in terms of ML investigations and indictments, the judiciary stage still presents a bottleneck in the system with numerous cases pending before the courts. The evaluators share the view of the previous team concerning the implementation aspect which is still far from being perfect and thus it needs to be addressed by a firm prosecution policy and creation of jurisprudence, particularly on the evidentiary requirements.

20. At the time of the 4th evaluation round, the evaluation team found the TF criminalisation more in line with the standards set in the FT Convention and SR.II. Namely, the FT offence now encompasses the financing of terrorists and terrorist organisations and expressly covers all offences defined as terrorist offences in the Annex to the FT Convention. The criminal liability of legal persons now applies to the FT offence and a number of related offences and, finally, the FT offence extends to the full notion of *"funds"* according to the FT Convention.

21. There remain some aspects which need to be corrected so as to achieve full compliance with SR.II. The generic offence of terrorist act (Art. 278 CC) should explicitly be applicable to the population or government of *"any country"*. In addition, the FT offence should be more precise in not requiring that the funds be linked to a specific terrorist act. The current legislation needs some clarification or completion so as to clearly provide that the financing of terrorist organisations and individual terrorists for any purpose (including legitimate activities) is actually covered.

22. The general results of the confiscation regime are still low even in the context of the economic situation in the Republic of Moldova. The legislation still does not clearly provide for the confiscation of the property that has been laundered (the *"corpus"* of the ML offence) as recommended in the previous evaluation report. The confiscation mechanism should be extended to proceeds the perpetrator or a *mala fide* third party has transferred to a *bona fide* third party without compensation. The legislation still does not extend the scope of applicability of sequestration to clearly cover the property belonging to legal entities and third persons (*mala* fides third parties as a minimum).

23. While the provisional measures and confiscation regime underwent changes and developments, many of the deficiencies remained. Apart from the more or less serious weaknesses of the legal framework, the evaluators still have the impression that the authorities make insufficient use of the powers currently vested to them by the existing legislation which, despite its deficiencies, offers a relatively broad authority to seize/sequester and to confiscate.

24. Further efforts are needed to familiarise law enforcement and judiciary authorities with the provisional and confiscation measures so that they actually and regularly apply their powers to seize/sequester and confiscate proceeds and instrumentalities of crime.

25. The examiners could not find any significant changes in the CFT legislation and practice that would have brought the Republic of Moldova closer to the standards set in SR.III. The legal framework remains largely deficient. The freezing mechanism only covers the postponement of transactions involving assets that belong to the listed persons or entities, thus apparently excluding all other funds and assets not directly involved in transactions. There are still no procedures for systematically checking whether designated persons have funds or other assets in the country, no procedures for de-listing, to challenge a listing decision and to release part of the frozen assets for legitimate purposes, etc. The majority of the areas that fall under the scope of SR.III have not been addressed.

26. The AML/CFT Law provides for the powers, functions and structure of the OPFML, which is designated as the FIU in the Republic of Moldova. The AML/CFT Law is complemented by Orders issued by the Director of the CCECC. Although the functions and powers of the OPFML as the central authority for the prevention of ML/FT are clearly set out under the AML/CFT Law and Order No. 96, at the time of the on-site visit, other legislative acts were still making reference to the CCECC in relation to certain functions specifically attributed to the OPFML.

27. The OPFML is required and empowered to analyse STRs and to disseminate information and documents, to criminal investigation authorities and other competent authorities, when there are reasonable suspicions of ML/FT and other proceeds-generating crimes.

28. Notwithstanding the recent welcome developments, the evaluators noted a number of factors which could potentially have a bearing on the effectiveness and efficiency of the OPFML. These include the disproportionate number of functions being carried out by the Tactical Analysis Department, who appear to be conducting most of the activities of the OPFML. In addition, the analysis methodology does not provide for clear provisions on the dissemination process, in order to determine the circumstances and criteria that shall be taken into consideration when

determining which LEA is to receive the OPFML analytical work and based on which circumstances and criterions.

29. In the course of an ML/FT investigation, the Moldovan law enforcement authorities may exercise all the investigative powers set out under the Criminal Procedure Code (CPC), including the interrogation of suspects, conducting on-site investigations, searches and seizing objects and documents in order to collect evidence and trace criminal assets. Nevertheless, as noted in the Third Mutual Evaluation Report, the range of techniques available is fairly limited and the use of such techniques is restricted to serious crimes, especially serious crimes and exceptionally serious crimes.

4. Preventive Measures – financial institutions

30. Since the 3rd round mutual evaluation the Republic of Moldova has made welcome progress in aligning its AML/CFT legal framework with international standards. At the time of the present assessment, the risk-based approach is embedded in the AML/CFT Law and in related guidance and regulation.

31. According to the legal requirements, reporting entities are obliged to establish due diligence procedures. The identification and verification of the identity of natural or legal person and of the beneficiary owner on the basis of the identity documents, as well as data or information obtained from a reliable and independent source is required by the AML/CFT Law. Enhanced CDD is required by law for relationships established with politically exposed persons (PEPs), correspondent current accounts and non-face to face relationships.

32. The scope of AML/CFT obligations broadly covers the financial institutions (FI) provided by the FATF standard. However, the Law contains one exception to this, namely the "A" license Savings and Credit Associations. The evaluation team is of the opinion that those should be included within the scope of the AML/CFT Law.

33. The FI in the Republic of Moldova appeared to be generally aware of the identification and verification obligations. They also appeared well aware of their obligation to retain the relevant documentation and the importance of a quick response to the authorities in case of a request for documentation.

34. However, further guidance is needed on the steps to be taken in respect of the identification of the beneficial owners and for the process of understanding the ownership and control structure of customers that are legal persons or legal arrangements, including cases when somebody exercises ultimate effective control.

35. Moldovan laws and regulations do not allow third party introducers but neither do they specifically prohibit it. According to the explanations provided to the evaluators by the Moldovan authorities, the prohibition would result logically from the CDD obligations in the sense that the FIs are obliged to apply the identification requirements directly on their customers. Neither the prohibition nor the requirement to apply identification procedures in direct contact are stated in the law.

36. The stipulations of the AML/CFT Law as well as those of the Law on Financial Institutions state that financial secrecy should not obstruct the application of the AML/CFT requirements including the provision of information to the FIU. The scope of this legislation has been broadened since the previous evaluation round. The evaluators were not advised of any particular problems occurring in practice.

37. The record keeping requirements are largely in line with the FATF standards. According to the AML/CFT Law, the FI are required to keep records of the information and documents of the natural and legal persons, of the beneficial owner, the registers of identified natural and legal persons and the archive of accounts and primary documents, including business correspondence, for a period of least 5 years after the business relationship ends or bank account closes. Upon supervisory authorities' request, the reporting entities are required to prolong the record keeping period.

38. In respect of the wire transfers requirements, the Regulations on the activity of banks within the international money transfer systems are stricter than the AML/CFT Law. According to this Regulation, the participating bank shall develop and implement effective mechanisms for establishing the identity of the payer/beneficiary before providing an international money transfer service; the identity of the payer/beneficiary shall be made, at least, based on the identification documents, and if an empowered person makes the transfer, based on the identification documents and letter of attorney which shall be presented. There is no threshold for identification mentioned in the Regulation, therefore it appears that the identification requirements apply for all transfers regardless of the amount. In practice, in the Republic of Moldova, only banks and the Post Office perform wire transfers. Deficiencies have been identified in relation to effective monitoring of compliance with the rules and regulations implementing SRVII, mainly related to the supervision of the Post Offices.

39. The AML/CFT Law requires that the reporting entities shall adopt enhanced due diligence measures when natural or legal persons receive or send funds from/to countries that lack norms regarding money laundering and financing of terrorism. Furthermore, lists of countries which are considered to pose a higher risk of ML/FT are annexed to the Guide to Suspect Activities or Transactions under the Law on Prevention and Combating of Money Laundering and Terrorism Financing. However, no requirement to pay special attention to transactions performed by customers from countries that do not apply or insufficiently apply FATF Recommendation is to be found in the Moldovan legislation. For the non-banking FIs, the counter measures for countries that do not apply or insufficiently apply the FATF Recommendations are limited to enhanced CDD.

40. The requirement to report suspicions of ML/FT is primarily set out under the AML/CFT Law. This obligation is supplemented by various provisions under other laws and regulations. It has to be noted that the reporting obligation provided by the AML/CFT legislation refers to *"transactions"* and not to *"funds"* which are suspected to be linked or related to or are used for terrorism, terrorist acts of by terrorism organisations. This is clearly not in line with essential criterion IV.1 as it limits the obligation of reporting and does not cover assets (including funds) which are in the possession of terrorists or used for terrorism or terrorist organisations but which are not used in a transaction.

41. The Orders issued by the CCECC provide an extensive list of criteria and indicators of suspect ML/FT activities or transactions within both the financial and non-financial sector. The evaluators are concerned that the systematic (tick box based) reporting might negatively influence reporting entities' reporting behaviour.

42. In terms of effectiveness, there is a major discrepancy between the number of (ML related) STRs submitted by banks and the reports submitted by other reporting entities. The evaluators consider the reporting level by all reporting entities, except for banks, to be extremely low, although the authorities remarked that the OPFML is focussing considerable resources to raise awareness among all reporting entities on their reporting obligations.

43. The AML/CFT Law requires the reporting entities to adopt proper programmes on prevention and combating money laundering and financing terrorism (PCMLTF), according to the recommendations and normative acts approved by the supervising authorities. FIs are obliged to include in their PCMLTF the name of a managerial employee responsible for ensuring the compliance of the policies and procedures with the AML/CFT legal requirements. However, both the AML/CFT Law and the Law on Financial Institutions remain silent on the internal audit function including its size and duties concerning AML/CFT matters.

44. There are no legal requirements for foreign branches and subsidiaries of the Moldovan FIs to observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local laws and regulations permit. During the on-site visit, the evaluation team was informed that in practice, Moldovan FIs do not have foreign branches. However, there are no provisions in the Moldovan legislation which prohibit the FIs from having foreign branches. Furthermore, the Law on Financial Institutions explicitly mentions *"branches and subsidiaries, including those abroad"* which explicitly opens the possibility for the FIs to open foreign branches in the future.

45. According to the Law on Financial Institutions, it is forbidden to engage in financial activities, without a license issued by the National Bank of Moldova. According to the AML/CFT Law, the FIs are not allowed to establish business relations with shell banks or with a bank that is known as allowing shell banks to use its accounts. Although the general provisions on the correspondent banking requirements are largely in line with the FATF standards, there is no express requirement for all FIs to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

46. The main legal provisions for the AML/CFT regulation and supervision of the FIs are contained in the AML/CFT Law, which lists the OPFML, the National Bank of Moldova, the National Financial Market Commission and the Ministry of Information Technology and Communications as supervisory bodies. The allocation of supervisory powers over a specific type of reporting entity to a specific authority is not contained in the AML/CFT Law but the Moldovan authorities indicated that this derives from the AML/CFT Law in conjunction with the sector specific laws (e.g. Law on Financial Institutions, Law on Insurance).

47. The evaluators reached the conclusion that AML/CFT supervision is effectively carried out by the NBM with regard to the FIs within its remit (banks and foreign exchange entities). The effectiveness of the NCFM's supervision over the non-banking financial market participants is assessed to be of a sufficient degree in line with the FATF Recommendations. With respect to the remaining non-banking financial market participants (Post Office, leasing companies) there is a lack of legal clarity which was not compensated by the amendments to the AML/CFT Law.

48. The requirements related to prevention of criminals from controlling FI and the fit and proper criteria are largely in place through the AML/CFT Law and sectoral Laws. However, there are no procedures to prevent criminals from holding or being the beneficial owner of a significant or controlling interest or holding a management functions in case of leasing companies.

49. The evaluation team welcomes the amendments brought in August 2011 to Art. 291^1 of the Administrative Code that now contains penalties for violation of the provisions of the AML/CFT Law. According to the new article, infringements of the AML/CFT legislation include fines. The fines amount from 100[4] to 150 conventional units for natural persons (~ from €133 to €200), and from 300 to 500 conventional units for legal persons (~ from €400 to €670). The evaluators are of the opinion that the amounts of the possible fines are far from being dissuasive for the financial

[4] According to Art. 64 of Criminal Code, *"one conventional unit"* is equivalent of 20 Moldovan lei.

sector. Furthermore, contemplating the minimum and the maximum limits of the fines, it is difficult to assess that they might be applied in a *"proportionate"* manner.

50. The money and value transfer providers (MVT) are not mentioned as such in the AML/CFT Law (except for the Post Office) therefore they do not have direct obligations in respect of SR VI requirements. In practice, the MVT services are provided by the banks and post offices and all AML/CFT measures apply. The banks demonstrated a relatively high level of awareness in respect of CDD and reporting obligations and since the MVT services are considered as part of the banking services, the AML/CFT obligations pertain equally.

51. In order to provide guidance for the reporting entities, the CCECC has issued Orders establishing criteria and indicators for suspicious transactions and activities. The criteria are dedicated for every specific financial institution, and describe ML and TF methods and techniques to which FIs have to pay attention when carrying out the transactions.

52. The guidance issued by the supervisory authorities is limited. Although the NBM and NCFM are empowered to do so, they have not made extensive use of this power so far. Instead, they rely to a high degree on regulations further detailing the provisions of the AML/CFT Law (AML/CFT Banks' Regulation and the AML/CFT NCFM Regulation). The two documents contain guidance on the structure of the AML/CFT programmes, know your customer and CDD measures, reporting procedures, data storage and internal controls but they do not contain red flags, indicators or ML trends.

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

53. In the Republic of Moldova all the DNFBP specified by the FATF Recommendations are covered by the AML/CFT Law and all the obligations applicable to the FI are relevant for the DNFBP too.

54. Although the legal system is largely in place and the AML/CFT provisions apply equally to the DNFBP, the evaluators have effectiveness concerns as a series of deficiencies have been identified in relation to the application of the risk-based approach in respect of CDD, the verification of the identity documents and the measures taken for PEP's identification.

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

56. Significant steps have been taken by the Moldovan authorities to ensure regulation, supervision and monitoring of the DNFBP. However, some technical and effectiveness shortcomings were identified. The allocation of supervisory powers in the area of AML/CFT to a specific supervisory authority for a specific supervised category is still missing.

57. The supervisory authority for the casinos is the Licensing Chamber (LiC). The main LiC activity is related to licensing. According to the LiC representatives, the beneficial owner is considered to be the shareholder of the casino or the person which has a power of attorney to represent the casino in relation to the authorities or other entities. No measures are in place to identify the beneficial owner as defined by the FATF standards.

58. There are no legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in casinos.

59. The Ministry of Finance (MoF) licenses and supervises auditing activities and is empowered to conduct inspections to verify compliance with the licensing requirements and conditions set out in licensing agreements, including for AML/CFT matters. It was unclear to the evaluation team which legal provision stipulates the supervisory powers of the MoF over the auditors for AML/CFT purposes.

60. The Ministry of Justice (MoJ) (Division for notaries and lawyers) licenses and regulates the activity of lawyers and notaries. The powers of the MoJ boil down to controlling compliance of persons subject to supervision with the legal practice laws, license requirements and conditions, obtaining information on the observance of the legislation and submitting proposals on disciplining lawyers to the Bar associations.

61. The supervisory function for controlling compliance of real estate agents with the AML/CFT legislation, including inspections and imposition of sanctions for violations, is assigned to the FIU. However, the FIU's capacity to conduct supervision and monitoring over the DNFBP (human and financial resources) is limited. The other supervisory authorities do not seem to pay special attention to the AML/CFT issues during their on-site inspections.

6. Legal Persons and Arrangements & Non-Profit Organisations

62. The activity of companies and other profit-making legal persons is primarily regulated by the Law on Enterprises and Entrepreneurship (Law No. 845-XII of 3 January 1992 as amended) which includes provisions on entrepreneurial activities in the Republic of Moldova and determines the legal, organisational and economic principles of this activity.

63. Steps taken to simplify and to speed up the registration process, to increase the transparency of the legal persons and to provide full availability of registered data, are to be appreciated. Notwithstanding that, the concept of beneficial ownership, which has otherwise been established in the Moldovan legislation by the AML/CFT Law, is entirely absent from the legislation governing corporate entities and their registration. Therefore, the examiners have serious doubts that any registers of legal entities contain any relevant information on beneficial owners of legal persons, as this term is defined by the AML/CFT Law.

64. The use of shell or *"ghost"* companies for committing ML and other crimes through fictitious banking transactions remains a laundering method in the Republic of Moldova despite the current company registration rules and the introduction of corporate criminal liability.

65. The Civil Code sets out general provisions with regard to the non-profit organisations (NPOs) (non-commercial organisations), their legal form (NPOs can operate in three legal forms: associations, foundations and institutions), the compulsory clauses to be enclosed in their statutes and provisions that regulate the economic activity and the conflicts of interest within the NPOs.

66. The evaluators noted the developments that took place in the Republic of Moldova in the areas relevant to SR.VIII. One of the main achievements was the establishment of the central register of NPOs which, considering the volume of relevant information and documents it contains, as well as the public accessibility of all registered data through the Internet, not only increases the transparency of the NPO sector, but will doubtless facilitate the examination of any specific NPO and accelerate any related procedures or investigations.

7. National and International Co-operation

67. The National Strategy sets out the basis for coordination between all authorities involved in the AML/CFT sphere and sets the CCECC as the authority responsible for its monitoring. The authorities which are required to contribute towards the implementation of the strategy are the National Bank of Moldova, the National Commission for Financial Markets, the Ministry of Justice, the Ministry of Information Technology and Communications, the Ministry of Finance, the Customs Service the General Prosecutor Office, Ministry of Interior, Ministry of Finance, Chamber of Licence, Ministry of Economy and National Bureaux of Statistics.

68. The National Strategy is also intended to create a forum for consultation between the various authorities involved in the prevention of ML/FT. However, the evaluators were not informed as to whether the authorities concerned meet on a regular basis to discuss issues and best practices in the AML/CFT field.

69. On a practical level, the OPFML cooperates with law enforcement authorities, especially the CID, on a daily basis. In the course of an ML/FT investigation the CID and the Anti-corruption Prosecutor Office co-operate closely with the OPFML. However, such close cooperation does not appear to exist between the OPFML and other law enforcement authorities which receive disseminations from the OPFML.

70. The Republic of Moldova is a party to international agreements, such as the 1959 European Convention on Mutual Legal Assistance in Criminal Matters and its additional protocol, the 1957 Council of Europe Convention on Extradition and its two protocols and the 1990 Strasbourg Convention. Furthermore, the Republic of Moldova signed and ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS n°198) as well.

71. Neither the CCP nor the MLA Law allow for the refusal of MLA requests on the grounds of secrecy or confidentiality requirements. In the Moldovan law, no financial institution secrecy law appears to inhibit the implementation of the FATF Recommendations and this general approach must be followed when executing foreign letters rogatory.

72. Pursuant to the provisions of the AML/CFT Law, the OPFML, on its own initiative or on the basis of a request, can send, receive or exchange information and documents with foreign authorities having similar functions to the OPFML. Such exchange of information shall be subject to the conclusion of a memorandum of understanding (*cooperation agreement*). The law enforcement authorities use informal channels, such as Interpol and Europol, for the exchange of intelligence in the course of criminal investigations.

73. The NBM is empowered to represent the Republic of Moldova in all intergovernmental meetings, councils and organisations concerning monetary policy, bank licensing and supervision, and other matters that are within its fields of competence. According to the NCFM Law, the Commission is legally empowered to cooperate with the corresponding specialised international organisations and to be their member, as is the case of the IAIS. Some shortcomings have been identified in respect of the legal basis for the NBM to sign bilateral agreements, and in respect of the NCFM's obligations to provide assistance in a rapid, constructive and effective manner to foreign counterparts.

8. Resources and statistics

74. The OPFML is structured in four separate departments: the Tactical Analysis Department composed of nine officers, the Financial Investigation Department composed of five officers and

the Strategic Analysis Department composed of two officers and the International Cooperation Department composed of two officers. The permanent staff of the OPFML is supplemented by ten officers of the CCECC which are delegated by the Director of the CCECC to assist the OPFML in undertaking its functions and duties.

75. An assessment of the internal structure of the OPFML does not appear to have been properly undertaken in order to determine the strengths and weaknesses of each department of the OPFML and to allocate resources in accordance with the identified needs.

76. Analytical software is available to assist the analysts in the analysis of cases. However, the authorities should ensure that the OPFML is adequately funded to enable it to properly perform its functions without the need to rely on the resources of the CCECC.

77. Law enforcement officers need specific training on proceeds of crime identification and tracing. This should be complemented with adequate software to assist the investigative authorities in financial investigations.

78. The resources of the NBM appear largely adequate allowing for on-and off-site supervision but the human resources of the NCFM do not appear sufficient for effective supervision of all supervised entities, given the number of reporting entities. For both supervisory authorities, professional standards and integrity of employees seem to meet the requirements and some training is in place.

79. The statistics kept by the Moldovan authorities are not always comprehensive and do not contain all the necessary data for an accurate analysis of effectiveness. No information on the predicate offence is contained in the statistics on ML investigations, prosecutions and convictions.

80. The situation of the statistics maintained by the supervisors has improved since the 3rd MER. However, better statistical data should be kept by all supervisory bodies, detailing the nature of AML/CFT violations detected and penalties imposed. Statistics of on-site visits and use of sanctions need reviewing collectively and on a coordinated basis, in order to have a clear picture of the level of AML/CFT compliance across the financial sector.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General Information on the Republic of Moldova

1. This section provides a factual update of the information previously detailed in the third round mutual evaluation report on the Republic of Moldova[5] covering: the general information on the country, its membership of international organisations and key bilateral relations aspects, economy, system of government, legal system and hierarchy of norms, transparency, good governance, ethics and measures against corruption. For the purpose of this report, the evaluation team has not assessed the situation in the areas of the Republic of Moldova in which the Government of the Republic of Moldova does not exercise effective control.

2. The Republic of Moldova is a landlocked state in Eastern Europe, located between Romania to the West and Ukraine to the North, East and South. It declared itself an independent state with the same boundaries as the preceding Moldavian Soviet Socialist Republic in 1991, as part of the dissolution of the Soviet Union. A strip of Moldovan's internationally recognized territory on the east bank of the river Dniester has been under the de facto control of the Transnistrian region of the Republic of Moldova since 1990.

3. The Republic of Moldova is divided into thirty-two districts, three municipalities and the autonomous region of Gagauzia and the Transnistrian region of the Republic of Moldova. The Republic of Moldova has 65 cities (towns), including the five with municipality status, and 917 communes. Some other 699 villages are too small to have a separate administration, and are administratively part of either cities (40 of them) or communes (659). This makes for a total of 1,681 localities of the Republic of Moldova.

4. Moldovans are the largest ethnic group in the Republic of Moldova. According to the combined data of the census in the government controlled area and the census in Transnistria in 2004 they account for 69.6% of the country's population. The proportion of Ukrainians and Russians decreased considerably in comparison to the last Soviet census in 1989: from 13.8% to 11.2% and from 13.0% to 9.4% respectively. This is mostly due to emigration. Ukrainians mostly live in the east (Transnistria) and the north, while Russians mostly live in urban areas: 27% of all Russians live in Chisinau, 18% live in Tiraspol, 11% in Bender and 6% in Bălţi. The Gagauz people are the fourth-largest ethnic group (3.8% in 2004). Most of them live in the south of the Republic of Moldova in the autonomous region of Gagauzia.

Economy

5. Since the collapse of the Soviet Union, the relative weight of service sector in economy of the Republic of Moldova started to grow and began to dominate the GDP (now about 75%), as a result of decrease in industry and agriculture. The main economical indicators contracted dramatically. As of 2009, the Republic of Moldova has been described by the European Parliament as the poorest country

[5] The reader is referred to the information set out under this section in the Third round detailed assessment report on Moldova (MONEYVAL(2007)18), which was based on the legislation and other relevant materials supplied by Moldova and information gathered by the evaluation team during its on-site visit to Moldova from 24-29 January 2005 and the updating evaluation visit from 6-8 December 2006. The report was adopted by MONEYVAL at its 24th Plenary meeting (10-14 September 2007).

in Europe in terms of GDP. The average monthly wage in December 2011 in the Republic of Moldova was 3,707 lei (~€ 240) which constituted an increase of 8.4% from the same month of 2010.

6. The Republic of Moldova imports all of its supplies of petroleum, coal, and natural gas, largely from Russia.

7. Nevertheless there were several economic developments in the recent years that should be noted. The Moldovan economy has broadly recovered from the recession, and the outlook is positive. After reaching almost 7 percent in 2010, GDP growth rose further in early 2011, driven in part by exceptionally strong exports. Moreover, core inflation was contained, the structural fiscal deficit has declined, and financial stability has strengthened. On the downside, rising energy prices press on headline inflation, unemployment remained high, and persistent political instability took its toll on the business climate. Nevertheless, the outlook is for robust growth and single-digit inflation in 2011–12, barring further adverse shocks[6].

8. The economy of the Republic of Moldova performed strongly in 2011. Exports in January-July 2011 rose by 43.8 percent relative to the same period in the preceding year. As a result, GDP growth reached 7½ percent and unemployment declined to 6.7 percent in 2011. However, the ongoing slowdown in global economic activity is likely to weigh on economic performance of the Republic of Moldova in the period ahead.

Table 1: Economic indicators[7]

	2007	2008	2009	2010	2011
GDP €bn.	3.2	4.1	3.9	4.4	5.02
GDP year growth in %	3.0	7.8	-6.0	6.9	6.4
GDP per capita €1,000	0.90	1.15	1.09	1.23	1.41
Inflation rate	12.3	12.7	0.0	7.4	7.6

9. While according to a World Bank report published in September 2010, the average share of the underground economy in the Moldovan GDP in 1999-2006 registered an average of 45.08%, a more recent assessment made by the National Bureau of Statistics estimates the illegal economy in Moldova as registering the highest level in 2011 (25.5%) and the lowest level in 2007 (21.3%).[8]

System of Government

10. No major changes are reported, thus the reader is referred to the section of the third round mutual evaluation report (paragraph 2). At the time of the on-site visit the Republic of Moldova had been unable to elect a new President since 2009[9].

[6] http://www.imf.org/external/pubs/ft/scr/2011/cr11200.pdf

[7] National Bureau of Statistics (www.bns.md)

[8] http://www.viitorul.org/libview.php?l=en&id=3986&idc=132#idc=293&

[9] The President was elected in 2012

Legal system and hierarchy of laws

11. Since there are no major changes since the last evaluation report, the reader is referred for further details to the section of the third round Mutual Evaluation Report (MER) (paragraphs 4-8).

International co-operation

12. In relation to international participation of the Republic of Moldova in international organisations, since there are no major changes since the last evaluation report, the reader should refer to the relevant section of the previous mutual evaluation report (paragraph 3).

Transparency, good governance, ethics and measures against corruption

13. On the 6th April 2011 GRECO published its Third Round Evaluation Report on the Republic of Moldova (Theme I[10] and Theme II[11]) in which it acknowledges improvements in the legislation to fight corruption and regulate political funding, but concludes that improvements are needed to combat bribery and calls for a stricter supervision and greater transparency of political funding.

14. Regarding the criminalisation of corruption, GRECO notes the measures taken with the aim of aligning the national legal framework with the standards of the Council of Europe's Criminal Law Convention on Corruption and its Additional Protocol, but stresses that several deficiencies remain which need to be addressed.

15. In addition, active and passive bribery offences in the public sector lack consistency and clarity, and bribery in the private sector and trading in influence are not fully addressed by the country's legislation. There is also a potential for misuse involved in the defence of 'effective regret', which can be invoked when an offender reports a crime after its commission.

16. Concerning transparency of party funding, the Republic of Moldova has gradually introduced legislation on political funding which incorporates many of the principles of Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. Nonetheless, there are still significant shortcomings in the legislation.

17. According to Transparency International corruption perception index, the Republic of Moldova was ranked 112th out of 182 countries and territories around the world. This indicates that it has been a significant deterioration in the perception of corruption in the Republic of Moldova since the previous MER when it ranked 79 out of 163 countries.

1.2 General Situation of Money Laundering and Financing of Terrorism

Money laundering

18. No formal risk assessment has been finalized by the Moldovan authorities by the time of the adoption of the present MER. Various interviewees indicated risks related to NPO sector, tax frauds, phantom companies and casinos.

[10] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)8_Moldova_One_EN.pdf

[11] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)8_Moldova_Two_EN.pdf

19. The National Risk assessment started at beginning of 2011 and it is still on-going. The process of evaluation is led by the FIU and all institutions with direct or indirect competence in the AML/CFT field are involved.

20. The risk stemming from the Transnistrian region is considered low by the Moldovan authorities, especially since all transactions in Moldovan Lei are effected through a clearing office of the National Bank of Moldova (NBM) and there are no branches or subsidiaries of the Moldovan financial institutions in the area of Transnistria. The evaluation team was told that there is a supervisory system in Transnistria, but no information was provided and the evaluation team did not visit this area.

21. To address this issue, based on the Decision of the Parliament nr. 885-XIII/19 June 1996, NBM opened an account to the Settlement Center from Tiraspol and the payments in Moldovan Lei to/from Transnistrian region are performed through this centre in automated interbank payment system. Settlement Center from Tiraspol cannot be called a clearing office of the NBM because it is a separate entity and it is not administered by NBM.

22. The authorities provided the table below, which presents an overview of investigations and convictions for the reference period 2007-2011:

Table 2: Statistics of Investigations and Convictions for Serious Offenses

FATF designated categories of offences	2007		2008		2009		2010		2011	
	Investigations[12]	Convictions	Investigations	Convictions	Investigations	Convictions	Investigations	Convictions	Investigations	Convictions
Participation in organised criminal group and racketeering	5	7	3	11	3	1	2	3	2	5
Terrorism and terrorist financing	0	0	0	0	3		1		1	
Trafficking in human beings[13] and migrant smuggling **(art. 165 of the CC)**	121	79	109	64	123	72	84	49	40	8
Sexual exploitation and sexual exploitation of children	195	33	198	7	175	9	159	7	112	7
Illicit trafficking in narcotic drugs and psychotropic substances **(art. 217 of the CC)**	1845	1681	1609	1439	1338	1158	1204	962	1184	932
Illicit arms trafficking **(art. 290 of the CC)**	81	73	69	62	52	42	76	59	22	17

[12] Including unfinished cases at the beginning of the reporting period

[13] Statistics provided for trafficking in human beings

Illicit trafficking in stolen and other goods	26		13		16		18		28	
Corruption and bribery **(art. 324-325 of the CC)**	137	107	102	69	74	53	57	40	27	10
Fraud **(art. 190 of the CC)**	232	185	247	186	299	180	412	243	230	47
Counterfeiting currency **(art. 236 of the CC)**	24	19	28	23	19	16	18	13	6	5
Counterfeiting and piracy of products	0	0	0	0	0	0	1		0	
Environmental crimes **(art. 223-235 of the CC)**	4	1	5	4	9	5	9	8	8	5
Murder, grievous bodily injury **(art. 145 of the CC)**	270	205	251	175	280	201	270	188	112	38
Kidnapping[14], illegal restraint and hostage-taking **(art. 164 of the CC)**	6	4	13	9	15	12	29	17	16	4
Robbery or theft **(art. 186 of the CC)**	41044	38144	27399	24144	20000	14997	22355	17662	10299	468
Smuggling **(art. 248 of the CC)**	209	181	83	71	82	66	50	35	22	9
Extortion	48	42	64	23	52	28	64	21	44	30
Forgery	10556		14555		16166		15200		12887	
Piracy	0	0	0	0	0	0	0	0	0	0
Insider trading and market manipulation	0	0	2		1		3		7	

23. As the statistics show, the Republic of Moldova is a country with a high crime environment. The majority of recorded crimes consist of illicit trafficking in narcotic drugs and psychotropic substances, robbery or theft, trafficking in human beings, illicit arms trafficking, corruption, fraud, smuggling. Criminal proceeds that are laundered derive from both from domestic and foreign criminal activity. Since most of the domestic crimes are profit-oriented, the evaluation team considers the risks of ML to be high.

24. The use of shell or *"ghost"* companies for committing ML through fictitious banking transactions still remains a typical laundering method, and it appears that neither the current company registration rules nor the corporate criminal liability have so far been proved to be sufficient to entirely overcome this phenomenon.

[14] Statistics provided for kidnapping

25. The analysis of ML cases where a conviction was achieved, shows however a different picture by the over-representation of crimes against property. Predicate offences such as *"cybercrime and swindle"* were noted in 3 out of 4 ML cases. One last conviction was, however, related to drug trafficking which can be considered a promising sign.

Financing of terrorism

26. As regards terrorist financing, the authorities indicated that the situation remained unchanged and no cases terrorist financing have been identified in the Republic of Moldova. No requests were received for assistance relating to suspected terrorist financing.

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

Financial sector

27. As of 30 June 2011 there were 15 commercial banks operating in the Republic of Moldova which were licensed and supervised by National Bank of the Republic of Moldova. This represents a decrease since the last round report where 16 banks were licensed. The banks can perform their financial activity in accordance with art.26 paragraph 1 of the Law on Financial Institutions no.550-XIII as of June 21, 1995.

28. As of June 31, 2011, there are: 854 licensed bank's foreign exchange bureaux; 340 foreign exchange offices and 14 branches thereof; 6 foreign exchange bureaux by hotels.

Table 3: Overview of the Moldovan financial sector in terms of total assets

	Assets (€m)		% of GDP		No. of Institutions		
31 December	**2009**	**2010**	**2009**	**2010**	**2008**	**2009**	**2010**
Monetary financial institutions							
Banks	2265.86	2624.70	31.28	28.31	16	15	15
Savings and Credit associations, Microfinancing Organisations	23.6	17.6	2.79%	2.0%	445	429	441
Non-monetary financial institutions							
Insurers	52.4	57.1	1.36%	1.27%	28	24	24
Insurance brokers/ Insurance agents					32	767	1024
Pension companies/funds	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Investment funds (the existing Investment funds are being liquidated, there are no funds actively operating non the Moldavian Market)	1.8	1.3	0.05%	0.03%	21	18	17
Leasing Companies	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Securities Brokerage companies	1.3	1.7	0.03%	0.04%	25	21	22
Fiduciary management companies	9.1	8.4	0.23%	0.18%	9	4	4

29. The following table compares the types of financial institutions operating in the Republic of Moldova with the types of financial activities to which FATF Recommendations apply.

Table 4: Financial activities and types of financial institutions

Financial activities and types of financial institutions

Type of activity of a financial institution (see Glossary to 40 FATF Recommendations)	Types of financial institutions engaged in such activities	Whether they are covered by AML/CFT Requirements	Supervisory/regulatory body for AML/CFT
1. Acceptance of deposits and other repayable funds from the public.	Banks	Yes	NBM
	Savings and Loan Associations	Since 7.4.2011	NCFM
	"A" Savings and Credit Associations	No	--
2. Lending.	Banks	Yes	NBM
	Savings and Loan Associations Microfinance organisations	Since 7.4.2011	NCFM
	"A" Savings and Credit Associations	No	--
3. Financial leasing.	Banks	Yes	NBM
	Leasing companies	Yes	OPFML[15]
4. Transfer of money or value.	Banks	Yes	NBM
	[Post Office][16]	Yes	Ministry of Information Technology and Communications
5. Issuing and managing of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).	Banks	Yes	NBM
6. Financial guarantees and commitments.	Banks	Yes	NBM
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.	Banks	Yes	NBM
8. Participation in securities issues and the provision of financial services related to such issues.	Brokers	Yes	NCFM
	Banks	Yes	NBM
9. Individual and collective portfolio management	Banks	Yes	NBM, NCFM

[15] Only supervision for AML/CFT purposes. No prudential supervision.

[16] The Post Office is not a financial institution according to Moldovan legislation.

10. Safekeeping and administration of cash or liquid securities on behalf of other persons.	Banks	Yes	NBM, NCFM
11. Otherwise investing, administering or managing funds or money on behalf of other persons.	Banks	Yes	NBM, NCFM
12. Underwriting and placement of life insurance policies and other investment related insurance.	Insurance companies, brokers	Yes	NCFM, NCFM
13. Money and currency changing.	1.Banks 2. foreign exchange offices, foreign exchange bureaux by hotels	Yes	NBM

Designated Non-Financial Businesses and Professions (DNFBP)

30. DNFBP are defined as reporting entities under Article 4 of the AML/CFT Law which states that the provisions of the AML/CFT Law, including the reporting obligation, shall be applied to all financial institutions, as well as the following legal and natural persons (hereinafter – *reporting entities*):

d) casinos (inclusively internet-casinos);
e) places of rest[17], equipped with gambling devices, institutions organizing and carrying out lotteries or gambling;
f) real estate agents;
g) dealers in precious metals or precious stones;
h) lawyers, notaries, auditors, independent accountants and other legal independent professionals, during the preparation, the carrying out or the realization of the transactions, on behalf of the natural or the legal person, related to the: purchasing and selling of real estate; funds management, securities and other financial assets; managing bank accounts, the accounting and financial reporting in accordance with National Accounting Standards; creation and management of legal persons and their buying and selling.
i) persons who provide investment or fiduciary assistance;

31. There are 7 casinos operating in the Republic of Moldova and 65 licenses have been issued to operate gaming. In addition, there is a Moldovan National Lottery, affiliated to the World Lottery Association and the European State Lotteries and Toto Association.

32. According to the Moldovan authorities, there are 308 notaries, 125 auditor companies and 2406 lawyers are licensed in the Republic of Moldova. Independent accounts are not regulated as such in the Republic of Moldova even if they are listed as reporting entity according to the AML/CFT Law.

33. Other legal independent professionals are represented by the dealers in high value and luxury goods.

34. Pawnshops and auction houses are not mentioned as reporting entities by the AML/CFT Law. The pawnbroker's category includes 15 companies representing a total of 50 to 60 operators.

35. There are 4 companies which provide fiduciary assistance in the Republic of Moldova.

[17] It is evaluator's understanding that "places of rest" mean "entertainment areas"

36. Although trust and corporate service providers appear to be included under paragraph (j) of Article 4, no definition is provided to cover all the activities listed under criterion 16.1 paragraph (d).

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

37. The legislative act that defines and sets out the basic regulations on legal persons is the Civil Code No. 1107-XV of 6 June 2002. The Civil Code defines the concept of legal person in Art. 55, as follows: a legal person is the organisation that has a distinct patrimony and is liable for its obligations with this patrimony, it may acquire and exercise in its name property/non-property rights, to undertake obligations, may act as an applicant or defendant in the court.

38. The Civil Code regulates the following types of legal persons: partnership, cooperative associations, state and municipal enterprises and non-commercial organisations: associations, foundations and institutions.

39. The activity of companies and other profit-seeking legal persons is primarily regulated by the Law on Enterprises and Entrepreneurship (Law No. 845-XII of 3 January 1992 as amended in 2001) which encloses provisions on entrepreneurial activities in the Republic of Moldova and determines the legal, organisational and economic principles of this activity.

40. As set out in the third round MER the main legal structures of entrepreneurial activities are enumerated by Art. 13 of this Law including legal entities such as joint stock company, limited liability company, production or entrepreneurial cooperatives and state and municipal enterprise. The same Law provides for the conditions for forming a company, the content of the incorporation documents, the procedures for registration and re-registration of commercial companies, and the modalities for the termination of a company's activity through liquidation and restructuring. Further, special pieces of legislation provide for detailed rules governing the activity of commercial legal persons such as Law Nr. 1134-XIII of 2 April 1997 on joint stock companies, Law no. 135-XVI of 14 June 2007 on limited liability companies and so on.

41. Joint stock and limited liability companies remain the most widespread forms of commercial legal entities. According to the State Register, as of 1 July 2011, 130,622 companies were registered (but this number also includes individual entrepreneurs who are not legal persons) out of which there are:

a) 66,992 limited liability companies (53,565 at the time of the 3rd round MER)
b) 4,826 joint stock companies (5,092)
c) 4,051 cooperatives, including production cooperatives, consumer cooperatives and enterprise cooperatives) (4,374)
d) 1,453 state and municipal enterprises (1,557)

42. Furthermore, the activity of partnerships and other profit-seeking legal persons is regulated by special laws, as follows:

a) Law no. 1134-XIII of 2 April 1997 on joint stock companies.

b) Law no. 135-XVI of 14 June 2007 on limited liability companies.

c) Law no. 1007-XV of 25 April 2002 on production cooperatives.

d) Law no. 73-XV of 12 April 2001 on entrepreneurial cooperatives.

e) Law no. 146-XIII of 16 June 1994 on state enterprise, etc.

43. Law no. 135-XVI of 14 June 2007 on limited liability companies regulates the establishment, functioning, reorganisation and liquidation of limited liability companies. According to this Law, a

limited liability company is a business with the status of a legal person. The capital of such companies is divided into shares according to the incorporation documents and its obligations are secured by the property of the company. The Law also regulates the establishment of branches and subsidiaries of such companies.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

44. There have been major changes regarding AML/CFT strategies and priorities since the 3rd round MER. The Decision of the Government of the Republic of Moldova No 790 from 3 September 2010 adopted the 2010-2012 National Strategy for the Prevention and Combating of Money Laundering and Financing of Terrorism. According to this Governmental Decision the Centre for Combating Economic Crimes and Corruption will monitor the activity of the institutions involved in the implementation of the 2010-2012 National Strategy for prevention and combating of money laundering and financing of terrorism. The public authorities responsible for the implementation of the Strategy will undertake measures for the implementation of the 2010-2012 National Strategy.

45. The main objective of this strategy is to identify and reduce the vulnerability of the financial sector against money laundering abuse and terrorist financing. Other objectives of this National Strategy are to:

a) protecting the domestic financial system through measures to combat ML / FT (indicators, quantity);
b) strengthening institutional capacity in AML / CFT;
c) consistent and effective implementation of preventive AML/CFT measures;
d) improving the existing legal framework in accordance with the current phenomenon of money laundering and terrorist financing, including international standards;
e) ensuring an effective cooperation both domestically as well as international in AML / CFT;
f) implementing the recommendations of international organizations, including FATF and MONEYVAL etc.;
g) ensuring transparency and public information on AML / CFT.

46. The elaboration and implementation of the Strategy represents an welcome improvement in approaching the ML/FT phenomenon in the Republic of Moldova.

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

47. The main change that was made to the institutional framework since the third round is the issue of the independence and autonomy of the FIU that was resolved with the enactment of a series of amendments to AML/CFT Law brought into force by Law No. 67 of 7th April 2011. Notwithstanding the OPFML continues to be situated within the operational structure of the Centre for the Combating of Economic Crime and Corruption CCECC, Law No. 190, as complemented by Order No. 96 of 2011, now provides for the establishment of the OPFML as an independent subdivision with powers and functions which are clearly distinct from those of the CCECC.

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

The National Bank of the Republic of Moldova

49. The National Bank of the Republic of Moldova (NBM) operates in accordance with the Law of the National Bank of the Republic of Moldova no. 548-XII of 21 July 1995, the Law on financial institutions no.550-XIII of 21 July 1995 and other normative acts. Its functions on prevention and

combating of money laundering and terrorism financing measures are to license, regulate and supervise financial institutions.

50. The NBM is also responsible for licensing, regulation and control of the activity of the foreign exchange entities under the provisions of the Law on the National Bank of the Republic of Moldova, Law no.62-XVI of 21 March 2008 on Foreign Exchange Regulation and other relevant normative acts. While performing its functions with regards to the activity of foreign exchange entities, the main tasks of the NBM in the AML/CFT domain are:

- elaboration of normative acts for foreign exchange entities;
- carrying out on-site inspections, checking the compliance of the Foreign Exchange Entities (FEE) activity with the requirements of the respective normative acts, including application of client identification and verification measures, reporting suspicious and other transactions to the OPFML, record keeping etc.;
- application of sanctions for non-compliance with the acting legislation in the domain.

51. Since the last evaluation report, the NBM established within the banking Regulation and Supervision Department, a Unit responsible for monitoring the activities of prevention and combat of money laundering and terrorism financing within the banking sector

National Commission of Financial Market

52. The National Commission of Financial Market was created on the basis of Law nr. 129-XVI from 7 June 2007 on Modification of the Law nr. 192-XIV from 12 November 1998 on National Commission of Securities Market. The NCFM was created to ensure regulation and supervision of the non-banking financial market by merging the National Commission of Securities Market, the State Inspectorate for Insurance Supervision and Non-state Pension Funds and the State Supervision Service of associations of economies and loans activity.

53. The NCFM, as an autonomous authority of the central public administration, is financed from taxes and regulatory payments and reports to the Parliament of the Republic of Moldova.

54. According to the provisions of the Action Plan on Implementation of the AML/CFT Strategy, the NCFM is one of the 13 national authorities which have a direct or indirect involvement in this field.

The Ministry of Justice

55. The Ministry of Justice is responsible for drafting and elaboration of the legislation and coordination of activities relating to the reform of the judiciary. Together with the General Prosecutor's Office, the Ministry of Justice is responsible for sending out and receiving the requests of mutual legal assistance. In particular, it deals with applications for mutual assistance drawn up during the trial and execution of judgment phases and extradition requests in respect of convicted persons. The Ministry of Justice is responsible for the registration of the non-profit organisations, political parties, legal entities (through the Chamber of State Registration under the Ministry of Justice) and maintains the Registers of non-commercial organisations, political parities and legal entities. It also maintains the State Register of legal acts. The Ministry of Justice supervises, together with the Council of the Union of Notaries, the activity of notaries, including for AML/CFT purposes. It also maintains a Register of licences for lawyers.

The Public Prosecution Office

56. The activities of the Public Prosecutor's Office are regulated by the Constitution, Parliament's decision regarding the approval of the Public Prosecutor's bodies, the places of residence, the districts

in which they operate and the number of staff (decision no. 78 of 4 May 2010) and the Law on the Public Prosecutor's Office (Law no. 294-XVI of 25 December 2008 as amended).

57. The Public Prosecution in the Republic of Moldova is structured as follows:
    a) the General Prosecutor's Office,
    b) the territorial prosecutor's offices (the Prosecutor's Offices of Gagauzia, the district, municipal and sector offices);
    c) the specialised prosecutor's offices (anti-corruption, military, transport and the Prosecutor's offices of the Courts of Appeal).

58. The Public Prosecutor's Office performs criminal prosecution, directs and supervises criminal investigations carried out by law enforcement agencies. Article 270 of the Criminal Procedure Code provides for the exclusive competence of the Prosecutor's Office for crimes (including money laundering) allegedly committed by the President, members of Parliament, members of Government, judges, prosecutors, bailiffs, servicemen, criminal prosecution officers, juveniles, also by the General Prosecutor and the CCECC staff.

59. The General Prosecutor's Office is the authority responsible for sending out and receiving applications for mutual assistance drawn up during the criminal prosecution phase, including extradition requests.

Ministry of Foreign Affairs

60. The Ministry of Foreign Affairs provides assistance to the Office for the Prevention and Fight against Money Laundering (OPFML) in the MOU signing process.

Ministry of Finance

61. The Ministry of Finance has supervisory duties on casinos and auditors. The casinos are supervised jointly by Ministry of Finance and Licence Chamber.

62. The Ministry of Finance is part of the Action Plan on implementation of national AML/CFT Strategy.

Customs

63. According to the provisions of AML/CFT Law, the Customs Service is required to provide the OPFML with all the information on the currency declarations (with the exception of banking cards) made at the border by natural and legal persons in accordance with the provision of the art. 33 and 34 from Law nr.62/XVI from 21 March 2008 on the currency regulation. The Customs Service will also inform the OPFML, within 24 hours, on the information linked to identified cases of introduction of foreign currency or and illegal expedition of currency.

Financial Intelligence Unit (FIU)

64. The 3rd round report found that the functions of the FIU were performed by a special department, named the Office for Prevention and Fight against Money Laundering (OPFML), of the Center for Combating Economic Crime and Corruption which was both a law enforcement body and a prosecutorial authority, though the evaluators were unable to say with certainty whether the Center or OPFML was the FIU, which was handicapped by a lack of autonomy.

65. It should be noted that in the period under evaluation the powers of the Center were subject to legal challenge. On 25 November 2010, the Constitutional Court issued a decision on the control of the constitutionality of some provisions under Law No. 1104-XV dated 6 June 2002 *"regarding the*

Center for Combating Economic Crimes and Corruption" and Law No.190-XVI dated 26 July 2007 *"regarding the prevention and combating money laundering and the financing of terrorism"*.

66. The Constitutional Court was concerned by the need for more legislative harmony and certainty in the provisions concerning the Center's powers.

67. Pursuant to this Decision, the Constitutional Court declared unconstitutional the section of the Act on the Center for Combating Economic Crimes and Corruption (enabling the Center to suspend transactions) and the section of the Act on Prevention and Combating Money Laundering and the Financing of Terrorism (paragraphs (1) and (2) of A.8 – reporting of activities and transactions).

68. As a result, the reporting regime set out under the AML/CFT Law was abrogated. The Moldovan authorities were obliged under the Law on the Constitutional Court to present draft legislation to Parliament within 3 months to modify, complement or abrogate the Act or the provisions declared unconstitutional.

69. The Moldovan authorities moved quickly and took temporary action to address the ruling and adopted with immediate effect a Decision which re-established the reporting duties and the powers of the Center, which had been declared unconstitutional.

70. The judgment of the Court caused no interruption of the flow of STRs to the FIU.

71. The Government received a MONEYVAL High Level Mission in February 2011 under step IV of MONEYVAL's Compliance Enhancing Procedures (CEPs). Following the High Level Mission, the Government rapidly introduced the Law for amending and fulfilling Law No. 190-XVI, redefining the STR obligation and addressing the perceived blurring of roles between the Center and the Office for Preventing Money Laundering by establishing the Office as a specialised independent division within the Center specifically charged with FIU responsibilities. The role and responsibilities of the FIU were placed in a new and separate chapter of the AML Law making it clear that STRs go to the Office and not the Center.

72. After this legislative change was effected and subordinate legislation amended in line with the statutory amendment, MONEYVAL lifted its Compliance Enhancing Procedures in October 2011.

73. At the time of the 4th round mutual evaluation, the OPFML is the Financial Intelligence Unit of the Republic of Moldova. The OPFML operates as a specialised body having the legal status of an independent subdivision in the Centre for the Combating of Economic Crimes and Corruption, specialised in the prevention and fight against money laundering and financing of terrorism.

74. The office performs the following main tasks:
- prevention and fight against money laundering and financing of terrorism;
- elaboration and implementation of policies and strategies in prevention and fight against money laundering and financing of terrorism in the Republic of Moldova;
- coordination and implementation of applicable international standards.

75. The staff of the OPFML have the rights, obligations, interdictions and restrictions provided by the laws for the employees of the CCECC, as well as by the Law no. 190-XVI of 26 July 2007 on the prevention and combating of money laundering and financing of terrorism.

76. The OPFML publishes annual reports containing the overall analysis and evaluation of the received data, as well as the tendencies in money laundering and financing of terrorism which are presented to the authorities and institutions involved in the monitoring and control in this field.

77. The activity of the OPFML is financed from the budget allocations provided via CCECC by the Government and other sources. Other sources represent different projects as MOLICO project, implemented by the Council of Europe and financed by the SIDA in 2006-2009 when the OPFML received an assistance of €1.3 million for supporting the process of prevention and fight against money laundering and financing of terrorism.

The Anti-Terrorist Centre

78. The responsibility to monitor and analyse compliance with SR.III, has been transferred, by virtue of Government Decision Nr. 1295 of 13 November 2006 to the Service of Intelligence and Security of the Republic of Moldova, the Anti-terrorist Centre, which has a bureau dealing exclusively with this issue (Monitoring and Analysis Unit).

c. The approach concerning risk

79. The risk-based approach is embedded in the AML/CFT Law and in related guidance and regulation. According to the legal requirements reporting entities are obliged to establish due diligence procedures. These procedures should be standardised in each reporting entity's programme on prevention and combat of money laundering and terrorist financing (PCMLTF) and are subject to the supervisors' revision. The evaluators were told that that indeed is the case but an observed literal understanding by the reporting entities of the existing guidance as well as regulations raises concerns as to the effectiveness of the risk-based approach introduced by the AML/CFT Law.

d. Progress since the last mutual evaluation

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

81. Some of the important measures have been undertaken already by the time of adopting the final evaluation report, reflecting the prompt reaction that Moldova had regarding the necessity of improving its AML/CFT system by implementing the MONEYVAL recommendations.

82. The fundamental revision of the AML/CFT legislation started with the adoption on 26 July 2007 of the new AML/CFT Law – the Law on preventing and combating money laundering and terrorism financing. The Law defines the ML/TF phenomena, establishes Customer Due Diligence procedures, and describe the reporting entities. Also, the Law stipulates directly that banking and professional secrets are not applicable for the law enforcement agencies, tax and financial control authorities, prosecutors and courts of justice.

83. On 13 July 2007, Moldova has ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. In order to implement the requirements of the Warsaw Convention and of the new AML/CFT Law, the relevant legal framework was amended.

84. An important amendment was the change of the art. 243 of the Criminal Code – the money laundering offence, in order to cover the material and mental elements as stated by the Palermo Convention.

85. In order to insure the implementation of the new AML/CFT Law, several acts were approved, for example Order 118/2007 of the CCCEC on reporting of activities or transactions which fall under the incidence of the AML/CFT Law. The Order of the CCCEC provides lists of countries where illegally are made drugs, countries that do not have provisions for prevention of money laundering and

terrorism financing, high risk countries because of the increased level of criminality and corruption, as well as the list of off-shore countries or areas.

86. The new informational system of the FIU, acquired with the support of the MOLICO project, offered the possibility for on-line reporting of the STRs. In 2007, the level of data protection through installing a security system was enhanced. In 2008, MOLICO project in Republic of Moldova achieved computer systems and high-level secure software for processing and storage of the confidential information.

87. At the national level, CCECC has signed cooperation agreements with General Prosecutor's Office, National Bank of Moldova, Ministry of Interior Affairs, Intelligence and Security Service, Customs Service, Ministry of Information Technology and Communications and the National Commission of Financial Market.

88. After a long procedure of harmonization of legislation in accordance with the EGMONT GROUP principles and with the support of the sponsored agencies of FIU of Ukraine, Russian Federation and Bulgaria, OPFML was accepted as a member of the Egmont Group during the plenary meeting held in Seoul, Korea, on 27 May 2008. A series of memorandums of understanding with similar authorities were concluded.

89. On 21 February 2008 the Republic of Moldova has ratified the International Convention for the suppression of acts of nuclear terrorism of 13 April 2005 and on 3 March 2008 - the Council of Europe Convention on the prevention of terrorism combating the terrorism of 16 May 2005.

90. In order to implement all ratified international instruments against terrorism and the UN Resolutions No 1373(2001), 1540 (2004), 1617 (2005) and 1624 (2005), a fundamental revision of the national legislation was carried out resulting in the adoption on 19 of June of the Law on amending several acts, including the Law on combating the terrorism, Criminal Code, Criminal Procedure Code, Law on refugee status, etc. which took in consideration the recommendations of the United Nations Office on Drugs and Crimes experts.

91. A new body for coordinating the anti-terrorist measures was established by the Decision of the Government No 1295 of 13 November 2006 – Anti-terrorist Centre of the Intelligence and Security Service.

92. On 4 March 2011, the Moldovan Government has approved by its Decision the national Programme for the implementation of the Action Plan RM-EU on the liberalization of the visa regime. The Programme provides a series of concrete activities aiming at mutual cooperation in criminal matters, preventing and combating corruption and financial crimes, preventing and combating the organized crime, including trafficking in human beings, drug trafficking, etc.

93. The Strategy of the National Reference System for the protection and assistance of victims and potential victims of trafficking in human beings and its Action Plan for implementation for 2009-2011 were approved by the Parliament Decision No 257-XVI of 5 December 2008. The National Plan for prevention and fighting trafficking of human beings for 2010 – 2011 was approved by the Decision No. 1 from 22 April 2010 of the National Committee for fighting against trafficking in human beings.

94. In order to develop the national provisions in relation to the transactions effectuated by the Political Exposed Persons, the Moldovan authorities elaborated Order 178/2010 which provides guidance for the reporting entities in carrying out transactions or business relations with Political exposed persons.

95. The Parliament of the Republic of Moldova approved by the law no.1030-XVIII of 24 September 2010 the amendments to the Art. 23 "money laundering and terrorism financing" of the Law on Financial Institutions. The amendments refer to the possibility of banks to request identification documents and information and other issues as well as the obligation of the client to provide the requested by the banks information.

96. In 2011 the National Bank of Moldova adopted new Regulation regarding prevention and combating money laundering and terrorism financing.

97. The National Bank of Moldova has drafted Guidelines regarding risk based approach of clients, where different risk scenarios are elaborated and measures to be taken therefore. The purpose of this Guidance is to create the risk-based approach to customers in the licensed banks by: guiding the licensed banks on improving their programs on preventing and combating money laundering and terrorist financing; facilitating familiarization with the risk-based approach to customers; drawing high level principles of risk-based approach to customers.

98. The NBM approved a new Regulation on Internal Control Systems within Banks that was effective starting with 15 December 2010. According to Regulation on Internal Control Systems, the banks should ask the shareholders and debtors of specific documents in order to understand the control structure and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements.

99. In addition, the Council of Administration of NBM approved on 15 October 2010 the Regulation on banks activity within the international money transfer systems. This Regulation contains a special chapter "Preventing and combating money laundering and terrorist financing by means of international money transfer systems".

100. The Law No. 62-XVI as of 21 March 2008 on Foreign Exchange Regulation became effective on 18 January 2009. The purpose of this law is to establish the general principles of foreign exchange regulation in the Republic of Moldova, the rights and the obligations of residents and non-residents related to the foreign exchange field, as well as the powers of the authorities of foreign exchange control and the competence of agents of foreign exchange control.

101. The changes in respect of the statutory position of the OPFML in relation to CCECC were described above, under FIU sub-chapter.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1)

2.1.1 Description and analysis

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

Summary of 2007 MER factors underlying the rating

102. In the Third Round Evaluation Report, the Republic of Moldova received a Partially Compliant rating for Recommendation 1. This was based upon the consideration that the coverage of self laundering raised doubts, insider trading was not covered as a predicate offence, the issue of foreign predicate offences needed further clarification and the effectiveness of the system was considered low.

Legal Framework

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

103. Since the last round of MONEYVAL evaluation, the Republic of Moldova has achieved a notable development in bringing its anti-money laundering criminal legislation more in line with the wording of the Vienna and Palermo Conventions.

104. Similarly to the situation in the previous round, Art. 243 of the Criminal Code (Law no. 985-XV of 18 April 2002 as amended[18]) provides that money laundering is rendered a criminal offence. This Article, however, was substantially amended by Law no. 243-XVI of 16 November 2007 (in force as of 14 December 2007) and further modified by Law no. 277-XVI of 18 December 2008 (in effect from 24 May 2009) and as a result, it follows more closely the standards set by the above mentioned Conventions. The core ML offence now reads as follows:

> ***Article 243. Money Laundering***
>
> *(1) Money laundering committed by:*
> *a) the conversion or transfer of goods by a person who knows or should have known that these constitute illicit proceeds with a purpose to conceal or to disguise the illicit origin of goods or to help any person, involved in the commission of the main offence, to evade the legal consequences of these actions;*
> *b) the concealment or disguise of the nature, origin, location, disposal, transmission, movement of the ownership of the goods or related rights by a person who knows or should have known that these constitute illicit proceeds;*
> *c) the purchase, possession or use of goods by a person who knew or should have known that these constitute illicit proceeds;*
> *d) the participation in any association, agreement, complicity by providing assistance, help or advice in order to commit the actions set forth in letters a)-c);*

[18] References to the CC are given according its latest version as republished in the Official Monitor of the Republic of Moldova no. 72-74/195 dated 14.4.2009

is punished by a fine in the amount of 1000 to 2000 conventional units[19] or by imprisonment for up to 5 years, in both cases with or without the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, by a fine, applied to the legal entity in the amount of 7000 to 10,000 conventional units with the deprivation of the right to practice a certain activity or by the liquidation of the legal entity.

105. The main development was the completion and restructuration of paragraph (1) above, and as a result the core ML offence (which had previously been criminalised by a single and composite provision), was reformulated and four subparagraphs (a to d) were allocated thus adopting the inner structure, and much of the terminology, of the model ML offence as defined in Art. 6(1) of the Palermo Convention. Hence, the four new subparagraphs serve to provide for the main types of laundering activities, following the way they are listed in subparagraphs (a/i) (a/ii) (b/i) and (b/ii) of Art. 6(1) of the Palermo Convention, respectively.

106. It is apparent that there is a remarkable level of similarity in this context which, at certain point, amounts to full identity particularly as the conducts themselves (i.e. the activities that may establish the ML offence) are concerned. This aspect of the material (physical) elements of the offence reflect the international requirements even more than they did at the time of the third round evaluation.

107. Notwithstanding that, the evaluation team noted that in the current wording of Art. 243(1)(c) CC the term *"acquirement"* was replaced with *"purchase"*. Before the 2007 amendment, the respective phrase was *"acquirement, possession and use"* while now it reads *"purchase, possession or use"* (the same changes took place in the Romanian original). As it was explained by the Moldovan authorities, this modification was carried out in order to more closely follow the terminology of the CETS 198 Warsaw Convention in the Romanian version which also uses the term "*achiziţionarea*" which they claim to be the Romanian equivalent for *"acquisition"* or *"acquirement"*.

108. However, the evaluation team ascertained that the Romanian term "*achiziţionarea"* does actually refer to getting possession of something by giving money or other value in exchange for that and hence its adequate English equivalent should actually be *"purchase"* as this term is used in the current English version of Art. 243(1) CC. As far as *"acquisition"* (the act of coming into possession/control of something regardless of means), the proper Romanian equivalent of this term would be "*dobîndirea*" as it was used in the previous wording of the said Article.

109. The importance of this issue comes from the fact that *"purchase"* is beyond any doubt a definitely more restrictive term than *"acquirement"* which difference is quite clear not only in English but, as described above, also in the Romanian terminology. As a result, the current wording of Art. 243(1)(c) CC appears, more restrictive in this very respect than it was before the 2007 amendment. While the Moldovan authorities claimed that this difference in terminology had not been intended to (and neither would) restrict the scope of the offence to any extent, the evaluation team considers that this interpretation (which appears *praeter legem* at least) should be confirmed by criminal jurisprudence.

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

110. Turning to the object of the ML offence, that is, the definition of property that represents proceeds and so can be subject of money laundering pursuant to Art. 243 CC, the new legislation raises some questions.

[19] According to the art. 64 of Criminal Code *"one conventional unit"* is equivalent of 20 Moldovan lei. (1 euro = 15.5 lei)

111. The evaluators of the previous round found it unclear why *"acquirement" "possession"* and *"use"* only applied to *"property"* while other conducts in the first part of Art. 243(1) CC then in force (concealment, disguise etc.) referred to *"financial means, property and income"*. In this context, the third round report pointed out that "*property*" was the only term applied by the relevant UN conventions but it was defined very broadly so as to encompass assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets. Reference was made to an authoritative decision of the Supreme Court of the Republic of Moldova (Decision No. 40 of 27 December 1999) in which the same broad interpretation was apparently adopted.

112. The current ML offence, according to its official English translation provided to the evaluation team, no longer applies to *"property"* since the object of the offence is now indicated by the term *"goods"*. Notwithstanding that, a brief examination of the respective provisions in their original Romanian version proves that it is actually the very same Romanian term ("*bunuri*") that was translated as *"property"* in the third round and *"goods"* in the fourth round of evaluations. For the sake of consistency, however, the present report follows the terminology applied in the latest official English version of the CC and thus refers to *"goods"* as the English equivalent of "*bunuri*" in the context of anti-money laundering criminal legislation.

113. Considering that *"goods"* is, at least in this respect, just a synonym of *"property"* the evaluators note that Moldovan lawmakers successfully eliminated the above-mentioned ambiguity regarding the object of the offence (*"financial means, property and income"* versus *"property"*) as a result of which all the conducts that may establish the current ML offence equally apply to *"goods"* (i.e. property) with no further distinction.

114. A further question arises however, on whether and how the term *"goods"* is defined by the Moldovan legislation with a view to the applicability of this definition in criminal jurisdiction and particularly as regards the ML offence.

115. Since the CC does not provide any generally applicable definition for this term (though a specific CC definition will be mentioned below) the Moldovan authorities the team met on-site claimed that the proper definition could be found in the Civil Code (Law no. 1107 of 6 June 2002) and particularly in the chapter dealing with property (Book 2 Title 1 *"Patrimoniul"* Articles 284 to 302).

116. On the face of it, it appears to provide for a set of property law rules and definitions according to the civil law traditions by which *"goods"* (*bunuri*) are doubtlessly defined, but the structure and contents of these provisions are far from being directly applicable in the context of criminal jurisdiction. Furthermore, neither the Criminal Code nor the Civil Code contains any provision by virtue of which the Civil Code could to any extent be directly applicable in criminal jurisdiction, although the Moldovan authorities claimed that such direct application is possible through the provisions of Art. 19 para (e) of the Law on legislative acts (Law Nr. 780-XV of 27 December 2001). This Law provides that the terminology used in the draft legislative acts shall be *"constant and uniform as in other legislative acts and norms of the Community legislation; one and the same term shall be used if is correct and its repeated use excludes ambiguity"* (however this provision apparently refers rather to the drafting of a new legislative act.)

117. Nonetheless, the evaluation team was provided sufficient evidence that the connection between the Criminal and the Civil Codes has been adequately established by the jurisprudence of the Supreme Court. The Decision Nr.5 of 30 March 2009 of the Supreme Court, when discussing the meaning of the term *"goods"* in the context of criminal jurisdiction (even if not in a ML case) makes a clear reference to Art. 285 of the Civil Code according to which goods are "*all the objects susceptible of individual or collective proximity and the patrimonial rights"* (in which context

"objects" are further defined as corporeal objects in relation to which civil rights and obligations can exist). On the other hand, this definition is still not in line with the relevant UN conventions.

118. There are several examples of definitions of *"goods"* that are in line with the relevant international standards though they do not seem to be directly applicable in the context of the ML offence in Art. 243 CC. The Law on prevention and combat of money laundering and terrorism financing (Law no. 190-XVI of 26 July 2007 hereinafter AML/CFT Law) provides a definition for *"goods"* (*bunuri*) in the third paragraph of Art. 3 as follows:

> ***goods*** *– financial means, assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, documents or other legal instruments in every form, including electronic or digital form, certifying a title or a right, inclusively every share (interest) regarding these assets.*

119. This definition it appears to be in line with the standards set by the relevant UN Conventions. Nevertheless the evaluation team found it doubtful whether and to what extent it can be directly applicable in criminal jurisdiction taking into account that the applicability of the definitions listed under Art. 3 (including that of *"goods"*) is clearly limited by the preliminary provision of the same Article, according to which these definitions apply solely "*in the sense of the present Law*" i.e. within the context of the AML/CFT Law.

120. Notwithstanding that, the evaluation team learnt that the Glossary[20] to the Criminal Code does actually refer to this definition in the context of Art. 243 CC. When pointing out that *"the material object (of the ML offence) is formed by the goods that constitute illicit proceeds"* the Glossary explicitly defines the term *"goods"* by referring to its definition in Art. 3 of the AML/CFT Law as quoted above, thus establishing a connection between the two laws. It can therefore be concluded that the Moldovan jurisprudence and judicial practice does consider this definition as being directly applicable for the purposes of criminal jurisdiction despite the apparent restriction in the preliminary part of Art. 3 as mentioned above.

121. It needs to be noted, however, that in case of other criminal offences, the lawmakers had actually copied the same definition from the AML/CFT Law instead of merely relying on an implicit reference thereto. Attached to the offence of terrorism financing in Art. 279(3) CC, one can find a definition for *"goods"* which is literally identical to the one in Art. 3 of the AML/CFT Law (in which respect the evaluators need to note that this approach clearly contravenes Art. 19(3) of the Law on Legislative Acts as it was mentioned above in paragraph 116). The evaluation team accepts that, by virtue of the Glossary interpretation discussed above, the definition in Art. 3 of the AML/CFT Law is considered to be practically applicable in the context of the ML offence too, but advise Moldovan authorities to provide for a generally applicable definition of *"goods"* in the General Part of the CC.

122. Property subject to money laundering must obviously represent proceeds of crime or criminal activity. The ML offence being in force at the time of the previous round clearly referred to property *"obtained unlawfully following the commission of an offence"* as well as property that "*constitutes the proceeds of an offence"*. As a contrast, the current ML offence applies to goods (i.e. property) which are *"illegal proceeds"* or which have "*illegal origin*". This time, it is beyond doubt that the different terminology is not a result of inadequate or imprecise translation of the same original text but a conceptual change in the legislation, as even the original Romanian terms are different[21].

[20] The Glossary is not a piece of legislation or other authoritative source in itself, but a compilation of legal science and criminal jurisprudence, issued for the coherent implementation and interpretation of the Criminal Code that was said to be generally followed by all legal practitioners in Moldova

[21] In the former ML offence, reference was made to property obtained unlawfully following the commission of an offence" (*"obţinute ilicit în urma săvîrşirii infracţiunilor"*) and that constitutes "proceeds of an offence" ("*provin din activitate*

123. While the terminology applied in the previous ML offence had doubtlessly met the relevant standards in this respect, the evaluators had some doubts about the adequacy of the current wording and particularly the scope of the term "*venituri ilicite*" (translated as *"illegal proceeds"*) considering that the term *"illegal"* (or *"illicit"*) cannot automatically be understood as a synonym for *"crime-generated"* or *"derived from a criminal offence"*. That is, the generally accepted notion of *"illegal"* is far more general and vague than this, as it used to describe something unlawful that is prohibited or not authorised by law (but not necessarily criminal law) and in the absence of a proper definition of *"illegal proceeds"* the scope of the ML offence could have easily suffered from uncertainty.

124. Unfortunately, the CC does not define the term *"illegal proceeds"*. It can only be assumed that this expression refers to property derived from a predicate criminal offence as there is a single reference in subparagraph a) to the commission of the underlying *"main offence"*. On the other hand, the AML/CFT Law does provide for the missing definition in the fourth paragraph of Art. 3. According to that, *"illicit proceeds"* are defined as follows:

> ***illicit proceeds*** *– goods intended, used or resulted, directly or indirectly, from commission of a crime, any benefit obtained from these goods, as well as the goods converted or transformed, partially or totally, from the goods intended, used or resulted from the commission of a crime and from the benefit obtained from these goods;*

125. This definition makes it clear that *"illegal proceeds"* merely refers to the proceeds of crime. It is quite likely that this explanatory provision of the AML/CFT Law was introduced with a view to serve as a basis of interpretation also in the context of criminal jurisdiction.

126. Indeed, the Glossary to the Criminal Code, when defining that *"the material object (of the ML offence) is formed by the goods that constitute illicit proceeds"* does actually make a clear reference to the above mentioned definition of *"illicit proceeds"* in Art. 3 of the AML/CFT Law, thus it creates a connection that proves, beyond any doubt, that the Moldovan jurisprudence and judicial practice does consider this definition as being directly applicable for the purposes of criminal jurisdiction.

127. Notwithstanding that, the evaluators need to point out that the preliminary part of Art. 3, as discussed above, explicitly restricts the applicability of the respective definitions to the context of the AML/CFT Law which clause should be rephrased accordingly so as to allow for such an application.

128. The evaluators of the previous round noted that the main problem with the ML offence of that time was the overall uncertainty among practitioners regarding the level of proof of the predicate offence as required to prove that the property had actually been proceeds of crime, that is, whether the commission of a specific predicate offence had to be proven and if yes, whether or not a prior conviction for the predicate crime was necessary. The controversy about this issue appeared to be left behind in light of the statement the Moldovan authorities made in the second Progress Report (2011) and the fourth round MEQ according to which the recent jurisprudence no longer requires a prior conviction for the predicate offence, but only proving the illicit origin of the assets i.e. that the perpetrator "*knew or should have known that the property was proceeds from crime"*.

129. Some of the Moldovan practitioners the team met during the on-site visit did support this opinion but the overall picture remained as controversial as at the time of the previous evaluation. Representatives of the first instance courts, for example, made it clear that achieving a conviction for

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infracțională" or "*provin din săvîrşirea unei infracţiuni*"). The current ML offence applies to "illegal proceeds" ("*venituri ilicite*" in the original).

the predicate crime must always be an indispensable condition of prosecuting anybody for the related ML offence and that the public prosecutor makes a mistake if submits an indictment before that.

130. Public prosecutors, on the other hand, claimed that it should be enough for the court if the prosecution can prove the link between the proceeds and "*some criminal action*" i.e. not even the commission of a particular predicate offence needs to be established. In this context, reference was made to the 3 convictions brought in third-party ML cases related to cyber fraud, where the underlying crime had been committed in – and hence the respective evidence had to be obtained from – a different country. In all three cases, the money launderers were convicted in the Republic of Moldova even before anybody would have been sentenced for the predicate crime abroad.

131. The latter view was supported by representatives of the CCECC who emphasised that enormous efforts were put into persuading all practitioners, particularly prosecutors and judges that a prior conviction for the predicate crime should neither be required by the prosecution or the judiciary. However, as the judges' contrary opinion shows, these efforts have not yet yielded convincing results among the judiciary and therefore, the evaluators cannot consider Criterion 1.2.1 as being fully met.

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

132. The Moldovan legislation had already applied the principle of the universality of the predicate offence at the time of the previous evaluation and nothing has been changed in this approach, even though the current ML offence applies less explicit terms (such as *"illegal earnings"*) as regards the underlying criminal activity.

133. The Moldovan legislation covers the FATF designated categories of offences as indicated in Table 5.

Table 5: Designated categories of predicate offences

Designated categories of offences based on the FATF Methodology	Offence in domestic legislation
Participation in an organised criminal group and racketeering;	Creation or leading of one of criminal organisation (Article 284 Criminal code) Illegal organisation of armed forces or participation in these forces (Article 282 Criminal code) Gangsterism (Article 283 Criminal code)
Terrorism, including terrorist financing	Terrorist act (Article 278 Criminal code) Delivery, placement, commissioning or detonation of an explosive device or any other device with lethal effect (Article 278^1 Criminal code) Financing terrorism (Article 279 Criminal code) Recruiting, instruction or according of another support in terrorist purpose (Article 279^1 Criminal code) Instigation in terrorist purpose or public justification of the terrorism (Article 279^2 Criminal code) False deliberate communication about terrorism act (Article 281 Criminal code)
Trafficking in human beings and migrant smuggling	Trafficking of human beings (Article 165 Criminal code) Slavery and similar to slavery conditions (Article 167 Criminal code) Forcing to labour (Article 168 Criminal code)

	Trafficking of children (Article 206 Criminal code) Organisation of illegal migration (Article 362[1] Criminal code) Attract of minors to the criminal activity or determination for committing the immoral acts (Article 208 Criminal code)
Sexual exploitation, including sexual exploitation of children;	Trafficking of children (Article 206 Criminal code) Children's pornography (Article 208[1] Criminal code) Recourse to children's prostitution (Article 208[2] Criminal code) Pimping (Article 220 Criminal code)
Illicit trafficking in narcotic drugs and psychotropic substances;	Illegal circulation of narcotic and psychotropic substances or their analogues without sale purpose (Article 217 Criminal code) Illegal circulation of narcotic and psychotropic substances or their analogues in sale purpose (Article 217[1] Criminal code) Illegal circulation of precursors in purpose of production or processing of the narcotic or psychotropic substances or their analogues (Article 217[2] Criminal code) Illegal circulation of materials or machinery for production or processing of the narcotic or psychotropic substances or their analogues (Article 217[3] Criminal code) Theft or extortion of narcotic or psychotropic substances (Article 217[4] Criminal code) Public illegal consuming or organisation of illegal consuming of the narcotic or psychotropic substances or their analogues (Article 217[5] Criminal code) Deliberate illegal introduction in body of another person, without he's/she's consent of the narcotic or psychotropic substances or their analogues (Article 217[6] Criminal code) The illegal prescription of narcotic or psychotropic substances (Article 218 Criminal code)
Illicit arms trafficking	Illegal carrying, storage, acquisition, manufacturing, repairing and sale of firearms and ammunition (Article 290 Criminal code) Manufacturing, purchase, processing, storage, shipment, usage or neutralization of the explosive and radioactive materials (Article 292 Criminal code)
Illicit trafficking in stolen and other goods	Attaining or commercialization of the goods that are known of being criminally obtained (Article 199 Criminal code)
Corruption and bribery	The embezzlement of other's property, committed by use of official responsibilities (Article 191 (2) d) Criminal code) Receiving of illicit remuneration from citizens for the performance of works related to providing services to people (Article 256 Criminal code) Passive Corruption (Article 324 Criminal code) Active corruption (Article 325 Criminal code) Traffic of influence (Article 326 Criminal code) Misuse of official powers or misuse of service (Article 327 Criminal code) Taking of the bribe (Article 333 Criminal code)

	Giving of the bribe (Article 334 Criminal code) Abuse of duties (service) (Article 335 Criminal code)
Fraud	Fraud (Article 190 Criminal code) Causing of material damage through by deception or misuse of trust (Article 196 Criminal code) Obtaining a credit by fraud (Article 238 Criminal code) Deceiving of customers (Article 255 Criminal code)
Counterfeiting currency	The manufacturing or bringing into circulation of counterfeited money and securities (Article 236 Criminal code) Fabrication or distribution of cards or other false pay checks (Article 237 Criminal code)
Counterfeiting and piracy of products	Production or commercialization of the counterfeiting medicaments (Article 214^1 Criminal code) Forging or counterfeiting of products (Article 246^2 Criminal code)
Environmental crime	Ecocide (Article 136 Criminal code) Violation of the environmental security requirements (Article 223 Criminal code) Violation of the rule of circulation of toxic, radioactive and bacteriological materials ((Article 224 Criminal code) Concealment or deliberate presentation of unauthentic data regarding pollution of the environment (Article 225 Criminal code) Non-fulfilment of obligations regarding elimination of consequences of environmental violations (Article 226 Criminal code) Soil pollution (Article 227 Criminal code) Violation of soil protection requirements (Article 228 Criminal code) Water pollution (Article 229 Criminal code) Air pollution (Article 230 Criminal code) Illegal clearing of forest vegetation (Article 231 Criminal code) The destruction of or damage to large forest tracts (Article 232 Criminal code) Illegal hunting (Article 233 Criminal code) Illegal fishing, hunting or other water exploitation (Article 234 Criminal code) Violation of the regime of protection and administration of natural areas protected by the state (Article 235 Criminal code)
Murder, grievous bodily injury	Deliberate murder (Article 145 Criminal code) Murder committed in a state of affect (Article 146 Criminal code) Murder of a newborn infant by the mother (Article 147 Criminal code) Manslaughter with the person's consent (euthanasia)

	(Article 148 Criminal code) Deliberate gross bodily or health harm (Article 151 Criminal code) Deliberate gross or medium bodily or health harm inflicted in state of affect (Article 156 Criminal code)
Kidnapping, illegal restraint and hostage-taking	Kidnapping Article 164 (Criminal code) Kidnapping of the minor by his close relatives (Article 164^1 Criminal code) Illegal deprivation of liberty Article 166 Criminal code Taking hostages (Article 280 Criminal code) Inhuman treating with taking hostages (Article 137 part.2 lett.b) Criminal code)
Robbery or theft;	Theft (Article 186 Criminal code) Robbery (Article 187 Criminal code) Burglary (Article 188 Criminal code)
Smuggling	Smuggling (Article 248 Criminal code) Evading customs payments (Article 249 Criminal code)
Extortion	Blackmail (Article 189 Criminal code)
Forgery	The forging or use of forged documents, stamps, seals or false blanks (Article 361 Criminal code) Falsification of public documents (Article 332 Criminal code)
Piracy	Piracy (Article 289 Criminal code)
Insider trading and market manipulation	Abuses in securities' emission (Article 245 Criminal code) Abuses in the activity of participants on the securities market (Article 245^1 Criminal code) Breaking the law when making entries in the register of securities holders (Article 245^2 Criminal code) Limitation of competition (Article 246 Criminal code) Unfair competition (Article 246^1 Criminal code)

134. At the time of the previous evaluation, all but one of the designated predicate offences (insider dealing) had already been covered in the Criminal Code. The abuse in the activity of participants on the securities market as provided by Art. 245^1 CC was inserted into the Criminal Code. Notwithstanding some confusion about the actual coverage of this criminal offence, it was finally convincingly demonstrated by the Moldovan authorities, subsequent to the on-site visit, that the offence of insider trading had adequately been criminalised by this article of the CC. Thus, the criminal legislation of the Republic of Moldova now covers all 20 categories of predicate offences for ML required under the Glossary to the FATF Recommendations.

Extraterritorially committed predicate offences (c.1.5)

135. Evaluators of the third round were still uncertain about the actual coverage of foreign predicate offences. At that time, nothing appeared to exclude foreign criminal activity as predicate for the ML offence but this issue had not yet been tested before the courts. Therefore the third round report urged clarification in this respect either in law or by way of creating jurisprudence. This recommendation and thus Criterion 1.5 has since been fulfilled by the 2007 amendment of the CC which added a new paragraph (4) to Art. 243 according to which proceeds derived from foreign

predicates (subject to dual criminality) can form the basis of a domestic ML offence in the Republic of Moldova:

> *(4) Illegal actions shall also be acts committed outside the territory of the country provided that such acts include the constitutive elements of a crime in the state where they were committed and may be the constitutive elements of a crime committed in the territory of the Republic of Moldova.*

136. Reportedly, this provision has already been applied in practice, considering that three ML convictions so far achieved in the Republic of Moldova were brought in cases of third-party ML related to the predicate offence of cyber fraud that had been committed abroad.

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

137. Similarly, at the time of the previous evaluation, there had been no positive legislation regarding the criminalisation of self-laundering although, on the other hand, there had not been any principal or fundamental legal objections to that. In lack of any relevant case law and jurisprudence, however, the third round evaluators remained doubtful about whether and to what extent the ML offence actually covered the laundering of own proceeds. It was therefore recommended in the last MONEYVAL report that the text of Art. 243 CC should formally cover the laundering by the author of the predicate offence.

138. Notwithstanding that, the evaluators found that the current ML offence still does not provide for a formal, positive coverage of self-laundering as the last, substantial amendment of Art. 243 CC did not directly touch upon this issue. The Moldovan authorities nonetheless argued that the ML offence had since been reformulated closely following the standards of the Palermo Convention, according to which the ML offence should normally embrace, without any further specification, the laundering of own proceeds unless a country declares it contrary to its fundamental legal principles and explicitly provides, pursuant to Art. 6(2)e of the Palermo Convention, that the ML offence do not apply to persons who committed the predicate offence. The Moldovan authorities claimed that they opted not to take the opportunity provided in Art. 6(2)e and hence self-laundering must necessarily be, even if implicitly, covered by Moldovan law.

139. This argumentation was equivocally supported by the Moldovan practitioners the evaluators met on-site. As a result, the evaluation team found the ML offence being generally understood and actually interpreted by practitioners so as to cover the laundering by the author of the predicate offence. Criterion 1.6 can therefore be considered as being met particularly as such laundering activities have actually been subject to prosecution in a number of criminal cases. Indeed, a significant proportion of indictments are based on self-laundering every year, as it was indicated by Moldovan authorities:

Table 6: Number of self-laundering and 3rd party ML indictments

Year	Indictments	
	Self-laundering	3rd party ML
2008	2	4
2009	4	6
2010	9	27
2011.1-09	7	25

140. Furthermore, one of the four convictions for ML so far achieved by the Moldovan courts was also related to a self-laundering case (where the predicate offence was drug trafficking).

Ancillary offences (c.1.7)

141. Ancillary offences had already been covered in the CC at the time of the previous round of MONEYVAL evaluation and no relevant changes have since taken place in this respect. Starting with the General Part of the CC, the attempt to commit a crime is rendered generally punishable by Art. 27 CC. The notion of conspiracy to commit a criminal offence is covered by the concept of perpetration in Art. 26 CC which refers to, among others, the preliminary agreement to commit a crime. Perpetration is only punishable if the respective criminal offence is at least a *"less serious crime"* which category denotes offences threatened with a maximum punishment of 5 years of imprisonment. Considering that even the basic offence of ML falls under this category, conspiracy to commit this crime is adequately covered by Moldovan law. Perpetrators of aiding-abetting and other similar ancillary offences (organizers, instigators, accomplices) are likewise covered in a general sense by Art. 42 CC paragraphs (3) to (5) and the subsequent Articles.

142. Turning to the Special Part, however, one can find these ancillary offences again (except for the attempt) being expressly covered in the ML offence itself in Art. 243(1) paragraph d) as quoted above (here, conspiracy is provided even more in line with the respective international standards). As a result, Criterion 1.7 is fully met by Moldovan legislation.

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

143. Where the proceed of crime are derived from conduct that occurred in another country, which is not an offence in that other country, but which would have constituted a predicate offence had it occurred domestically, it will not lead to an offence of ML.

Recommendation 32 (money laundering investigation/prosecution data)

144. Examination of statistical figures provided in respect of the number of criminal investigations, prosecutions and convictions for ML shows noticeable increase in all of these aspects.

Table 7: Number of ML cases

	Investigations		**Prosecutions**		**Convictions (final)**	
	cases	**persons**	**cases**	**persons**	**cases**	**persons**
2006	7	10	3	6	0	0
2007	10	16	7	12	0	0
2008[22]	6	10	5	9	0	0
2009	10	18	10	18	1	1
2010	36	42	24	29	1	2
2011[23]	32	45	26	32	2	5

145. As for the convictions, there had been no positive record until 2009 when this trend changed and the Republic of Moldova has since achieved at least one conviction every year. It was also in 2009 when the number of indictments started to increase with a further boost in 2010 and 2011 and

[22] No statistical data were provided for the last three months of 2008.
[23] For the period of 1.1.2011 to 20.9.2011.

the very same goes for the number of investigations which followed a similar pattern in the last three years. A significant gap between convictions and investigations is noticeable.

146. Notwithstanding that, the number of convictions is still low both in general terms (that is 1-2 cases per year) and also as opposed to the number of indictments. As for the latter, it is quite proportionate to the number of investigations but both appear rather low if compared to the remarkably high number of STR-based notifications forwarded to law enforcement authorities.

147. No information on the predicate offence is contained in the statistics kept by the Moldovan authorities in respect of ML investigations and prosecutions.

Table 8: Number of FIU notifications to law enforcement vs. judicial proceedings

Statistical Information on reports received by the FIU			Judicial proceedings			
			indictments		Convictions	
year	cases opened by FIU	notifications to law enforcement/ prosecutors	cases	persons	cases	persons
2006	193	32	0	0	0	0
2007	197	41	1	0	0	0
2008	303	88	0	0	0	0
2009	317	211	2	3	1	1
2010	292	213	5	8	1	2
2011[24]	151	138	4	7	2	2

148. Representation of cases based on transaction reports as opposed to the total figures can best be illustrated by amalgamating the two tables above:

Table 9: ML cases vs. STR generated ML cases

Only ML cases		Prosecutions		Convictions (final)	
		cases	persons	cases	persons
2006	**ML**	3	6	0	0
	ML/STR	0	0	0	0
2007	**ML**	7	12	0	0
	ML/STR	1	0	0	0
2008[25]	**ML**	5	9	0	0

[24] For the period of 1.1.2011 to 20.9.2011.

[25] No statistical data were provided for the last three months of 2008.

Only ML cases		Prosecutions		Convictions (final)	
		cases	persons	cases	persons
	ML/STR	0	0	0	0
2009	**ML**	10	18	1	1
	ML/STR	2	3	1	1
2010	**ML**	24	29	1	2
	ML/STR	5	8	1	2
2011[26]	**ML**	26	32	2	2
	ML/STR	4	7	2	2

149. Here in the third table, only ML cases are indicated out of which the total figures of ML indictments and convictions are compared to the number of cases based on STRs (or CTRs). The total figures are denoted by "ML" while the STR- (or CTR-) based cases with "ML/STR" respectively. (As to the percentage of CTRs within the number of transaction reports that led to criminal cases, the evaluators were only given data for the first nine months of 2011 which implies an approximate 90/10% ratio for STRs/CTRs including that, for example, 3 of the 26 report-based indictments were related to CTRs but neither of the 2 convictions.)

Effectiveness and efficiency

150. During the on-site visit the Moldovan authorities claimed that the majority (at least 80%) of investigations ending with an indictment had been based on transaction reports (STR/CTR) submitted by the obliged entities but this statement could not be confirmed by the statistics above in which such kind of indictments and investigations are in a definite minority. Notwithstanding that, these figures (number of report-based indictments and investigations) are still notable particularly if taking into account the size of the country and the features of its financial sector.

151. What is actually high is, however, the proportion of transaction report based cases among ML convictions, in which respect one can find that practically each and every conviction achieved by the Moldovan courts in the last three years had been based on STRs (or CTRs) which could be, once confirmed, a remarkable feature of the entire AML regime. The judiciary stage nevertheless remained a bottleneck in the system while numerous indictments for ML are pending before the court.

152. As far as ML prosecutions and convictions are concerned, the meetings the evaluators had with Moldovan practitioners on-site left the impression that the ML offence apparently mostly related to crimes against property (particularly to bank card fraud) tax evasion and probably also to corruption, while it appeared unclear whether and to what extent other proceeds generating criminal offences occurring in the Republic of Moldova such as trafficking in drugs or human beings, were actually represented among the predicate offences.

153. Indeed, the analysis of ML cases where a conviction was achieved, confirmed the over-representation of crimes against property, since predicate offences such as *"cyber crime and swindle"* (presumably *"cyber fraud"* i.e. fraudulent purchases committed through online auction websites) were noted in 3 out of 4 cases (that is 4 out of 5 persons). The first conviction was, however, related to drug trafficking which can be considered a promising sign. The Moldovan authorities achieved a conviction for ML related to a classic proceeds-generating crime, even if this ML consisted of laundering the perpetrator's own proceeds derived from her drug trafficking offence. The proportion of STR-based cases is nevertheless significant (even if less than the majority) and the evaluators

[26] For the period of 1.1.2011 to 20.9.2011.

suggest maintaining this positive approach to achieve more convictions for autonomous (third-party) laundering.

154. No information was provided by the Moldovan authorities in respect of the sanctions applied for ML convictions.

155. As it was discussed above in greater detail, the interview held with representatives of the judiciary made it quite evident that in cases related solely to autonomous (third party) ML offence, a prior conviction for the predicate crime would be required by the court in order to convict a person for the respective ML crime. This issue raises serious doubts as to whether and if yes, how often autonomous (third-party) ML offences are actually investigated and prosecuted in practice. The evaluators learnt that all three conviction achieved for third-party ML offences had been related to proceeds derived from cyber fraud committed abroad but apart from them, nobody has ever been convicted for a "classic" autonomous ML offence in the Republic of Moldova (particularly for ML related to domestic proceeds-generating predicate offences where the alleged requirement of a prior conviction could have been tested before the court) which is a major shortcoming.

156. The extraterritoriality of the ML offence appears to be adequately provided by the current legislation in Art. 243(4) CC.

157. As for the criminal liability of legal persons, the evaluators note that on-site they were made aware of a number of cases where legal entities had actually been investigated or prosecuted and these included ML charges too (even if no legal person had so far been convicted for ML).

158. While this is a definite step forward, the evaluation team also noted some issues of effectiveness in this field. Prosecuting the perpetrators of the same ML offence in separate cases, depending on whether they have natural or legal personality, was mentioned as a trend in Moldovan criminal jurisdiction that may easily lead to the duplication of court procedures and unnecessarily complicating the procedure in terms of evidence. Furthermore, the use of shell or *"ghost"* companies for committing ML through fictitious banking transactions still remains a typical laundering method, and it appears that neither the current company registration rules nor the corporate criminal liability have so far been proved to be sufficient to entirely overcome this phenomenon (even though the recent statistics show a declining trend in this respect (see Table 16: Cases referred to criminal investigations related to shell companies.).

2.1.2 Recommendations and comments

Recommendation 1

159. The examiners note the development in the AML criminal legislation that the Republic of Moldova achieved in the past years. They responded positively and effectively to almost all recommendations made by the third round evaluation team: completed the list of designated categories of offences, provided for the explicit coverage of foreign predicate offences, the implicit and practical coverage of self-laundering and amended the rules governing corporate criminal liability to meet the respective international standards. These achievements are unconditionally welcomed by the evaluators the only exception being the application of the term *"purchase"* instead of *"acquirement"* which appears (perhaps unintentionally but) more restrictive than the previous wording and therefore it should be remedied by legislation or, at least, by guiding jurisprudence.

160. What needs however to be criticised is the judiciary's apparent insistence on a prior conviction for the predicate offence as a precondition of prosecuting autonomous (third-party) ML offences. Widespread application of this approach will necessarily make it impossible to secure a ML conviction in case of autonomous (third-party) ML offences in general. This is applicable not only in

cases where the prior conviction could not be achieved by lack of evidence, but also where a proceeds-generating offence has been committed, but the perpetrator is dead, or has absconded. Certainly, this threat is, to some extent, counterbalanced by the fact that three convictions have so far been achieved in third-party ML cases, without having a prior conviction for the predicate crime. Nevertheless, the specific characteristics of these cases (all were related to cyber fraud predicate offences committed in a different country) do not allow for drawing the conclusion that third-party ML convictions can generally be achieved without a prior conviction.

161. The efforts the CCECC and other authorities have to date made in this respect are to be appreciated. Nevertheless they have proved to be insufficient so far to effectively change the judiciary's approach and therefore the Moldovan authorities need either to further these efforts or to seek for other, even legislative solutions to overcome this obstacle.

162. While the evaluation team is convinced that the Glossary to the Criminal Code does actually provide for a guiding interpretation according to which the notion of *"goods"* and *"illicit proceeds"* are to be understood in criminal jurisdiction pursuant to their definitions in the AML/CFT Law they would deem it more advisable to make it clear in positive law that these definitions equally apply in criminal jurisdiction.

163. The third round evaluators recommended serious efforts to be made to increase the effectiveness of the system, particularly in the judiciary phase. Despite the increase in statistical figures especially in terms of investigations and indictments, the judiciary stage still poses a bottleneck in the system with numerous cases pending before the courts. The evaluators share the view of the previous team inasmuch as the implementation aspect is still far from being perfect and thus it needs to be addressed by a firm prosecution policy and creation of jurisprudence, particularly on the evidentiary requirements.

Recommendation 32

164. No information on the predicate offence is contained in the statistics kept by the Moldovan authorities in respect of ML investigations, prosecutions and convictions. Such statistics should be routinely kept by the Moldovan authorities.

165. No information on sanctions applied in cases of ML convictions.

2.1.3 Compliance with Recommendation 1

	Rating	Summary of factors underlying rating
R.1	**LC**	**Effectiveness:** • Low number of ML convictions achieved; • Uneven understanding by judiciary on the need for a prior conviction to achieve ML convictions.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

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

Summary of 2007 MER factors underlying the rating

166. The Republic of Moldova was rated 'PC' in respect of Special Recommendation II, based on the following deficiencies:
167.

- The financing of terrorists and terrorist organisations as such, unrelated to the actual perpetration, attempt or preparation of terrorist activities, is not covered;
- The TF offence should expressly refer to and cover all offences, defined as terrorist offences in the Annex of the TF Convention;
- The criminal liability of legal persons does not apply to the financing of terrorism and terrorism.

Legal framework

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

168. The offence of financing of terrorism is criminalised by Art. 279 CC which had been substantially amended since the previous round of MONEYVAL evaluations. The amendments, carried out by the Law No. 136-XVI of 19 June 2008 (in force as of 8 August 2008) addressed almost all the recommendations made in the third round report. The core offence in paragraph (1) now reads as follows:

> ***Article 279. Financing of Terrorism***
>
> *(1) Financing of terrorism, meaning intentionally providing or collecting by any person, by any means, directly or indirectly of goods of whatsoever nature obtained through any means, or provision of financial services aimed at the use of such goods or services or knowing that they will be used, in whole or in part:*
> *a) to organize, prepare, or commit a crime of a terrorist nature;*
> *b) by an organised criminal group, a criminal organisation, or a person who commits or attempts to commit a crime of a terrorist nature or organizes, manages, associates, agrees in advance, incites, or participates as an accomplice in the commission of this crime;*
> *is punished by imprisonment for 5 to 10 years with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, by a fine, applied to the legal entity in the amount of 7,000 to 10,000 conventional units with the liquidation of the legal entity.*

169. Similarly to the ML offence, the new legislation provides for a structure and wording by which the FT offence closely follows the respective international standard set by Art. 2 of the International Convention for the Suppression of the Financing of Terrorism (hereinafter: FT Convention).

170. As a result, the main conducts of collection and provision of funds (goods) are criminalised exactly in the same manner in Art. 279(1) CC as they are in Art. 2(1) of the FT Convention (by any means, directly or indirectly etc.) providing compliance with Criterion II.1(a).

171. Furthermore, the Moldovan legislation inserted an additional conduct into the conventional FT offence by which rendered the provision of financial services a *sui generis* form of terrorist financing. As a result, the three main conducts of the offence are the collection of goods, the provision of goods and the provision of financial services. As for the latter, the evaluators learnt that this refers to providing assistance, for example by a bank employee, to the actual financier by providing him/her financial services so as to channel the funds through the financial system (according to the Glossary to the Criminal Code, the expression *"providing of financial services"* means carrying out of certain activities related to the management of finances and cash flow regarding the finances).

172. The financing of a terrorist act, as required by Criterion II.1(a)i is criminalised under Art. 279(1)a CC. Starting with the link between the collected or supplied funds and the respective terrorist act, the current provision has a remarkably broader coverage in this respect than the one in force at the time of the previous evaluation as the knowledge element is now extended from the mere carrying out (committing) to the organisation and preparation of the terrorist act.

173. This development was likely a response to the concerns expressed by the third round evaluators regarding the financing of attempted terrorism, since the current provision penalises the funding of a terrorist act already at the stage of preparation or organisation. It needs to be noted, however, that the previous wording of Art. 279(1)a together with the general CC rules of attempt and preparation had already been broadly in line with the FT convention in this respect, while the current one actually goes beyond this standard.

174. While the TF offence in force at the time of the previous evaluation used the term *"terrorist acts"* the current offence is extended to the financing of a *"crime of terrorist nature"* which actually denotes a conceptual change in approach. The third round evaluators had some concerns about the coverage of financing activities related to terrorist acts provided for in the nine international conventions listed in the Annex to the FT Convention, with particular respect to the declaration the Republic of Moldova had made at the time of ratification (stating it did not consider treaties, to which it had not been party, as being included in the said Annex). A recommendation that the FT offence should expressly refer to and cover all terrorist acts so defined in all nine conventions was made (i.e. regardless whether or not the Republic of Moldova was party to these treaties).

175. As a result of a fundamental revision of the relevant legal framework, the term *"crimes of terrorist nature"* was introduced by the 2008 amending legislation in order to fulfil this recommendation by broadening the coverage of the FT offence. The scope of this term is defined in Art. 134^{11} CC as follows:

> ***Article 134^{11}. Crime of Terrorist Nature***
> *Crimes of terrorist nature are the crimes set forth in art.140^{1}, 142, 275, , 278, 278^{1}, 279^{1}, 279^{2}, 280, 284 par.(2), art.289^{1}, 292 par.(1^{1}) and par.(2) in the section related to acts set forth in par.(1^{1}), art.295, 295^{1}, 295^{2}, 342 and 343.*

176. Crimes of terrorist nature are, obviously, the offence of terrorist act (Art. 278 CC "Acts of terrorism") together with a new, complementing offence (Art. 278^{1} CC "Delivery, Placement, Triggering, or Detonation of an Explosive Device or of Any Other Device with Lethal Effect"). The next group consists of two *sui generis* ancillary offences related to crimes of terrorist nature i.e. any of the offences listed above (Art. 279^{1} CC "Recruiting, Training or Any Other Assistance for Purposes of Terrorism" and Art. 279^{2} CC "Instigation for Purposes of Terrorism or Public Justification of Terrorism") and a third one which penalises the creating or leading a criminal organisation or an organised criminal group in order to commit crimes of terrorist nature (Art. 284(2) CC). Articles 342 and 343 CC denote terrorism-related offences namely "Attempt on the life of the President of the Republic of Moldova, the Chairperson of Parliament or the Prime Minister" and "Diversion" while the rest of the articles listed above are those by which terrorist acts listed in the Annex of the FT Convention are criminalised.

Table 10: Conventions listed in the Annex of the FT Convention

Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970	Art. 275 CC Theft or capture of train, airship or vessel
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at	Art. 289^{1} CC Offences against aviation security and against

Montreal on 23 September 1971	airport security
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973	Art. 142 CC Assault against a person who benefits from international protection
International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979	Art. 280 CC Taking hostages
Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980	Art. 140^1 CC Usage, development, manufacturing, acquisition by other means, processing, possession, storage or conservation, direct or indirect transferring, keeping, shipment of weapons of mass destruction Art. 292 CC Manufacturing, purchase, processing, storage, shipment, usage or neutralization of the explosive substances or the radioactive materials Art. 295 CC Theft of radioactive materials or devices or of nuclear installations, threatening to steal or request to transmit these materials, devices or installations Art. 295^1 CC Holding, production or use of radioactive materials or devised devises or of nuclear installations Art. 295^2 CC Assault on a nuclear installation
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988	Art. 289^1 CC Offences against aviation security and against airport security
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988	Art. 289^2 CC Offences against maritime transport security
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988	Art. 289^3 CC Offences against the security of fixed platforms
International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997	Art. 278^1 CC Delivery, placement, triggering or detonation of an explosive device or of any other device with lethal effect

177. The CC articles listed in the right column of the table above were either inserted into the CC Special Part as new criminal offences or were rephrased by the 2008 amendment. Together with this, the 2008 amendment inserted a series of explanatory provisions in Art. 134^2 - 134^{10} CC to provide definitions for a number of new terms introduced in these articles (*e.g.* to define *"fixed platform" "explosive device or other device with lethal effect"* etc.).

178. Considering this, one may question whether all terrorist acts falling within the scope of the Conventions referred to in the FT Convention were fully covered by the Moldovan criminal legislation at the time of the previous evaluation In any event, all these offences are now adequately criminalized and, being classified as *"crimes of terrorist nature"* in Art. 13411 CC, they are all covered by the terrorist financing offence in Art. 279(1)a. Compliance in this respect is further enhanced by the fact that the 2008 amending legislation formally repealed the declaration that Moldova had made to the FT Convention on the non-consideration of treaties to which it had not been party, as being included in the Appendix.

179. The generic offence of terrorist act, as it is provided in Art. 278 CC is also listed among *"crimes of terrorist nature"* pursuant to Art. 134^{11} CC and is therefore covered by the FT offence in Art. 279 CC. This criminal offence was also substantially amended by the 2008 legislation and now it reads as follows:

> ***Article 278. Acts of Terrorism***
>
> *(1) Acts of terrorism meaning setting an explosion, arson, or any other action that creates the danger of causing death, bodily injury, damage to health, vital damage to property or to the environment or other severe consequences when such an act is committed to intimidate the population or a part thereof, to draw the attention of society to the political, religious or other ideas of the perpetrator, or to force the state, international organisation, legal entity or natural person to commit or to refrain from committing an action, as well as threat to commit such acts for other purposes shall be punished by imprisonment for 6 to 12 years.*

180. The offence is almost entirely in line with the standard prescribed by the FT Convention and, at certain points, it goes even beyond that. Nevertheless, the evaluation team found at least one aspect in which it appears deficient and thus falls short of fully meeting the respective Criterion.

181. The wording used by Art. 2(1)b of the FT Convention leaves no doubt that the financing of *"any other act"* of terrorism (i.e. the generic offence of terrorist act) must apply to acts committed for the purpose of intimidating or compelling the population or government of any country thus not only the country's own population or government. In this respect, the language by which the population or government is described usually gives sufficient indication as to whether these are referred to in general terms or specifically in the context of the given country. Typically, the use of indefinite articles ("a" or "an" in English) implies the coverage of any country while definite articles ("the" in English) limit the offence to domestic context.

182. As far as the Moldovan legislation is concerned, Art. 278(1) CC makes clear reference to *"the population"* as well as to *"the state"*. These definite articles, which can equally be found in the Romanian original,[27] indicate that Moldovan law adopted the second approach and thus Art. 278(1) CC only applies in relation to the Moldovan state or the population of the Republic of Moldova while terrorist acts committed, either in the Republic of Moldova or elsewhere, with the purpose of intimidating the population or compelling the government of another country seem to fall out of the

[27] Art. 278(1) CC refers to "*statul*" (the state) instead of "*un stat*" (a state). For the sake of comparison, the official Romanian version of the FT Convention uses the term "*constrângerea unui govern*" literally "compelling of a government" (according to the translation available at www.antiteror.sis.md).

scope of this offence which appears to question the equal coverage of domestic and international terrorism and, consequently, the financing thereof in Moldovan criminal legislation.

183. On the other hand, the above mentioned Glossary to the Criminal Code addresses this issue and provides for an interpretation by which this deficiency of the FT offence can be, to a certain extent, remedied.

184. When defining the term *"terrorist act",* the Glossary also refers to the Law on Combating Terrorism (Law Nr. 539 of 17 October 2001) which defines *"terrorist act"* quite similarly to the definition on Art. 278(1) CC and provides for the definition of *"international terrorist activity"*. This definition does cover activities carried out (i) on the territory of two or more states, damaging the interests of these states (ii) by the citizens of a state against the citizens of another state or on the territory of the other state and (iii) when both the terrorist and the terrorist victim are citizens of the same state or different states, but the offence was committed outside the territories of these states (Art.2).

185. The Glossary to the Criminal Code considers this phenomenon making part of the generic notion of *"terrorist act"* defining that it encompasses, among others, acts which are intended to complicate or to destroy the relations *"between states"* removing of political leaders including heads ***"****of states****"*** who are undesirable for some political circles, influencing the general policy *"of states****"*** by intimidation etc. all in plural form and hence referring to more than one state.

186. While the evaluation team is convinced that this interpretation, if it is actually followed by all practitioners of criminal jurisdiction in the Republic of Moldova, does provide an adequate practical solution to eliminate any potential effects the inadequate, or misleading terminology, they have the opinion that this issue should better be settled in positive legislation than jurisprudence.

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

187. As for the territorial aspects of financing of terrorism, however, the last phrase of Art. 279(2) provides that the FT offence „*shall be considered consummated regardless of (...) whether the actions were committed in or outside the territory of the Republic of Moldova*". This provision was likely intended to implement the requirement in Criterion II.3 but the wording the Moldovan lawmakers chose is not accurate enough to define the actual coverage of this provision particularly as regards the scope of the "actions" that is, whether this term refers to the financing actions or the underlying acts of terrorism or both. The evaluators therefore urge revisiting the respective provisions and seeking for a more appropriate wording in both Art. 278(1)b and Art. 279(2) CC so that all aspects of Criterion II.3 will undoubtedly be covered.

188. Art. 11 CC provides for the traditional jurisdiction over offences committed abroad by Moldovan citizens and ones committed in the Republic of Moldova by Moldovan or foreign nationals. However, paragraph (3) of Art. 11 grants the Republic of Moldova universal jurisdiction to hear offences committed abroad by foreign nationals or stateless persons not residing in the Republic of Moldova if the offences *"are adverse to the interests of the Republic of Moldova or to the peace and security of humanity (...) including crimes set forth in the international treaties to which the Republic of Moldova is a party*" (which obviously includes the FT Convention too). The third round team considered these rules as the very legislation to meet Criterion II.3 but this opinion is no longer endorsed by the fourth round evaluators.

189. While the rules such as Art. 11 CC regulate whether and under what conditions a country has jurisdiction over criminal offences committed abroad, the actual wording of the said Criterion leaves no doubt that the ultimate question is whether the financing of terrorism can be punished in a country once the respective terrorist activities (are planned to) take place or the terrorist organisations or

individuals are located in a different country, which results in a certain bifurcation as regards the place of commission of the crime (i.e. financing activities in country "A" while the respective terrorist activities/organisations/individuals in country "B"). Such a situation requires a provision like the above mentioned Art. 279(2) CC which only needs some redrafting, as discussed above, to fully meet Criterion II.3.

190. At the time of the previous evaluation, one of the major deficiencies the FT offence was the lack of coverage of financing activities beyond the scope of Art. 2 of the FT Convention, that is, the general concept of financing of terrorist organisations and individual terrorists. This evaluation team welcomes the fact that that these aspects have already been addressed by Moldovan criminal legislation in Art. 279(1)b CC.

191. In this paragraph, both terrorist organisations and terrorists are defined by their activities in relation to the commission of terrorist acts. An organisation or a natural person can therefore be considered as terrorist if they commit or attempt to commit a crime of a terrorist nature or, at least, an ancillary offence thereof (organisation, management, association etc. in the commission of such an offence) which is almost in line with the definition of *"terrorist"* and *"terrorist organisation"* as provided by the Glossary of Definitions attached to the FATF Methodology.

192. When referring to terrorist organisations, the FT offence applies the terms of *"organised criminal group"* and *"criminal organisation"* which are defined by Articles 46 and 47 CC respectively.

> ***Article 46. Organised Criminal Group***
>
> *An organised criminal group shall be a stable union of persons that organised themselves in advance in order to commit one or more crimes.*
>
> ***Article 47. Criminal Organisation (Association)***
>
> *(1) A criminal organisation (association) shall be considered a union of criminal groups organised into a stable community whose activity is based on a division of the administration functions among the members of the organisation and its structures for ensuring and executing the criminal intentions of the organisation to exert influence over or otherwise control the economic or other activity of individuals and legal entities to derive benefits and economic, financial, or political gains.*

193. Considering that a *"criminal organisation"* is made up of organised criminal groups it is sufficient, for the purposes of evaluation, to examine the latter. An organised criminal group thus needs to be a *"stable union of persons"* organised by its participants in advance which implies, on the face of it, a higher level of integration and structure than what is required by the Glossary definition of terrorist organisation which only refers to *"any group of terrorists"*. On the other hand, the formation of any terrorist group would necessarily require some level of structure and organisation and therefore the evaluators do not consider this definition as being contrary to the requirements of SR.II nevertheless they can see room for judicial interpretation in this field (as regards the required stableness of the group, for example).

194. A more important difference the evaluators found between the Glossary definitions and the FT offence in Art. 279(1)b CC is that the Glossary refers to the involvement of these organisations or individuals in terrorist activities in entirely general terms (as indicated by the plural in *"terrorist acts"*) while the offence in paragraph (b) appears to make reference to a concrete act of terrorism

(using terms such as "a crime of a terrorist nature" or "this crime" also in the Romanian original[28]). In other words, while the wording used in Glossary definitions obviously refers to the terroristic character of the respective organisations or persons in general (describing them as having been committed or habitually/regularly committing terrorist acts) the Moldovan FT offence appears to make reference to the commission of a single act of a terrorist nature (where there is emphasis on the specificity of the terrorist act be it completed, attempted or just prepared or planned). This approach raises serious concerns about the compliance of Art. 279(1)b CC with Criterion II.1.c(ii) according to which FT offences should not require that the funds be linked to a specific terrorist act.

195. Contrary to that, the other subparagraph of Criterion II.1.c namely (i) that prescribes not to require that the funds were actually used to carry out or attempt a terrorist act is clearly met by Art. 279(2) CC, according to which:

> *(2) The crime of financing of terrorism shall be considered consummated regardless of whether the crime of a terrorist nature was committed or whether the goods were used for the commission of this crime by the group, organisation, or person mentioned in par. (1) letter b)(…)*

196. The evaluators need to note at this point that the CC is not the only source of law by which the terms of *"terrorist organisation"* and *"terrorist"* are defined in the Moldovan legislation. The Guidance for the Identification of Transactions Suspected of Financing of terrorism issued by CCECC Order No. 40 of 18.3.2011 the general provisions of which (Chapter 1) contain the following definitions:

> ***Terrorist*** *– person involved in terrorist activity of any form.*
> ***Terrorist group*** *– two or more persons associated for the purpose of terrorist activity.*
> ***Terrorist organisation*** *– an organisation created for terrorist activity or an organisation admitting the use of terrorism in its activities. Any organisation is considered to be a terrorist one if at least one of its subdivisions is involved in terrorist activity.*
> ***Terrorist activities*** *- these mean the activities that include the following:*
> *- planning, preparations, attempts to commit and the commission of a terrorist act;*
> *- instigation to terrorist acts, to violence against private individuals and companies, to destruction of material property for terrorist purposes and justification of terrorism in public;*
> *- foundation of an illegal armed organisation, of a criminal community (organisation), of an organised criminal group for the commission of terrorist acts and participation in such acts;*
> *- recruitment, arming, training and use of terrorists;*
> *- financing of preparations or commission of a terrorist act or another crime of terrorist character, financing of a terrorist organisation, of a terrorist group or single terrorist, as well as provision of any other assistance or support to terrorists;*

197. These definitions are in many aspects more in line with the less demanding standards set by the Glossary definitions (e.g. no *"stable union"* needed for a terrorist organisation). More comprehensive definitions are to be found in secondary legislation therefore the evaluators recommend the Moldovan lawmakers to use similar or identical definitions for the same terms in various pieces of legislation. .

198. Another aspect where the current legislation appears to need clarification or completion, is related to whether and to what extent the financing of terrorist organisations and individual terrorists for any purpose (including legitimate activities) is actually covered. Certainly, the Moldovan CC does cover financing activities where the funds are to be used by a terrorist organisation or an individual terrorist without any further specification or restriction as to what the funds are actually intended for.

[28] "*Unei infracţiuni*" and "*acestei infracţiuni*" respectively.

199. Notwithstanding that, it must also be taken into account that both terrorist organisations and terrorists are defined by their terroristic activities in Art. 279(1)b CC which might incite the legislator to seek to clarify if financing a terrorist organisation or an individual terrorist for any other purpose including legitimate activities such as funding the everyday expenses of the organisation or the individual, is equally covered by the offence of FT. Full compliance with both the wording and meaning of SR.II can only be achieved if this aspect is also covered by positive law (or at least by convincing judicial practice) which is not the case for the time being.

200. At the time of the previous round, the notion of *"funds"* being the object of FT was not adequately defined by the CC. It was therefore quite doubtful, in the absence of any relevant court decisions, whether the Moldovan legislation met the standard the FT Convention had set in this respect and particularly whether the form of support given included all types of funds whether material or non-material. As a contrast, the current FT offence applies such a broad definition of *"goods"* in Art. 279(3) CC that is almost fully in line with the scope of *"funds"* as defined in the FT Convention:

> *(3) Goods are financial means or any category of material or immaterial, movable or immovable, tangible or intangible values (assets) as well as acts and other legal instruments in any form, including electronic or digital form that confirm a legal title or right including any share (interest) in these values (assets).*

201. The only notable difference is that the FT Convention clearly and explicitly extends to funds whether from a legitimate or illegitimate source (by making reference to assets *"however acquired"*) while the definition in paragraph (3) above remains silent on this issue. Notwithstanding that, the wording applied in Art. 279(1) CC covering "*goods of whatsoever nature obtained through any means"* convincingly demonstrates that the FT offence does extend to any funds regardless of their origin and hence achieves compliance with Criterion II.1.b.

202. Criteria II.1.d (attempt) II.1.e (ancillary offences) and II.2 (FT offences should be predicate offences for ML) had already been met at the time of the previous MONEYVAL evaluation and duly taken into account in the third round report and no relevant changes have since taken place. As for the current situation, however, these issues were discussed more in details under R.1 above.

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

203. Criterion II.4 (on the applicability of Criteria 2.2 to 2.5 in relation to the FT offence) is also met, in its every aspect. Criterion 2.2 (on the inference of the intentional element from circumstantial evidence) had already been met and thus applied as a general rule for any intentional offences at the time of the previous evaluation.

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

204. Concerning corporate criminal liability (Criterion 2.3-2.4), it was previously recommended that Moldova takes the necessary legislative and other steps to ensure that Art. 21(3) CC (as discussed already under R.1) is extended to make it applicable to Art. 278 and 279 CC.

205. The 2008 amending legislation made the said provision applicable to the FT offence in Art. 279 CC together with the two autonomous ancillary offences of terrorism described in Art. 279^1 CC (Recruiting, instruction or according of another support in terrorist purpose) and 279^2 CC **(**Instigation in terrorist purpose or public justification of the terrorism) and a further, related offence in Art. 292 CC (Manufacturing, purchase, processing, storage, shipment, usage or neutralization of the

explosive and radioactive materials), but not Art. 278 CC (Acts of Terrorism), even if its inclusion had also been recommended in the third round report.

206. Nevertheless, for the purposes of the evaluation, it is the FT offence the coverage of which counts and thus needs to be examined and since it is undoubtedly covered by the current legislation, the evaluators can accept Criterion 2.3 in II.4 as being formally met.

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

207. Compliance had already been achieved with Criterion 2.5 (on the effectiveness, proportionality and dissuasiveness of sanctions for FT).

Effectiveness and efficiency

208. Both the statistics provided to the evaluators and the information gathered on-site confirmed that there has never been any investigation or prosecution for FT offences in the Republic of Moldova (that is, neither in the period from the last round of evaluation nor before). Any assessment of the effectiveness and implementation of the relevant provisions cannot be undertaken in the absence of concrete cases (let alone judicial practice).

2.2.2 Recommendations and comments

Special Recommendation II

209. Similarly to what was noted under R.1 above, the evaluators welcome the development achieved in criminalising FT more in line with the standards set in the FT Convention and SR.II. Namely, the FT offence now encompasses the financing of terrorists and terrorist organisations and expressly refers to and covers all offences defined as terrorist offences in the Annex to the FT Convention. The criminal liability of legal persons now applies to the FT offence and a number of related offences and, finally, the FT offence extends to the full notion of "funds" according to the FT Convention.

210. There remain a few aspects which need to be corrected so as to achieve full compliance with SR.II. That is, the generic offence of terrorist act (Art. 278 CC) should explicitly be applicable to the population of government of *"any country"* ("*a*" instead of "*the*" as discussed above). In addition, the FT offence should be more precise in not requiring that the funds be linked to a specific terrorist act.

211. Finally, the current legislation needs some clarification or completion so as to clearly provide that the financing of terrorist organisations and individual terrorists for any purpose (including legitimate activities) is actually covered.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• FT offence requires that the funds be linked to a specific terrorist act; • The financing for any purpose does not cover terrorist organisations and individual terrorists; • The generic offence of terrorist act is not explicitly applicable to

		the population of any country.

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

2.3.1 Description and analysis

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

Summary of 2007 factors underlying the rating

212. Compliance with R.3 was rated 'PC' in the Third Round Evaluation Report based on the following factors:

- Confiscation of laundered money in standalone money laundering prosecution not unequivocally covered;
- Idem for the funds related to the terrorism financing offence;
- Insufficient bona fide third party protection;
- Inconsistent application and insufficient effective use of the current seizure and confiscation provisions.

Legal framework

Confiscation of property (c.3.1)

Confiscation

213. The structural characteristics of the confiscation and provisional measures regime in the Republic of Moldova remained largely the same since the previous round of evaluation. The constitutional fundaments (Art. 46 paragraphs (3) and (4) of the Confiscation as quoted in Annex III to the third round report) are thus unchanged and so is the structure by which the general rules of confiscation are provided in the Criminal Code (CC). Sequestration (i.e. seizure of goods) as the main provisional measure is prescribed in the Code of Criminal Procedure (CCP).

214. Starting with the legislation on confiscation, it is Art. 106 CC on special confiscation[29] that has traditionally been regulating this subject. This provision had already been amended before the last round of MONEYVAL evaluations to include the possibility to confiscate equivalent value as well as proceeds transferred to a third party, and it was amended again in 2007-2008 in order to enhance compliance with the recommendations made by the third round evaluators.

215. No changes took place as regards the basic definition in Art. 106(1) CC which provides for the confiscation of instrumentalities (goods used in the commission of a crime) and the proceeds of crime (goods resulted from crimes) and furthermore, it clearly provides, in its second sentence, for the possibility of value confiscation:

> *(1) Special confiscation is the forced and free transfer to the state of goods used in the commission of a crime or that resulted from crimes. If the goods used in the commission of a*

[29] The latest official English version of the CC applies the term "special seizure" which is an obvious mistranslation, not just because "seizure" usually denotes a temporary measure but also if considering the Romanian original "*confiscarea specială*". As it was agreed with the Moldovan authorities, the respective term will be used throughout this report as "*special confiscation*".

crime or that resulted from crimes no longer exist or cannot be found, their equivalent is confiscated.

216. This generic provision is partly reiterated, partly broken down in details by Art. 106(2) CC which precisely defines what can be subject of confiscation according to the Moldovan criminal substantive law:

(2) The following goods are subject to special confiscation:
a) goods resulting from an act set forth in this Code as well as any revenues from these goods, except for goods and revenues subject to return to their legal owners;
b) goods used or intended for use in the commission of a crime, if they belong to the perpetrator[30];
c) goods provided to determine the commission of a crime or to pay the perpetrator;
d) goods obtained through the commission of a crime, if they are not to be returned to the injured person or not intended for his/her compensation;
e) goods possessed contrary to legal provisions;
f) goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods;
g) goods used or intended for financing terrorism.

217. As for the compliance with Criterion 3.1 it is thus obvious that all three aspects of subcriteria a) to c) are met by this legislation. Namely, the coverage of proceeds of crime is provided by Art. 106(1) CC (in general terms) and specifically in Art. 106(2)a above, the instrumentalities used in the commission of any criminal offence (including ML and FT too) are covered by Art. 106(1) and Art. 106(2)b respectively while instrumentalities intended to use are only covered by the latter provision.

218. The scope of proceeds of crime subject to confiscation was enlarged by the 2008 amending legislation, as a result of which the confiscation regime (Art. 106(2)a CC) now clearly extends to indirect proceeds i.e. property representing revenue yielded or derived from proceeds of crime. Consequently, Criterion 3.1.1(a) is met.

219. Art. 106(3) CC explicitly provides that any kind of property specified in paragraph (2) can only be confiscated if it is owned by the offender or it has been transferred to a *mala fide* third party:

(3) Special confiscation is applied to persons who committed acts set forth in this Code. The goods mentioned in par. 2 can be subject to confiscation even if they belong to other persons, if these persons accepted them knowing about the illegal way of obtaining of these goods.

220. The law itself makes an exception to this general rule in paragraph (2)b according to which instrumentalities and intended instrumentalities can only be confiscated if they belong to the offender (Art. 106(2)b CC). It is unclear what is meant under the phrase *"belong to"* in this context but the evaluators presume the lawmakers required the instrumentalities be actually owned by the perpetrator of the respective criminal offence.

221. On the other hand, there is another, practical exception to the general rule. As it was subsequently explained by the Moldovan authorities, the property items possessed contrary to legal provisions (see paragraph 2(e) above) such as narcotics, firearms etc. must always be subject to confiscation irrespective of their actual ownership status, even if this is not explicitly stipulated by law.

30 Translated as "criminal" in the official English version. The Romanian original "*infractor*" should rather be translated as "perpetrator".

222. As for other kinds of property subject to confiscation and particularly the direct and indirect proceeds of crime (paragraph (2)a) and their substitutes (paragraph (2)f) these can only be confiscated if they are either owned by the perpetrator or have been transferred to a third party being aware of their illicit origin (*mala fide* third party). While the evaluators understand that this limitation was necessary to protect the *bona fide* third parties, the clear reference to the receiving party's knowledge *("knowing about the illegal way of obtaining of these goods")* raises doubts as to whether and how paragraph (3) can be applied in case the third party is not a natural person but a legal entity. When asked about it, the Moldovan authorities expressed their opinion that in such cases, it is the natural person acting on behalf of the legal entity whose knowledge should be examined, nevertheless this is not explicitly stipulated by law and the evaluators have no information on any relevant judicial practice in this respect.

223. Third round evaluators expressed their concerns as the legislation then in force did not expressly cover the confiscation of the property that has been laundered, that is, the object or *"corpus"* of the offence as it is required by the first phrase of Criterion 3.1. Arguments such as the laundered assets become proceeds after laundering (and so they fall under [2]a) or that they constitute instruments (pursuant to [2]b) thus did not convince the previous evaluation team who recommended that the confiscation of the body (*"corpus"*) of the offence should be unequivocally and unconditionally provided for (the *bona fide* third party exemption aside) both in stand-alone ML and in FT cases.

224. Examination of the current provisions under Art. 106 CC proves that this recommendation has only been partially implemented by the Moldovan legislators. On the one hand, the evaluators welcome the introduction of paragraph (2)g by which the *"corpus"* of the FT offence, that is, the property used or intended to use for financing of terrorism is explicitly covered by the confiscation regime[31]. On the other, there is still no positive legislation to directly and clearly provide for the confiscation of property that has been laundered. This must be seen as a formal deficiency of the regime despite the fact that judicial practice, as it was illustrated by examples of recent case law, apparently seeks to overcome this gap as the Moldovan courts tend to apply the current legal framework to confiscate the "*corpus*" of the offence in ML cases so far ended with a conviction.

225. Among the case examples provided by the Moldovan authorities is Decision Nr.5 of 24.12.2010 in which the Supreme Court ruled that the goods and services, by which the offence of passive corruption (Art. 324 CC) had been committed, must be confiscated *"according to Art. 106 CC as objects of the offence"*.

226. Since Art 324 CC does not contain any specific provision related to the confiscation of the *"corpus"* of the offence, this decision is a proof that court practice does actually enlarge the scope of Art. 106 so as to cover the object of the crime in a general sense (theoretically, the same approach could likely be applicable in a ML case too) – the only problem being that this interpretation appears entirely *praeter legem* provided that Art. 106 does not provide for confiscation in this respect.

227. Value confiscation had already been provided for at the time of the previous round of evaluation. The relevant provision can be found in the 2nd sentence of Art. 106(1) CC the scope of which was extended in 2008 to encompass confiscating the equivalent value of property constituting

[31] In order to avoid any misinterpretation, the evaluators need to point out that the property used or intended to use "for financing of terrorism" i.e. the funds collected, provided or intended to be provided either for the commission of a terrorist act or to a terrorist organisation or an individual terrorist cannot be considered as being covered by Art. 106(2)b as property being used or intended for use "in the commission of a crime". Instead, the latter clearly refers to the instrumentalities and intended instrumentalities of the offence by the use of which the funds can be either collected from donors or channelled to the recipients (e.g. IT facilities, telecommunication equipment, vehicles etc.). Consequently, Art.106(2)b cannot be considered to cover the "corpus" of the ML offence either.

proceeds or instrumentalities that *"cannot be found"* (in addition to those that *"do not exist anymore"*) as follows:

> *If the goods used in the commission of a crime or that resulted from crimes no longer exist or cannot be found, their equivalent value is confiscated.*

228. The evaluators appreciate that by this amendment, the Moldovan lawmakers eliminated a lacuna in their criminal legislation that could have led to potential evidentiary issues in practice. While the former provision required proof that the original property or property subject to confiscation had ceased to exist in order to be able to confiscate equivalent value, now it is sufficient to bring evidence that the original property or property item "cannot be found" i.e. its actual location cannot be determined (for any reason thus not necessarily for being intentionally hidden by the offender). Being a general provision, this rule obviously refers to *mala fide* third parties as well.

229. On the other hand, the provision quoted above does not seem to compensate the effects of the wide protection of *bona fide* third parties as provided by Art. 106(3) CC when it comes to confiscation of proceeds of crime.

230. As it was discussed above, property derived from criminal offences (para (2)a) can only be confiscated from the perpetrator or from a third person who acquired it knowing about its illicit origin, but not from other persons who obtained the respective property in good faith, without being aware of their origin.

231. However, while the Moldovan lawmakers did their best to protect the *bona fide* third parties in this respect, less attention appears to have been paid to the state interest to retrieve the proceeds of crime. Specifically, there is no mechanism under Art. 106 CC by which the equivalent value of the property constituting proceeds could be confiscated from the perpetrator or a *mala fide* third party in case the respective property item was eventually acquired by a *bona fide* third party.

232. Art. 106(2)f CC appears to be applicable in case of property having been sold or exchanged for other goods and hence it may provide ground to confiscate the sum of money or other equivalent the *bona fide* third party had paid or given for the respective property.

233. Nonetheless, this provision cannot be applicable in cases the property was obtained by the *bona fide* third party free of charge, typically as a gift. This legislative lacuna may pose a weakness to the confiscation regime.

234. The 2008 amending legislation carried out further important changes, the most important being the completion of paragraph (2)a to clearly provide for the confiscation of indirect proceeds (income, yields) of crime. As a result, the confiscation regime now extends beyond the concept of direct proceeds and encompasses the revenue that accrues from goods derived directly from a criminal offence (with the exception of direct and indirect proceeds to be returned to their legal owner) in compliance with Criterion 3.1.1.a.

235. The evaluators noted a series of further changes coming from the 2008 legislation. One of them was the insertion of the above mentioned paragraph (2)f which expressly provides for the confiscation of assets converted or transformed, partially or totally, from assets resulting from offences (proceeds) and from the incomes (yields) obtained from these assets.

236. The next amendment is the lower level of proof required in paragraph (2)d, where the term *"obviously"* (or *"manifestly"* as it was quoted in the third round MER) was deleted from the phrase *"obtained obviously by committing an offence".*

237. Finally, a new paragraph (2^1) was introduced to address the confiscation of commingled proceeds.

238. Article 106(4) provides that "*special confiscation can be applied even in cases when a criminal punishment is not established for the criminal"* that is, when no criminal punishment was applied.

239. Although it appears that this provision authorised, even if in very general terms, the confiscation *in rem* being applicable in the absence of a conviction, the evaluators cannot support this view, as the text clearly refers to the lack of punishment and not lack of conviction. Subsequent to the on-site visit, it was actually confirmed by the Moldovan authorities that the legislation did not provide for *in rem* confiscation.

240. As it was explained by the Moldovan authorities, these *"special cases"* refer to situations provided by Art. 53 and Art. 89 CC (i.e. cases when the perpetrator can be exempted from criminal liability or, even if being criminally liable, from the actual execution of criminal punishment) where the only sanction imposed is, by virtue of Art. 106(4) CC, the special confiscation thus no punishment is applied.

241. The evaluators also note that Art. 396(4) of the CCP provides that whenever the court brings a verdict other than conviction (i.e. a sentence of acquittal or to terminate a criminal proceeding) it can only decide on revoking "*measures securing a civil action or an eventual special confiscation of goods"* and hence there is no provision to authorise the *in rem* application of Art. 106 CC.

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

Provisional measures in criminal procedural law

242. As it was already noted in the previous MONEYVAL reports, the Moldovan CCP provides for two main sorts of temporary coercive measures that can be applied to prevent any dealing, transfer or disposal with property subject to confiscation (as required by Criterion 3.2) namely the seizure (Articles 126 to 132 CCP) and sequestration (Articles 203 to 210 CCP). In general terms, the scope and structure of these measures have not changed to any significant extent since the third round of evaluation.

243. Seizure refers to the securing of tangible items (objects or documents) being important for the criminal case either as pieces of evidence or items that have been illegally acquired and hence subject to confiscation. The respective rules governing this sort of coercive measure have been described and analysed in details in the third round report. In lack of any relevant changes in this field, the findings and conclusions of the third round evaluation team remained valid thus do not need reiteration.

244. Sequestration is, however, the measure which can actually be applied to secure the instrumentalities as well as proceeds of crime with a view to their confiscation:

> ***Article 203. Sequestration***
>
> *(1) Sequestering goods is a coercive procedural measure consisting of inventorying the goods and prohibiting the owner or possessor from disposing of those goods or, if necessary, to use such goods. Upon sequestering bank accounts and deposits, any operations with those accounts or deposits shall be terminated.*

(2) Sequestering goods shall be done to secure the recovery of damage caused by the crime to secure a civil action or an eventual special confiscation of the goods or their equivalent used in the commission of a crime or resulting from the commission of the crime.

245. Art. 204 CCP provides that assets that constitute property of the defendant or the "*civilly liable party"* can only be subject to sequestration (regardless to who is actually keeping or possessing these assets) including assets being common property of the defendant and his/her spouse or other family members.

246. According to Art. 73(1) CCP, a civilly liable party is "*an individual or legal entity that based on the law or the civil action filed during a criminal proceeding may be materially liable for material damage caused by the acts of the accused/defendant*."

247. As a result, Art. 204 CCP appears to contradict the rules governing special confiscation (as discussed above) by which property that constitutes proceeds of crime but not being property of the perpetrator can also be confiscated if it is owned by a third person who accepted it knowing about its illicit origin (*mala fide* third party).

248. Since the notion of the *mala fide* third party (as provided by Art. 106(3) CC) is significantly different from *"civilly liable party"*, the evaluators cannot see how the measure of sequestration could be applied to proceeds owned by a *mala fide* party in case he/she is not the spouse or family member of the defendant.

249. Furthermore, Art. 204(4) CCP provides that the property of enterprises, institutions and organisation cannot be sequestered *"except for the share of collective property that was illegally obtained and that may be separated without prejudicing their economic activity"*. Again, this provision further restricts the scope in which sequestration can be applied. While the preceding paragraphs of Art. 204 CC undoubtedly refer to natural persons, this one deals with the property of legal persons (using the more obscure terms of "enterprises, institutions and organisation") practically exempting their assets from sequestration – apart from illicit property that is not only separable from the other assets but should also be separable without endangering the economic activity of the respective entity.

250. This standard is so high that it raises serious doubts about the actual applicability of this provision. First, it does not take into account the property intended or used in the commission of a crime (i.e. instrumentalities) which should normally be confiscated regardless to whether or not it has been *"illegally obtained"*. Therefore it appears a rather inadequate and irrelevant approach to require the prosecution proving the illicit origin of instrumentalities. A second and more important issue is that the general exclusion of the legal persons' property from the provisional measures regime clearly contradicts the principle of corporate criminal liability already established in the Republic of Moldova. Since the criminal offence of ML can be committed by corporate entities, it should be self-evident that their property can also be seized with a view to its confiscation, regardless to whether or not it prejudices their economic activity. Furthermore, the widespread use of legal entities in committing ML as shell or *"ghost"* companies would in itself require the lowering of this standard.

251. It is a further obstacle to the effective application of provisional measures that sequestration can only be ordered if *"the evidence collected supports the justified assumption that the suspect/accused/defendant or other persons keeping the goods subject to sequestration may conceal, damage or dispose of them"* (Art. 205(1) CCP). This provision places another evidentiary burden on the prosecution. The evaluators are concerned that property constituting proceeds or instrumentalities of crime could, for any reason, be left for safekeeping with the perpetrator or any other person and not taken away by state authorities.

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

252. The legal framework remained unchanged since the previous round of evaluation concerning the proceedings for the placement and the lifting of sequestration measures.

253. Sequestration is based on the order of a criminal investigative body and must be authorised by the investigating judge (or ordered by the court, depending on the case). In urgent cases, the decision is taken directly by the law enforcement authority and must be confirmed by the investigating judge within 24 hours (Art. 205 CCP).

254. The method for executing an order on sequestering goods is provided under Art. 207 CCP according to which a copy of the order on sequestering and submitting goods shall be handed over to the owner or possessor of the respective assets who is then called to voluntarily execute this requirement or else the goods shall be sequestered forcibly including, if necessary, the authority to conduct a search.

255. Although the person concerned (or one of his/her close relatives or representative) must in principle be present when assets are seized or premises are searched, it is clear that the action does not require prior notice to the defendant. In case the property to be sequestered does not consist of tangible items such as objects or documents but, for example, money held in a bank account, the sequestration order issued by the investigative body and authorised by the investigative judge is first submitted to the respective financial institution for execution and only after will the defendant be notified. In summary, the evaluators consider Criterion 3.3 as being met.

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

Provisional measures under the AML/CFT Law

256. Art. 14 of the AML/CFT Law authorises the FIU (OPFML) to suspend the execution of any suspicious financial transaction for a period specified in the decision but not exceeding five working days. This deadline can however be extended by a resolution of the investigative judge[32] from up to the limit of 30 working days to allow the criminal investigative authorities to initiate criminal proceedings for the seizure/sequestration of the assets involved. Beyond the prolonged deadline, however, no further action can be taken and the assets must be released.

> *(1) The reporting entities are obliged to freeze, at the decision of the Office for prevention and fight against money laundering, the carrying out of the suspect transaction, for the period specified in the decision, but for not more than five working days. If the mentioned period is not sufficient, the Office for prevention and fight against money laundering can request, on motivated grounds, before the expiration of the term, from instruction judge, to extend the term of freezing or seizing the property. At the expiration of the term of 30 working days from the date of approving the decision that is considered null.*

257. In the context of the AML/CFT Law *"freezing"* means *"temporary prohibition of the transfer, liquidation, conversion, placement or movement of property or temporary assuming of custody or control over the property"* (Art. 3) thus it is clearly not a coercive measure applicable in a criminal procedure but an administrative one aimed at suspending (stopping and temporarily prohibiting) the transaction.

[32] The term used in the official English version of the AML/CFT Law is "instruction judge" which however means the same institution that was mentioned as "investigating judge" in the CCP. Both English terms are translated from the very same Romanian original "*judecător de instrucție*".

258. Both the initial suspension of the transaction and the prolongation thereof are carried out without prior notification of the person involved in the transaction. It is unclear however at what point the owner of the property is actually notified. It is only prescribed by paragraph $(1)^1$ that *"about the resolution of the instruction judge on the prolongation of the term of freezing of the suspect transaction or activity the natural or legal person the subject of the freezing decision are informed in accordance with the legislation in force"* but there is no such requirement as regards the initial 5-days suspension. On the other hand, paragraph $(1)^2$ provides that both the freezing (suspending) decision of the FIU and the prolongation order of the investigating judge can equally be appealed by the person whose rights are affected[33] which implies that he/she must have been notified about the initial suspension as well.

Protection of bona fide third parties (c.3.5)

259. Evaluators of the third round recommended further developing the full protection of the interest of the bona fide third party within the context of the criminal proceeds confiscation proceedings. At the time of the previous round, this protection was only provided by Art. 106(3) CC as discussed above (by which third party confiscation was restricted to *mala fide* third parties) and by the possibility to take civil but nothing was provided for the third party to intervene in the confiscation proceedings to protect its interests.

260. In the present round of evaluation, the Moldovan authorities made reference to another provision of criminal procedural law that enables the *bona fide* third party to protect their rights in case of temporary seizure (sequestration) of the goods (see more in details below). Article 209(1) and (2) CCP (which, besides, had already been in force at the time of the third round evaluation) thus read as follows:

> ***Article 209. Contesting the Sequestration of Goods***
>
> *(1) The sequestration of goods may be contested in the manner duly set out in this Code; however, a complaint or cassation request filed shall not suspend sequestration.*
> *(2) Persons other than the suspect/accused/defendant who consider that the sequestration of goods was illegal or unjustified shall be entitled to request that the criminal investigative body or the court revoke the sequestration of goods. Should the body or court refuse to satisfy the request or not to inform the respective person within 10 days from the date of its receipt about the results of the request, the person shall be entitled to request the revocation of the goods sequestered under a civil procedure. A court judgment on a civil action to revoke the sequestration of goods may be subject to cassation by the prosecutor in a higher court within 10 days; however, upon becoming effective, it shall be mandatory for criminal investigative bodies and for the court trying the criminal case to settle the issue of whose goods shall be confiscated or, as the case may be, restored.*

261. By virtue of this provision, any third person can make appeal against this provisional measure, not only the owner or possessor of the property subject to sequestration and not necessarily those with bona fide legal interests, but any person (other than the defendant) who considers the sequestration was *"illegal or unjustified"*. What is actually established by this provision is however nothing but the right to request for revoking the sequestration as a result of which the same authority that has applied the measure should reconsider its application.

262. The law, on the other hand, does not provide for a forum of appeal within the context of the criminal procedure, that is, once the request for revocation is denied, there is no

[33] The official English version of the AML/CFT Law used the phrase "person considered frigid in rights" which is obviously a mistranslation of the original "*persoana care se consideră lezată în drepturi*".

(prosecutorial/judicial) authority to bring a second-instance decision and the complainant is referred to civil procedure and the outcome would however bind the authorities conducting the criminal procedure.

Power to void actions (c.3.6)

263. Art. 216 of the Civil Code defines null and annullable transactions in general terms, where a transaction is null on grounds established by the Code (absolute nullity) or it may be declared null on grounds established by the Code by the court or by parties' agreement (relative nullity).

264. The Civil Code provides for a list of specific causes for nullity, among which one can find the nullity of transactions contrary to law, public order and morality in Art. 220 as follows:

> *(1) The transaction or the clause contrary to imperative norms is void, unless it follows otherwise from legal provisions.*
> *(2) The transaction or the clause contrary to public order or moral principles is void.*

265. Other possible causes for nullity are Art. 221 *(Nullity of Sham and Feigned Transactions)* but it applies in cases where the purpose of a juridical act is to conceal another one and not to avoid or prevent the application of an authoritative measure. Art. 232 *(Nullity of Transaction Concluded in Breach of Interdiction of Asset Dispose)* refers to a transaction whereby a property, on which the law or a competent body had established an interdiction of disposal, has been disposed of in favour of certain persons. However, such juridical acts can only be declared null upon request of the persons in whose interest the interdiction is set and it is unclear whether the State can be considered such a *"person"*. It can therefore be concluded that Art. 220 seems to provide for the most appropriate cause for nullity in cases falling under Criterion 3.6.

266. Art. 219 of the Civil Code provides that a null transaction terminates retroactively from the moment of conclusion or, where it follows from the substance of the transaction, it shall not produce effects for the future. Each party is bound to return all he received by virtue of null transaction and, in case of impossibility of restitution, to compensate for the value of counter-performance.

Additional elements (c.3.7)

267. The third round evaluators noted that the confiscation regime then in force did not allow, for constitutional reasons, for a reversal (or even a sharing) of the burden of proof for confiscation purposes following conviction and hence it was recommended that Moldovan authorities consider reducing this burden pursuant to R.3.7(c).

268. It was already indicated in the third round MER that a constitutional amendment to reduce the burden of proof had then already been under preparation. The amending legislation would have deleted the last sentence of Art. 46(3) of the Constitution which declares that, as far as property rights are concerned *"the licit character of the acquirement is presumed*" to provide ground to the introduction of civil confiscation and the reversal of the burden of proof. Even though the Constitutional Court rendered a positive decision on the draft in April 2006, it was nonetheless met with such a controversy among the mass media and the civil society, which finally led to the loss of political support, as a result of which the Parliament turned down the draft amendment in 2007 and no reconsideration of the issue has been given.

269. The examiners could find no specific legislation or jurisprudence to cover R.3.7.a (authority to confiscate the property of organisations that are found to be primarily criminal in nature). When asked on-site, the Moldovan interlocutors made reference to corporate criminal liability but it is a

completely different issue. Civil confiscation (without the conviction of any person) as it is referred to in R.3.7.b was mentioned being unknown in the Moldovan jurisdiction.

Recommendation 32 (statistics)

270. It was already indicated in the previous report that the Ministry of Justice kept detailed statistics on confiscation, freezing and seizure and other similar measures based on the statistical information the courts were obliged to submit every 3 months. In the current round of evaluation, the Moldovan authorities only provided statistics as regards confiscation measures applied in major proceeds generating cases (numbers of confiscation orders and total value of confiscated assets) and separate figures related to confiscation applied in ML cases. The evaluators were not given any statistics regarding the application of provisional measures (sequestration) either in ML cases or in general terms although such information was available at the time of the previous round of evaluation.

271. Statistics related to the major proceeds-generating crimes can be found below. The figures indicate that confiscation measures still are not applied with sufficient regularity and the total volume of confiscated assets also remained at an unsatisfactory level despite the recommendations made by the third round evaluation team.

Table 11: Number of convictions in 2007

	Criminal Code offence	Number of convictions with the application of special confiscation	Total value of confiscated assets
1.	Theft, Robbery, Burglary	3	4 cars 4,177,442 MDL 31,414 USD 170 EUR 320 GBP
2.	Embezzlement of other's property	1	
3.	Smuggling	56	
4.	Corruption	3	
5.	Other offences	41	

Table 12: Number of convictions in 2008

	Criminal Code offence	Number of convictions with the application of special confiscation	Total value of confiscated assets
1.	Theft, Robbery, Burglary	4	1,938,120 MDL 12,765 EUR 2,430 USD
2.	Smuggling	17	
3.	Corruption	2	
4.	Other offences	29	

Table 13: Number of convictions in 2009

	Criminal Code offence	Number of convictions with the application of special confiscation	Total value of confiscated assets
1.	Theft, Robbery, Burglary	4	1,303,820 MDL 74,759 USD 119,930 EUR 3,300 GBP 1,800 GRN (Ukrainian Hryvnia) other assets in value of 155,552 MDL
2.	Illegal trafficking in narcotics	6	
3.	Smuggling	25	
4.	Other offences	29	

Table 14: Number of convictions in 2010

	Criminal Code offence	Number of convictions with the application of special confiscation	Total value of confiscated assets
1.	Theft, Robbery, Burglary	2	940,218 MDL 24,100 EUR 15,020 USD 2 cars
2.	Illegal trafficking in narcotics	4	
3.	Smuggling	9	
4.	Other offences	29	

Table 15: Number of convictions in 2011

	Criminal Code offence	Number of **convicted persons** with the application of special confiscation*	Total value of confiscated assets
1.	Theft, Robbery, Burglary	7	9,561,103 MDL 4,050 EUR 2,100 USD assets in value of 1,145,800 MDL
2.	Illegal trafficking in narcotics	5	
3.	Smuggling	6	
4.	Other offences	47	
*For reasons unknown to the evaluation team, the statistics for 2011 contain the number of convicted persons and not that of the cases ended with a conviction.			

272. The tables above do not contain statistical information regarding ML cases, about which the Moldovan authorities provided separate statistics. Specifically for the ML cases ended with a conviction since the third round of evaluation, the following figures were communicated:

- 1 ML conviction in 2009 case with the confiscation of 70,000 MDL
- 1 ML conviction in 2010 with the confiscation of 85,750 USD
- 2 ML convictions in 2011 with the confiscation of 63,425 USD total.

273. The fact that confiscation was applied together with the conviction in all ML cases is a positive sign and so is the volume of the confiscated property in these cases, particularly if compared to the total value of assets confiscated per year in relation to any other crimes which raises more concerns. That is, the cumulated figures appear insufficient even if taking into account the economic situation in the Republic of Moldova and thus may indicate the generally ineffective performance of the confiscation regime.

Effectiveness and efficiency

274. Among the possible reasons for the low results, the evaluators point out the deficiencies of the respective legal framework as discussed above. One of these is the restrictive character of the sequestration particularly as regards its scope of applicability with overly high evidentiary standards and de facto excluding seizure of assets from third parties and from (most of the) legal entities.

275. Although this issue was not mentioned by domestic authorities as an actual obstacle, the evaluators can see an apparent difference between the scope of the applicable provisional measures and that of the special confiscation as a result of which the powers to temporarily secure property appear clearly more limited than those related to the permanent confiscation of property. As a consequence, the deficiencies of the provisional measures regime unavoidably affect (and hence limit) the effective performance of the confiscation regime too.

276. Evaluators of the previous round experienced some uncertainty about the mandatory or discretionary nature of the confiscation measure. This is no longer an issue as the examiners are convinced that confiscation, as discussed above, is actually mandatory in the Moldovan criminal jurisdiction.

277. The ability to confiscate of the property that has been laundered should have been explicitly provided for, similarly to the *"corpus"* of the FT offence which is now explicitly covered by criminal legislation.

278. The evaluators appreciate that Moldovan courts apparently tend to make use of the current legal framework to confiscate the *"corpus"* in ML cases. Nevertheless there is no doubt that the clear coverage of this issue in the positive law (including provisional measures in criminal procedural law) would provide a firm legal base to a more extensive application of sequestration and confiscation measures even in the initial stage of proceedings.

279. The same goes for the apparent inconsistency in the current legislation as regards third party confiscation, first, as regards the inability to confiscate the equivalent value of proceeds the perpetrator transferred to *bona* fide third parties without compensation (and thus Art. 106(2)f CC cannot be applied to confiscate the substitutes) and second, the difference between the scopes of Art. 106(3) CC and Art. 204 regarding third parties. The interviews with the professionals indicated that this led to limited applicability of sequestration in relation to third parties *e.g.* in drug cases (please see Recommendation 27). Clarification of these issues would encourage the investigating and prosecution authorities to conduct more efficient financial investigations for the proceeds of crime.

280. Meetings with law enforcement authorities gave the impression that the traditional priorities in a criminal investigation are, first, the collection of evidence regarding the respective criminal offence and second, the securing of ill-gotten property with a view to the compensation of the victim or the damaged party. Securing assets beyond what is needed for compensation purposes (the seizure/sequestration of all proceeds derived from and instrumentalities used or intended for a criminal offence with a view to their confiscation) would therefore come after these priorities only.

281. On the other hand, this approach is likely to be changing as a result of the efforts of the prosecution authorities. The Prosecutor General's Office developed a practical Guide for the investigation of the corruption and connected offences (July 2009) which has been published and distributed also to law enforcement bodies. This Guide was developed by the Anti-Corruption Prosecutor's Office together with the CCECC and the Ministry of Internal Affairs and it serves as a detailed manual covering aspects such as the financial investigation and the assets investigation, the identification and seizure of assets for the purpose of further confiscation. Furthermore, the General Prosecutor's Office also elaborated a Study on special confiscation (2009) explaining Art. 106 CC and the application of the confiscation regime, which is now used as a guideline for internal use within the prosecution service.

282. The evaluators welcome the issuing and distribution of such guidance to practitioners and urge its overall implementation within the entire structure of investigating and prosecution authorities. The evaluators equally appreciate the efforts so far made by Moldovan authorities to train the judges and prosecutors to be more familiar with the provisional measures and confiscation regime including trainings with the support of the MOLICO project[34].

[34] Project against corruption, money laundering and the financing of terrorism in the Republic of Moldova (MOLICO) conducted by the European Commission and the Council of Europe, which was held from 1 August 2006 to 31 July 2009. The objectives of this project were to ensure the implementation of the Republic of Moldova's anti-corruption strategy on the basis of annual action plans and to strengthen the anti-money laundering/counter-terrorist financing (AML/CFT) system of the Republic of Moldova in accordance with international standards and good practices as well as MONEYVAL recommendations. The Centre for

283. In the last MONEYVAL evaluation report, the FIU was also encouraged to make more frequent requests under its own powers for transactions to be suspended, obviously with a view to the applicability of further coercive measures. This table below illustrates the overall performance of this regime in the past years:

Table 16: Cases referred to criminal investigations related to shell companies.

Year	Decisions to freeze assets	Decisions withdrawn	Shell companies identified				Cases referred to criminal investigation				
			Cases / in which freezing applied	Assets frozen on their accounts	Assets recovered	*Related tax fines imposed*	Total	Crim.investig. / of which ML	Prosecution	Conviction	Confiscation
2007	41	8	33/15	€1,750,000	€62,500		15	11/7	4		
2008	88	5	53/15	€1,320,000	€218,750		21	13/5	4		
2009	106	17	64/21	€275,000	€143,750	*€1,312,500*	25	24/2	10	1	€3,625
2010	75	24	17/11	€93,750	€62,500	*€1,250,000*	35	26/2	6	1	€71,458
2011*	32	16	16/5	€272,854	-	*€1,262,500*	12	6/1	2	2	€52,854

*up to the time of the on-site visit

284. The table above was produced by the evaluators preparing it from the statistical data and figures provided cumulatively by the Moldovan authorities. The relationship between certain columns and rubrics was not entirely clear to the examination team (e.g. whether and what correlation can be established between the number of cases involving shell companies and those in which criminal investigation was initiated) nevertheless there is room to draw some basic conclusions.

285. The number of decisions to freeze transactions started to rise rapidly after the previous round of evaluation but this trend had apparently reversed since 2010. In the last two years, the total number of decisions decreased together with an increasing proportion of decisions withdrawn by the FIU. The volume of assets frozen and recovered in cases related to shell companies shows a negative tendency throughout the entire period (probably due to the above-mentioned deficiencies of the legislation). On the other hand, the number of cases referred to criminal investigation, shows a constant growth up to 2011.

2.3.2 Recommendations and comments

286. While the provisional measures and confiscation regime underwent some significant changes and development, many of the deficiencies remained.

287. Apart from the more or less serious weaknesses of the legal framework, the evaluators still have the impression that the authorities make insufficient use of the powers currently vested to them by the existing legislation which, despite its deficiencies, offers a relatively broad authority to seize/sequester and to confiscate.

288. Notwithstanding that, the general results of the confiscation regime are still low even in the context of the economic situation in the Republic of Moldova. The evaluators share the opinion of the

Combating Economic Crime and Corruption (CCECC) of the Republic of Moldova is the main counterpart institution in the Republic of Moldova.

third round evaluation team according to which the awareness raising and adequate training of the law enforcement and judiciary authorities are as important as adequately addressing (through legislation or at least jurisprudence) the deficiencies in the legal framework particularly in the field of provisional measures.

289. Therefore, Moldovan authorities should clearly provide for the confiscation of the property that has been laundered (the *"corpus"* of the ML offence) as recommended in the previous evaluation report. The confiscation mechanism (value confiscation as a minimum) should be extended to proceeds the perpetrator or a *mala fide* third party has transferred to a *bona fide* third party without compensation.

290. The current evidentiary standards (i.e. the requirement to reach a *"justified assumption"* that the defendant or other persons may conceal, damage or dispose of the property subject to sequestration) should be removed from the provisional measures regime.

291. Legislation should be amended to extend the scope of applicability of sequestration so as to clearly cover the property belonging to legal entities and third persons (*mala* fides third parties as a minimum).

292. Echoing the recommendations made in the previous report the present evaluating team strongly encourage the authorities to further their efforts to familiarise law enforcement and judiciary authorities with the provisional and confiscation measures so that they actually and regularly apply their powers to seize/sequester and confiscate proceeds and instrumentalities of crime.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	PC	• The explicit coverage of the body (*"corpus"*) of the ML offence has not yet been provided for; • Inconsistency in criminal legislation as regards confiscation from third party legal persons; • Incapability to confiscate (at least the equivalent value) of proceeds the perpetrator or a mala fide third party transferred to a bona fide third party without compensation; • Overly high evidentiary standards for the application of provisional measures (sequestration) together with restrictions as regards the property that belongs to third parties and legal entities; **Effectiveness:** • Insufficient effective use of the current seizure/sequestration and confiscation provisions; • The volume of confiscated property is low in comparison with the number of convictions for predicate offences.

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

2.4.1 Description and analysis

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

Summary of 2007 factors underlying the rating

293. In the 3rd round MER the Republic of Moldova received a Non-compliant rating. The evaluators' conclusion was based on the following factors:

- No clear legal structure for the conversion of designations into Moldovan law under UNSCR 1267 and 1373 or under procedures initiated by third countries;
- No designating authority in place for UNSCR 1373;
- No effective and publicly known procedures in place for, or guidance relating to, considering de-listing and unfreezing, authorising access to frozen funds for necessary expenses and for challenging such measures;
- No clear guidance to all financial and nonfinancial sector ;
- Insufficient bona fide third party protection;
- Practice appears to be limited and so does the monitoring of compliance.

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

Freezing and seizing under the relevant UN resolutions

294. In the 3rd MONEYVAL evaluation round, the Republic of Moldova was found non-compliant with the requirements of Special Recommendation III. At that time, there was no specific legislation to provide for the freezing of assets of designated persons and entities under the relevant UNSCRs as reference was only made to some articles of the CCP (such as Art. 203 on sequestration and others) the Law on Combating Terrorism and the AML/CFT Law then in force, neither of which appeared to provide a clearly established legal mechanism in this field.

295. Since then, the situation in the Republic of Moldova has not changed significantly. On the positive side, there is some legislation in place that regulates the publication and updating of the respective lists as well as the possibility to elaborate national lists in this respect, but one cannot find much development in the implementation of SR.III.

296. The publication and updating of terrorist lists was within CCECC's competence at the time of the previous evaluation. Currently, Art. 14(4) of the AML/CFT Law prescribes that the list of persons and entities involved in terrorist activities shall be elaborated and actualised (i.e. updated) by the Service of Intelligence and Security of the Republic of Moldova (SIS) and be published in the Official Monitor. In practice, the SIS Order updating the lists of terrorist and terrorist organization is published the next week after the week of adoption, thus there is a time gap between adoption and publication of the lists which usually varies between 5 and 10 working days.

297. Pursuant to this provision, the SIS issued its Order Nr. 75 of 14 November 2007 on the lists of the persons and entities implicated in terrorist activities. It contained a consolidated list of persons and entities belonging to or associated with Taliban and Al-Qaida (Annex I of the Order) according to the respective lists issued and maintained by the competent committee of the UN Security Council instituted by UNSCR 1267 (1999), as well as a list of persons, groups and entities involved in terrorist activities as approved through the Common Position 2001/931/CFSP of European Union Council of 27 December 2001 as amended (Annex II *idem*).

298. Just one week before the on-site visit, the SIS replaced its Order Nr. 75 by a new Order Nr. 68 of 15 November 2011 apparently to follow the approach of the UN Security Council by which the Taliban and Al-Qaida Committees and their respective lists had been separated. As a result, the new Order Nr. 68 makes specific reference both to UNSCRs 1988(2011) and 1989(2011) and it contains three separated lists, namely, the list of persons and entities associated with Taliban pursuant to UNSCR 1988(2011) the list of persons, groups, enterprises and other entities associated with Al-Qaida pursuant to UNSCR 1267(1999) and finally the list approved through Common Position 2001/931/CFSP (attached to the Order as Annexes I, II and III, respectively).

299. By virtue of the AML/CFT Law, the SIS is obliged to update these lists according to the changes intervened in the respective UN and EU lists of designated persons and entities. As it was indicated in the second Progress Report, the SIS had actually performed this duty on a regular basis by bringing the lists attached to the former Order Nr. 75 up to date (by issuing amending orders thereto) not less than 16 times since the issuance of the original Order in 2007.[35]

300. Art. 14(5) of the AML/CFT Law prescribes the grounds upon which a person or organisation shall be included in the list as being involved in terrorist activities. These are

- the fact that the person or entity has already been so designated by the international organisations to which the Republic of Moldova is a party or by the authorities of the EU (para a)
- a definitive decision of a Moldovan court by which it
    - declares the organisation (either a domestic or a foreign one) as being terrorist (b)
    - ceases or suspends the activity of the organisation implied in terrorist activities (c)
        - convicts[36] a natural person for committing a terrorist act or other crime with terrorist character (d)
- an ordinance (order) to initiate criminal investigation against a natural person for committing a terrorist act or other crime with terrorist character (e)
- or a definitive criminal decision of a foreign court duly recognized by the competent Moldovan court in respect to the persons and entities implied in terrorist activities (f).

301. For the time being, the UN and EU designations make up the sole basis of the lists annexed to Order Nr. 68, despite the broad authority to add national designations as provided by para (b) to (f) above. At this point, the evaluators note that the reference to a conviction in para (d) appears redundant and unnecessary considering that even the initiation of an investigation might already be sufficient for being listed (para e). In any case, neither of the lists annexed to Order Nr. 68 contains any persons or entities listed according to para (b) to (f) which is explained by the fact that nobody in the Republic of Moldova has ever been charged with the offence of terrorist act or other crimes with terrorist character.

302. While the Republic of Moldova has undoubtedly established a legal mechanism to convert designations specifically under United Nations Security Council resolutions 1267 (1999) and now also 1989 (2011) into Moldovan law, the evaluators noted some deficiencies as regards the circulation of these lists to the authorities and financial institutions.

303. The circulations consist of making the respective lists publicly available on the website of the SIS pursuant to Art. 3 of Order Nr. 68 which provides that electronic versions of these lists shall be published on the *"Centrul Antiterrorist"* webpage www.antiteror.sis.md, while the further distribution of the lists to public authorities, reporting entities and other interested persons can only take place *"on request"*. It appears indeed that the terrorist lists are distributed by the OPFML to some of the reporting entities (with a number of notable exceptions e.g. foreign exchange bureaus).

[35] Since its adoption, the new Order Nr. 68 has also been amended accordingly.

[36] The word used in the official English translation was "condemnation".

304. During the on-site interviews, the evaluators noted that the representatives of different sectors were unevenly aware of the terrorist lists. A trend is difficult to describe but it could be said that foreign banks were more familiarised with the obligations derived from UNSCRs due to uniform corporate policies, while the local banks had little awareness on those. The non-banking financial sector had an even lower level of awareness of the terrorist list and obligations resulted from SR.III. While the insurance sector appeared to have some knowledge on the existence of the lists and received such lists from the FIU, the currency exchange offices do not receive the lists from the authorities and they do not perform any checks in this respect.

305. Other entities made reference to the availability of such lists on the homepage of the FIU (e.g. Posta Moldovei, representatives of casinos, lawyers and notaries) nonetheless, the evaluators could not find such easily accessible lists either on the website of the CCECC/FIU or that of the Centrul Antiterrorist, and are not convinced that obliged entities indeed inform themselves on the current status of terrorist lists.[37]

306. The Moldovan authorities have the opinion that even if not all of the reporting entities *"receive"* the lists of terrorists and terrorist organisations, it is mandatory for them to be aware of those lists which are not only published in the Official Gazette but, are also available through the internet. Furthermore, if a reporting entity asks either the FIU or the SIS or its respective supervising authority for these lists, it will be served without delay.

307. As far as the freezing of assets of designated persons and entities pursuant to SR.III is concerned, the evaluation team noted some fundamental deficiencies in the domestic legislation.

308. The legislation being in force at the time of the third round evaluation (CCECC Order Nr. 187 of 1 December 2006 concerning the lists of persons suspected of terrorist financing, repealed in 2007) had obliged the organisations carrying out financial operations *"to stop any transaction that is to be prepared, carried out or already finalised"* by the designated persons or entities and to inform the FIU about the actions undertaken no later than 24 hours from receiving the transaction request. Financial institutions thus appeared to be required to freeze without delay transactions. However, where there was no concrete transaction, they were not explicitly obliged to search all their accounts to ascertain whether persons on the lists have funds deposited with them.

309. The rules that regulate this area can now be found in Art. 14 paragraphs (2) and (3) of the AML/CFT Law as follows:

> *(2) The reporting entities freeze transactions with property for two working days, excepting the account supplying transactions of the persons and entities implied in terrorist activities, in financing and supporting of this in other ways, depending or directly controlled legal entities by this kind of persons and entities, of the natural and legal persons which act in the name or at the indication of this kind of persons and entities, including the means derived or generated by the property owned by the mentioned persons or directly or indirectly controlled, as well as natural and legal entities associated to them, by immediately informing the Office for Prevention and Fight against Money Laundering, but not later than 24 hours from the receiving of the request. If in the mentioned term of 2 days they do not receive the decision of freezing of the transaction from the Office for Prevention and Fight against Money Laundering, the reporting entities perform the transaction.*

[37] Since then, the Centrul Antiterorist webpage has been a conspicuous button which provides a direct access to all the respective lists.

310. The main obligations of the reporting entities thus remained practically the same. The AML/CFT Law requires, at least implicitly, the reporting entities to freeze (that is, to postpone) transactions involving assets that belong directly or indirectly to designated persons and organisations and to inform the FIU thereupon within 24 hours. Still there is no legal requirement to systematically search all the accounts for deposited terrorist assets which thus remain out of the scope of the legal framework.

> *(3) After the receiving and verification of the information mentioned in paragraph (2), the Office for Prevention and Fight against Money Laundering dispose, in dependence of the case, the freezing of suspect transactions on term till 5 working days, execute by emergency necessary actions for the examination of the discovered case, by notifying the reporting entity about the decision that was taken.*

311. Pursuant to Art. 14(3) of the AML/CFT Law above, once the transaction is postponed and a report is made to the FIU, the reporting entity keeps the assets frozen for a maximum period of two working days while the FIU verifies the information received. If the examination of the case requires more time, the FIU may prolong the freezing (postponement) of the transaction to a maximum period of five working days. Notwithstanding all these measures, there is no specific legislation in the Republic of Moldova to provide for the actual freezing of these assets beyond the maximum period of postponement (i.e. 5 working days).

312. Specifically, reference was made at this point to Art. 14(1) which provides that the five-working-days maximum deadline for the freezing (postponement) of transactions carried out by reporting entities upon the decision of the FIU can be prolonged by the investigative judge up to a maximum term of 30 working days, within which period the competent authorities have the opportunity to initiate criminal proceedings and apply provisional measures (sequestration). If no such measures are applied, the assets must be released by the expiration of the deadline.

313. While this regime can obviously be applicable in the context of R.3 it does not appear justifiable as regards SR.III. The evaluators are not convinced that the 30-working-days prolongation applies to the freezing of assets of designated persons considering the inner structure of Art. 14, as the freezing (postponement) of suspicious transactions is provided by para (1) to (1^1), while the postponement of transactions related to terrorist assets is provided in para (2) to (3). This implies that para (1) and (1^1) on the judicial prolongation of the deadline only refers to the preceding paragraph (1) and not to the subsequent ones.

314. Notwithstanding even if the 30-working-days prolongation applies, there is no possibility to keep these assets frozen beyond this deadline unless they can be the subject of provisional measures (sequestration) pursuant to the Code of Criminal Procedure. No such measures can however be applied unless there is a criminal procedure initiated which, in turn, obviously requires that a criminal offence, falling under Moldovan jurisdiction, be committed. The mere fact that the assets involved in the transaction belong to a designated person or entity, could not in itself be considered a criminal offence and hence there is no legal base for the application of CCP provisional measures.

315. Therefore, the evaluators conclude that there is no legislation in the Republic of Moldova by virtue of which these assets could be kept frozen beyond the 30-working-days maximum deadline. This is an important loophole in the CFT legal framework which raises questions as to the meaning and purpose of the entire freezing regime in Art. 14(2)-(3).

316. Criteria III.1 and III.2 are thus only partially met.

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

317. The evaluators could not find any legislation to specifically address Criterion III.3. In this respect, the Moldovan authorities made reference to the law by which the CETS 198 Warsaw Convention was ratified in 2007 claiming that this treaty provides a legal basis to seize, freeze and confiscate assets at the request of other jurisdictions, including assets that belong to designated persons and entities. A clear distinction must however be made between, on the one hand, the administrative procedure through which transactions involving terrorist funds can be postponed pursuant to the AML/CFT Law and, on the other hand, the criminal procedural measures (which can certainly be provided to other jurisdictions as well in the framework of international legal assistance but this issue is covered by R.38 not SR.III.).

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

318. The requirements of Criterion III.4 regarding the scope of funds or other assets are addressed and, on the face of it, met by Art. 14(2) of the AML/CFT Law as quoted above, which was apparently drafted with the intention to follow the wording of the said Criterion (though the notion of *"jointly"* owning or controlling funds or other assets seems to be missing). Notwithstanding that, the current regime only extends to assets actually involved in transactions subject to freezing (postponement) and not in general terms (e.g. for deposited funds) which evidently limits its scope of application.

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

319. Turning to Criterion III.5, the evaluation team were not provided with any legislation that would establish an applicable (or any) system for immediately communicating the actions taken under the freezing mechanism discussed above to the financial sector. The evaluation team consider that communication of the decisions which the FIU can impose on a certain reporting entity pursuant to Art. 14 cannot be considered as *"communication to the financial sector"*.

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

320. It was recommended in the last round that clear guidance be given to all financial and non-financial sector operators and adequate official awareness and information measures are developed on those measures and for detecting terrorist assets in line with Criterion III.6. This recommendation is adequately addressed by the *"Guidance for the identification of transactions suspected of financing of terrorism"* as attached to and approved by the CCECC Order Nr. 40 of 18 March 2011 aimed at the proper implementation of the AML/CFT Law in terms of identifying FT risks and recognizing the signs of suspicion. This guideline was distributed to supervisory authorities and reporting entities and it is also made available on the official website of the CCECC.

321. Due to the recent adoption of the guidance not all of the reporting entities were fully aware of its provisions in relation to the terrorist lists, especially the DNFBP.

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

322. Criterion III.7 requires 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 obligations. In this context, the Moldovan authorities made reference to the above mentioned obligation of the SIS to update ("actualize") the lists of persons and entities in accordance with the respective international sources thus to "delist" the names that have been deleted from the original lists (Art. 14(4) of the AML/CFT Law). This is, however, far from being an *"effective and publicly known"* national procedure to deal with de-listing requests as it is required by III.7 above.

323. There is no legislation in place to provide for any procedure for the unfreezing of assets that belong to de-listed persons or entities. Although it was mentioned in the MEQ that the "*Methodology of analyses of suspicious transactions, freezing and dissemination of reports suspected in money laundering and terrorist financing*" was going to be amended so as to meet this requirement, the evaluators were not provided with any draft legislation and, furthermore, they have serious doubts whether such a "Methodology" could be applicable to provide for a set of publicly known and generally applicable procedural rules.

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

324. Likewise, the evaluators did not find any specific legislation that would establish 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 pursuant to Criterion III.8 (any references made in this respect were actually related to the judicial review of freezing measures, which is discussed below under Criterion III.10).

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

325. There is no procedure available that could authorise access to frozen funds or other assets in case these would be necessary for basic expenses, the payment of certain types of fees, expenses etc. in accordance with Criterion III.9. The only steps that the evaluators noted was the establishment of an *"initiative group"* aimed at creating normative framework for implementing provisions that stem from UNSCRs 1267(1999) and its successor resolutions 1333(2000) 1363(2001) 1390(2002) 1455(2003) and 1526(2004) as well as UNSCR 1452(2002). However, no results were reported.

Review of freezing decisions (c.III.10)

326. When seeking compliance with Criterion III.10 the Moldovan authorities referred to Art. 14(1^2) of the AML/CFT Law. This provides that a decision on the postponement of a transaction, issued by the FIU (up to 5 working days) or the investigative judge (prolongation up to 30 working days) can be attacked (i.e. appealed) "*in accordance with the legislation in force"* by any person whose rights were affected by the decision. While the AML/CFT Law is silent on further details, it was subsequently clarified by the Moldovan authorities that the relevant piece of legislation is the Law on Administrative Procedure (Law Nr. 793/2000). Articles 16 to 18 of this law provide that administrative decisions, such as ones issued by the FIU, can be appealed to the Court while the court decision on the prolongation of the freezing can be appealed to the Court of Appeal.

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

Freezing, seizing and confiscating in other circumstances

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

328. In this context, it deserves particular attention that the "corpus" of the FT offence i.e. the property used or intended to use for financing of terrorism is now explicitly covered by the new Art. 106(2)g CC. However, the confiscation regime in general is still suffering from deficiencies such as the restrictive character of the provisional measures regime and the high evidentiary standards for its application that could, in principle, affect measures aimed at terrorist assets.

329. It is worth noting that at the time of the previous round of evaluation, the Law on combating terrorism (Law no. 539-XV of 12 October 2001 as amended) had also prescribed a parallel freezing obligation in its Art. 81 which obliged all organisations that carry out financial operations to freeze, upon instruction from the criminal investigation bodies, funds or other assets of natural or legal persons involved in committing or attempting terrorist acts or favouring actions. This provision was deleted in 2007 together with the establishment of the current, single freezing regime in the AML/CFT Law.

General provisions

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

330. The examiners were not advised of any specific procedures for protecting the rights of *bona fide* third parties in the context of SR.III. Although a reference was made to the appeal the *bona fide* third party can make (according to Art. 209 CCP) against the sequestration measure if it has breached their rights, the criminal procedural rules do not appear to provide a justifiable legal basis for appeal against measures imposed according to the preventive AML/CFT legislation. Nonetheless, as subsequently clarified by Moldovan authorities, the above-mentioned Law on Administrative Procedure (Art. 16 to 18) provides a right to appeal for *bona fide* third parties as well.

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

Monitoring

331. While at the time of the previous round of evaluation the FIU was entrusted with controlling the proper implementation of the freezing regime then in force, the examiners of the present round learnt that this responsibility has since been transferred, by virtue of Government Decision Nr. 1295 of 13 November 2006 to the SIS Anti-terrorist Centre. This is an autonomous unit within the said Service, made up of 4 bureaux one of which (Monitoring and Analysis Unit) exclusively deals with monitoring and analysing compliance with SR.III.

332. Notwithstanding that, the examiners still have no concrete information of any FT-specific controls which would enable the SIS to check whether all reporting entities are themselves making the necessary checks and whether listed persons or entities have assets in the Republic of Moldova (particularly as deposited assets or other funds not directly involved in transactions are concerned). According to an orally presented national procedure, the SIS must inform the OPFML which informs the supervisory bodies which are in charge with the monitoring of the implementation by reporting entities. It is unclear to the evaluation team what is the legal ground, the frequency of the procedure and the meaning of the word *"inform"* in this context.

333. During the on-site interviews, part of the banks that were aware of the obligation to freeze terrorist assets, mentioned that the NBM checks the monitoring software and other measures taken in respect of the terrorist lists, within the general AML/CFT inspections. There was no evidence of the involvement of the SIS in the monitoring activities over the reporting entities for SR.III purposes.

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)

334. It is unclear whether relevant measures from the Best Practices Paper have been considered and implemented.

335. There are no procedures to authorise access to funds or other assets that were frozen pursuant to S/RES/1373(2001).

Recommendation 32 (terrorist financing freezing data)

336. No freezing has occurred under SR.III.

337. As regards enforcing obligations under SR.III, no cases have been instituted against entities for failure to comply with such requirements.

Effectiveness and efficiency

338. In view of uncertainty regarding the receipt by the non-financial sector of the relevant lists and of an effective system for monitoring their compliance, concerns remain regarding effectiveness and efficiency.

339. While some sectors appeared to be aware of the obligations arising from SR.III and about the terrorist lists, other sectors (exchange offices, most of the DNFBP) had no knowledge about the listings despite the publication of the lists in the Official Monitor and their availability through the respective governmental websites. Banks do not routinely check the existing customers against the terrorist lists to identify assets. The insurance sector stated that they do not enter into relations with listed persons therefore no freezing is possible. The existing customers appeared not to be routinely verified against the lists.

2.4.2 Recommendations and comments

340. As noted above, the examiners could not find any significant changes in the CFT legislation and practice that would have brought the Republic of Moldova closer to the standards set in SR.III. In fact, there have only been a few inconsequential steps taken towards ensuring compliance with the relevant UNSCRs and the implementing legislation is still incomplete.

341. It is a positive step that the SIS has been granted a clear, general legal authority to convert designations under UNSCRs 1267 and successor resolutions into Moldovan law and to act as a designating authority for UNSCR 1373. The lists of designated persons and entities appear to be effectively and regularly updated by the SIS which also publishes them on its official website. Similarly, since the previous evaluation round, it appears that the banks are checking the lists; although practice still appeared to be limited.

342. The legal framework remains largely deficient. The freezing mechanism only covers the postponement of transactions involving assets that belong to the listed persons or entities, thus apparently excluding all other funds and assets not directly involved in transactions (e.g. deposits). Even in the case of transactions, their postponement can only be prolonged up to a 30-working-days deadline beyond which the assets must be released unless criminal procedural coercive measures (seizure/sequestration) can be imposed. Consequently, the evaluators cannot see a sufficiently firm legal base for applying the CCP in the absence of a formal criminal procedure (or, on the other hand, to initiate a criminal procedure for this purpose in the absence of a criminal offence under Moldovan jurisdiction).

343. The majority of the areas that fall under the scope of SR.III have not (or not adequately) been addressed by the lawmakers of the Republic of Moldova. There are still no procedures for systematically checking whether designated persons have funds or other assets in the country, no procedures for de-listing, to challenge a listing decision and to release part of the frozen assets for legitimate purposes, etc.

344. The evaluators therefore recommend

- that specific, complex and target-oriented legislation is drafted and adopted, promptly, to address all aspects of SR.III that are currently not, or not adequately covered;
- that assets not directly involved in transactions (deposits etc.) can also be subject to the freezing mechanism and that the legislation prescribes carrying out systematic checks for their identification;
- that publicly known and effective procedures are implemented for the freezing of terrorist funds and the handling of frozen assets (even beyond the above mentioned deadline) and for all aspects discussed above under Criteria III.3 as well as III.7 to III.9 and elsewhere
- that adequate awareness raising, training and subsequently monitoring of compliance with SR.III is taking place in practice.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• Major deficiencies in the freezing regime: limited applicability as regards assets not directly involved in transactions and a gap in the legal framework as regards the freezing of assets beyond the deadline of 30 working days; • No clear legal structure for the conversion of designations into Moldovan law under procedures initiated by third countries; • No effective and publicly known procedures in place for considering de-listing and unfreezing, authorising access to frozen funds for necessary expenses etc.; **Effectiveness:** • Awareness appears to be limited and so does the monitoring of compliance; • Limited implementation of UNSCR requirements especially by the non-banking financial institutions and DNFBP.

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

2.5.1 Description and analysis

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

Summary of 2007 factors underlying the rating

345. In the Third round MER, the Republic of Moldova was rated PC according to the following factors:

- Generally, the autonomy and powers of the FIU need reviewing and the identity of the FIU should be established clearly in legislation;
- Reporting forms and procedures have not been issued for all reporting entities;
- Insufficient physical and electronic security systems to securely protect the information held by the FIU;

- No periodic reports issued by the FIU with statistics, typologies, trends and information on its activities;
- In practice real issues as to whether the Egmont Principles are applied in relation to security of information, thus impacting on effective co-operation;
- Low turnover in terms of cases forwarded to prosecution (efficiency).

Legal framework

346. The AML/CFT Law provides for the powers, functions and structure of the Office for the Prevention and Fight against Money Laundering (OPFML), which is designated as the FIU in the Republic of Moldova. The AML/CFT Law is complemented by Order No. 96 of 29th June 2011 on the Organisation and Functioning of the OPFML issued by the Director of the Centre for the Combating of Economic Crime and Corruption ("CCECC").

347. The FIU was originally set up in 2001 as a special section within the Public Prosecutor's Office by virtue of Law No. 633-XV of the 15 November 2001. Following an amendment to Law No. 633-XV by Law No 197-XV of 15 May 2003, the functions of the FIU were transferred to a special subdivision within the CCECC, the OPFML, which was set up by Order No. 111 of 15 September 2003 issued by the Director of the CCECC. Although the OPFML was attributed the functions of an FIU by Order No. 111, its legal status was not sufficiently clear under Law No. 633-XV since the law did not make any specific reference to the OPFML but merely referred to the CCECC.

348. In the course of the third round evaluation in 2007, the evaluators raised various concerns with respect to the identity and autonomy of the OPFML and a number of recommendations were made to the Moldovan Authorities to rectify the situation.

349. On a legislative level, the issue of the independence and autonomy of the FIU was resolved with the enactment of a series of amendments to AML/CFT Law brought into force by Law No. 67 of 7 April 2011. Notwithstanding the fact that the OPFML continues to be situated within the operational structure of the CCECC, Law No. 190, as complemented by Order No. 96 of 2011, now provides for the establishment of the OPFML as an independent subdivision with powers and functions which are clearly distinct from those of the CCECC.

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

350. Article 13¹(1) of AML/CFT Law states that the OPFML shall serve as a specialised, independent division within the CCECC. Clause 2 of Order No. 96 sets out the mandate of the OPFML as the body responsible for the prevention of ML/FT in the Republic of Moldova. In addition, Article 13¹(3) and Clause 2 charge the OPFML with the responsibility of coordinating and overseeing the activities of the authorities involved, directly or indirectly, in the fight against ML/FT in the Republic of Moldova.

351. In addition to the general functions referred to above, Article 13¹(2) of AML/CFT Law and Clause 7 of Order No. 96 set out the specific powers and functions of the OPFML.

352. The core functions of the OPFML are the following[38]:

- receiving, analysing, processing and transmitting information on suspicious activities and transactions submitted by reporting entities;

[38] Article 13¹(2)(a), (b), (d), (e) and (h) of Law 190 and Clause 7(a), (b), (d), (e) and (h) of Chapter II of Order 96

- transmitting information and documents to law enforcement and other competent authorities for investigation purposes when there are reasonable suspicions of ML/FT and other proceeds-generating crime;
- requesting and receiving information from reporting entities and public authorities for the purpose of assessing whether the reported activity or transaction is suspicious or otherwise;
- issuing postponement orders to delay the execution of a suspicious activity or transaction;
- cooperating and exchanging information with similar foreign authorities and international organisations dealing with ML/FT issues.

353. The other functions of the OPFML, as the central authority responsible for AML/CFT matters, are the following[39]:

- issuing regulations, guidelines and normative acts to harmonise national legislation with international standards;
- providing feedback to reporting entities regarding the outcome of the analysis of suspicious activity and transaction reports and publishing periodical activity reports;
- providing methodological support to reporting entities on the prevention of ML/FT;
- creating and providing for the proper functioning of the information framework in its area of activity;
- collecting and analysing statistical data on the efficiency of the system for the prevention of ML/FT, including the number of declarations made by reporting entities, the number of criminal cases and convicted persons and data on the freezing, seizure and confiscation of the proceeds derived from ML/FT;
- elaborating the national strategy for the prevention of ML/FT and coordinating the activities of national authorities involved in the implementation of the strategy;
- exchanging data with other competent authorities and informing them of the causes and conditions facilitating ML, FT and other illicit activities;
- elaborating proposals and initiating the process for the harmonisation of national legislation with the applicable international standards;
- identifying the risk factors for the economic security of the Republic of Moldova and gathering and analysing data on the status, trends and typologies of ML/FT;
- performing other functions attributed to it by law.

354. In addition to all the functions referred to above, the AML/CFT Law and Order No. 96 also attribute supervisory powers to the OPFML. The relevant provisions[40] provide that at the request of other supervisory authorities listed in Article 10(1) of the AML/CFT Law, the OPFML shall participate in on-site inspections to ensure that the provisions of the Law are being complied with by reporting entities. This function is supplemented by the power to identify infringements of AML/CFT legislation and impose sanctions in relation thereto[41].

355. Chapter III of Order No. 96 provides for other duties and powers of the OPFML. Clause 8 provides for the following duties:

- to act in compliance with the Constitution of the Republic of Moldova, Law No. 190, Order No. 96 and other normative acts;
- to undertake actions for the prevention of ML/FT;
- to conduct operative investigations for combating ML/FT;
- to identify infringements of applicable laws and apply sanctions in relation thereto;

[39] Article 13¹(2)(c), (f), (g), (i), (k), (l) and (n) of Law 190 and Clause 7(c), (f), (g), (i), (k), (l), (m), (n), (o) and (p) of Chapter II of Order 96
[40] Article 13¹(2)(j) of Law No. 190 and Clause 7(j) of Chapter II of Order No. 96
[41] Article 13¹(2)(m) of Law No. 190

- to administer the process in relation to administrative contraventions;
- to receive and register information provided by reporting entities and to verify and analyse such information in accordance with applicable laws;
- to provide for the training, re-qualification, and upgrade of staff;
- to provide for the protection and security of state, banking and commercial secrets, as well as any other secrets protected by the laws, which may have come into the possession of the OPFML in the course of the fulfilment of its functions.

356. Clause 9 of Order No. 96 provides for the following powers of the OPFML:

- to issue orders, decisions and recommendations to reporting entities which are relevant to the prevention of ML/FT, to make proposals on the removal of causes and conditions contrary to the efficient implementation of national policy;
- to approve guidance on suspicious activities and transactions, the instructions on the production and presentation of special forms relating to the reported activities or transactions, the special forms for reporting entities, the guidance on the identification of transactions suspected of financing of terrorism, the guidance on the identification of politically-exposed persons, the instruction on the prevention of use of the national banking and non-banking systems for the legalisation of illicit proceeds and financing of terrorism, as well as any other instructions necessary for the proper implementation of policies aimed at the recovery of illicit income, prevention and combating of financing of terrorism;
- to request and receive from the public authorities, enterprises, institutions and organisations, reporting entities, independently of the type of property, any information necessary for the proper exercise of authorities
- to verify and monitor the application of Law No. 190 in relation to the collection, registration, storage, identification and presentation of data on the transactions, as well as the implementation of internal control activities and procedures;
- to suspend the execution of transactions suspected of money laundering and/or financing of terrorism;
- to establish the violations of applicable laws and apply sanctions within the limits of its competency;
- to organise the training and professional upgrade of staff and to participate in scientific-practical conferences, workshops and other events at both the national and international level;
- to represent the Republic of Moldova at specialty forums and international organisations in which the Republic of Moldova is a member.

357. Although the functions and powers of the OPFML as the central authority for the prevention of ML/FT are clearly set out under the AML/CFT Law and Order No. 96, at the time of the on-site visit other legislative acts were still making reference to the CCECC in relation to certain functions specifically attributed to the OPFML. In this regard reference is to be made to Article 17 of AML/CFT Law, which states that the Government of the Republic of Moldova shall harmonise its normative acts within two months from the date of the entry into force of Law No. 67 of 7 April 2011.

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

358. Pursuant to Article 13¹(2)(g) of AML/CFT Law and Clause 7(h) of Order 96, the OPFML is responsible for providing methodological support to reporting entities on AML/CFT issues. Furthermore, in terms of Article 10(2)(b) of AML/CFT Law and Clause 9(b) of Order No. 96, the OPFML is empowered to approve the special forms for reporting purposes and the instructions on the production and presentation of such special forms. The composition of the forms and the instructions

for reporting are set out in detail under Order No. 117 of 20 November 2007 (as amended by Order No. 114 of 22 August 2011).

359. Order No. 117 provides for a detailed reporting form for every reporting entity listed under Article 4 of the AML/CFT Law. These forms require the reporting entity to provide information on, among other things, the type and nature of operation being reported, the amounts involved in the reported operation, the details of the identity of the suspect and the grounds for suspicion. Order 117 also provides clear and precise instructions on the completion and submission of such forms. All forms are required to be submitted in electronic format including the digital signature of the reporting entity. Where it is not possible to send such forms in electronic format they may be sent in hard copy or magnetic media in a sealed envelope. Whether sent electronically or physically delivered, the Order instructs reporting entities to send the forms to the CCECC and not to the OPFML. Additionally, no contact details are provided which may prove problematic in those limited cases where reporting entities do not have the software to submit reporting forms electronically. It was also noted that the contract which must be concluded for the reporting entities to submit reporting forms electronically must be signed with the CCECC and not with the OPFML.

360. Although Order 117 provides for comprehensive guidance on the manner of reporting and the procedures that should be followed when reporting, the evaluators identified an issue of a legal nature with respect to Article 10(2)(b) of the AML/CFT Law and Clause 9(b) of Order No. 96 which may possibly raise some concern. This issue arises from the fact that Article 10(2)(b) empowers other supervisory authorities, besides the OPFML, to approve the special forms for reporting purposes and the instructions on the production and presentation of such special forms. This may potentially result in the issuing of a reporting form other than the one issued by the OPFML for a particular reporting entity, thereby creating uncertainty as to the choice of form which is required to be completed.

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

361. The evaluators were informed that the OPFML has direct access to a large number of databases which make accessible a wide spectrum of information required for the adequate performance of the analytical function. The databases which the OPFML has direct access to are the following:

- Controls performed by CCECC – verified companies and the results performed by the Audit Unit of CCECC which performs controls to determine the damage for criminal investigation purpose.
- Financial Information– analytic database which contains data of all STRs, CTRs, cumulative transactions (which are no longer being reported) and limited transactions;
- Criminal cases – database of all criminal cases opened by the Criminal Unit of CCECC;
- Accec-Web – Personal data of citizens and their relationships, ID documentation data, data on the registered transportation vehicles, data on the crossing of state border, data on the resident and non-resident economic agents registered in the country, data on the foreign persons;
- Fisc.md Infoview – data on the financial/economic activity of economic agents, accounting of fiscal bills of lading, accounting balance-sheets (interface adapted for OPFML);
- Real Estate Database – data about real estate property;
- Custom Database – data on the customs declarations;
- Database on wanted persons, stolen vehicles, and other criminal records;
- Database of delinquent (shell) companies – data of all shell companies identified by law enforcement agencies;
- Archive of exchange rates;
- Phone database – data on numbers of fix phone and its owners.

362. There is no legal provision under Law No. 190 which requires reporting entities, public authorities and other legal entities to provide information not directly accessible by the OPFML within a particular period of time or on a timely basis and no specific sanctions are contemplated in the law for cases where information is not provided on a timely basis by reporting entities. This deficiency may restrict the timely availability of information to the OPFML which may in turn have serious repercussions on the analysis of a suspicious transaction/activity or the exchange of information with a foreign FIU/supervisory authority.

363. In reaction to this finding, the Moldovan authorities explained that in practice all requests for information by the OPFML specify the date within which the information is to be provided. In those cases where such information is not provided within the specified time-frame, the authorities may impose a penalty in terms of Art. 349 of the Contravention Code *("Preventing legitimate activity of public servants"*). Moreover, the Law of Correspondence sets out a general requirement on any person to provide information to an official authority within 15 days for simple requests and 30 days for complex requests.

Additional information from reporting parties (c.26.4)

364. In terms of Article 13¹(2)(d) of the AML/CFT Law, the OPFML may request reporting entities and public authorities to provide any information and documentation for the purpose of assessing the suspect nature of a transaction.

365. According to Clause 7(d) of Order No. 96, information may be requested to determine the suspicious nature of both a transaction and an activity. In addition, Clause 9(c) of Order No. 96 grants a wide-ranging power to the OPFML to request and receive any information necessary for the proper exercise of its powers from public authorities, enterprises, institutions, organisations and reporting entities, independently of the type of property. The OPFML is empowered to request information from a natural person in an indirect manner through the CCECC.

366. Article 12(2) of the AML/CFT Law states that the transmission by a reporting entity of any information to the OPFML shall not constitute a disclosure of a commercial, banking or professional secret. Article 12(3) further states that the legislative provisions on commercial, banking or professional secrets shall not impede the OPFML from receiving information on the financial and economic activities and transactions of natural or legal persons.

367. As noted under Criterion 26.3, the OPFML has direct access to a large number of databases and therefore additional information required by analysts would normally be directly available through such databases. In those limited cases where such information is not directly available the analysts may request such information directly from reporting entities after obtaining the consent of the Head of the OPFML.

Dissemination of information (c.26.5)

368. The OPFML is required to transmit information and documents to criminal investigation authorities and other competent authorities, when there are reasonable suspicions of ML/FT and other proceeds generating crimes[42]. The law does not state the manner in which the transmission is to be carried out and does not specifically require the OPFML to produce an analytical report.

369. The methodology on the analytical procedure states that the conclusion of an analytical report shall include a reference to the competent authority to which the analytical report is to be transmitted

[42] Article 13¹(2)(b) of Law No. 190-XV and Clause 7(b) of Order No. 96

for the initiation of a criminal investigation. However, the methodology does not provide for a list of competent authorities which are to receive financial analysis reports to initiate a criminal investigation and the manner in which a determination is to be made as to which competent authority is to receive such a report.

370. The methodology also states that an analytical report shall either state that a competent authority is to receive the analytical report or that an operative investigation is to be initiated by the OPFML. There is no indication in the methodology as to which factors must be taken into consideration to determine whether a case is to be transmitted to a competent authority or an operative investigation is to be initiated or else the case is to be closed.

371. Based on the proposals formulated by the OPFML employees, a decision is made by the Head of the Office. The decisions signed by the Head shall be registered in the register of decisions and marked accordingly by the FIU.

Table 17: Statistical data on cases generated by the OPFML and disseminated to law enforcement

	2005	2006	2007	2008	2009	2010	2011
FIU Cases	177	193	197	303	317	292	268
Disseminated	37	32	41	88	211	213	201
% of disseminated cases	21%	17%	21%	29%	67%	73%	75%

372. Table 17 indicates that the number of cases opened by the OPFML increased considerably in the period between 2008 and 2011. The percentage of cases disseminated to law enforcement authorities has constantly followed an upward trend.

373. During the on-site visit the evaluators were informed that the number of cases opened by the OPFML and the number of cases disseminated to law enforcement have increased over the years as a result of the experience obtained by the officers of the OPFML in the analysis of STRs and due to the implementation of new analytical software.

Table 18: Statistical data on cases disseminated to law enforcement and the number of indictments and convictions resulting from such cases

	2005	2006	2007	2008	2009	2010	2011
Disseminated	37	32	41	88	211	213	201
ML Indictments	0	0	1	0	2	5	4
ML Convictions	0	0	0	0	1	1	2

374. Table 18 highlights the low number of indictments and convictions resulting from cases disseminated by the OPFML to law enforcement authorities. The authorities could not immediately identify a concrete reason for such a discrepancy and appeared not to have carried out an assessment to determine whether any action would be necessary to improve the situation. However, it was stated that the issue did not concern the quality of the analytical reports but was possibly the result of the high level of proof that is required by the prosecution and judges. This confirms the conclusions reached by the evaluators in relation to Recommendation 1. Indeed, the authorities explained that although few ML proceedings were instituted on the basis of the OPFML's disseminations, in various instances the prosecution of the predicate offence was pursued instead.

375. The authorities also explained that since the large majority of ML investigations required the assistance of foreign authorities through letters of assistance, the execution of such requests delayed the indictment stage.

Operational independence and autonomy (c.26.6)

376. As noted earlier, shortly before the on-site visit, on a legislative level the OPFML became legally an independent division within the CCECC pursuant to a series of amendments which entered into force in April 2011. This is undoubtedly an improvement from the position prevailing at the time of the third round and for much of the period under review. This legislative amendment appears to adequately address the concerns expressed by the Constitutional Court of Moldova with respect to legal certainty regarding the CCECC/OPFML powers[43].

377. The OPFML is a specialised, independent division within the CCECC[44]. Clause 10 of Order No. 96 states that the OPFML is independent in the elaboration of its activity programmes, in decision-making and in the implementation of its functions. The activities of the OPFML are financed by the state budget allocated by the Government of the Republic of Moldova[45].

378. The authorities emphasised that the OPFML is sufficiently independent and autonomous from the CCECC. According to the OPFML, the independence and autonomy is demonstrated by various factors such as: the fact that the policy of the OPFML is set out without the interference of the Director of the CCECC, the exclusive access by the officers of the OPFML to the database of the OPFML, the direct receipt by the OPFML of suspicious transaction reports and the exclusive power of decision on dissemination of the analytical work to law enforcement authorities, without the need of approval of the Director of the CCECC.

379. Notwithstanding the explanations provided by the authorities, the evaluators identified a number of administrative and operational aspects of the OPFML which indicate that the OPFML is still dependent on the CCECC to a certain degree. These aspects, which are found both in the law itself and in certain procedures followed in practice, may impinge on the independence and autonomy of the OPFML.

380. According to Art. 11 of Order 96, the Head of the OPFML is designated by the Director of the Centre (CCECC). This raises some concern in the light of the fact that Order No. 96 is an internal administrative order issued by the Director of the CCECC.

381. Another factor which raised concerns is the fact that a number of officers are delegated from the CCECC to assist the OPFML in certain areas. It was noted that there are no legal provisions which expressly state that such officers shall be independent from the CCECC and that in the exercise of their functions as delegated officers they shall act under the sole direction of the Head of the OPFML.

382. It is to be noted that notwithstanding the potential risk of interference by the Director of the CCECC, the Moldovan authorities stated that in practice no undue influence had ever been exerted on the OPFML. It was explained that the designation and removal of staff from the OPFML by the Director of the CCECC is purely formal and is due to administrative procedures.

383. Clause 5 of Order No. 96 states that the activities of the OPFML are financed by the state budget allocated by the Government of the Republic of Moldova. The budget allocated to the OPFML is confidential and cannot be published. Considering the figures provided, the evaluation team, is of

[43] Decision on the control of the constitutionality of some provisions under Law no.1104-XV dated 6.6.2002 „Regarding the Center for combating Economic Crimes and Corruption" and Law no. 190-XVI din 26.7.2007 „regarding the prevention and combating money laundering and the financing of terrorism" no. 27 dated 25.11.2010
[44] Article 13¹(1) of Law No. 190-XV and Clause 4 of Order No. 96
[45] Clause 5 of Order No. 96

the opinion that it is unnecessarily low (barely covering basic expenses such as salaries), indicating that the OPFML relies on the CCECC to cover a number of operational costs.

384. Although the evaluators welcomed the recent efforts by the Moldovan authorities to secure independence for the OPFML, the evaluators concluded that more efforts are required to ensure that the OPFML achieves sufficient operational independence and autonomy from the CCECC. Indeed, according to information published on the CCECC website in 2011, consideration was being given by the Moldovan authorities to removing the OPFML entirely from the CCECC structure.

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

385. Article 15 of Law No. 190 states that the OPFML, the supervisory authorities listed under Article 10(1) and any officials of the OPFML and such supervisory authorities have a duty to maintain any commercial, banking or professional secret which they may have come in possession of in the course of the performance of their functions. Any disclosure of such secret shall be subject to the damages caused by the disclosure of such secret in accordance with the relevant legislation. No further details as to what the sanctions for failure to observe the secrecy rules are, or for how long the OPFML employees are bound to keep the confidentiality of the data are provided in the AML/CFT Law.

386. To clarify the matter, the Moldovan authorities indicated that the OPFML employees must sign a Commitment on the protection of information considered as a *"state secret"* and other sensitive information protected by laws. The Commitment which is annexed to Order 105/2011 of the CCECC, concerns all CCECC employees and not specifically the OPFML employees. The confidentiality obligations are to be observed not only throughout the duration of the working contract but also once the contract has expired without any time prescription.

387. The Commitment contains a list of excerpts from the Criminal Code and from the Contravention Code of the Republic of Moldova, out of which, only Art. 107 seems to be directly applicable to the FIUs work, as it refers to disclosure of the commercial, banking or fiscal secrecy information. The sanctions for such disclosures consist in fines between 400 and 500 conventional units (~€516 to €645). The evaluation team is of the opinion that the level of sanctions remains low and not dissuasive enough taking into consideration the high level of sensitivity of the FIU's information.

388. There is no reference to professional secrecy in the Commitment document; therefore, it is unclear for the evaluation team how information which does not fall under banking, commercial or fiscal secrecy, is protected.

389. The evaluators were advised that a number of security measures have been implemented by the OPFML to ensure that the information received and processed by the OPFML is adequately protected. The authorities explained that the server of the OPFML is situated in a separate room from the server of the CCECC and access to such server is restricted to the officers of the OPFML. The premises of the OPFML and the server are under constant CCTV surveillance and access to the premises of the OPFML is restricted. All the workstations of the officers of the OPFML are secured by a password.

390. It was also pointed out that banks are required to install software to deliver STRs in a secure manner while the other reporting entities are required to install a secure web-browser (named Thunderbird). The software can be downloaded free of charge from the OPFML web page together with the instruction manual.

391. The authorities also pointed out that all documents which are disseminated by the OPFML contain a footnote which states that data presented includes trade, banking and professional secrets, data shown is the property of OPFML and may be used only for the purpose of preventing and combating ML/FT, data presented cannot be disclosed without the prior written consent of the OPFML, data presented cannot be admitted as evidence in court and cannot be used in a court judgment and the competent authority to which the case should be disseminated is established by the head of OPFML based on the investigation competence of predicate crime established by the provisions of art. 266-270 of the Criminal Procedure Code.

Publication of periodic reports (c.26.8)

392. The OPFML is required to present an annual report on the activities of the Office to the Director of the CCECC. Such report shall contain the analyses and evaluation of received data, as well as ML/FT trends. The annual reports of the OPFML are uploaded on the website of the OPFML.

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

393. The OPFML became a member of the Egmont Group of FIUs on 27th May 2008. There are a number of legislative provisions which provide for the exchange of information with foreign FIUs. Pursuant to Article 13(2) of Law 190 the OPFML, on its own initiative or on the basis of a request, can send, receive or exchange information and documents with foreign authorities having similar functions to the OPFML, on a mutual basis and subject to the observance of similar requirements regarding confidentiality.

394. Additionally, Article 13¹(2)(h) of Law No. 190 empowers the OPFML to co-operate and exchange information with foreign FIUs and international organisations dealing with ML/FT. The evaluators were informed that the OPFML has signed thirty nine memoranda of understanding (MoU) with foreign FIUs as, in terms of Article 13(2) of the AML/CFT Law, information exchanged with other FIUs can only be exchanged if a cooperation agreement is in place.

Table 19: Requests received and sent via the Egmont Secure Web (ESW)

	Sent requests via ESW	**Received requests via ESW**
2008	93	49
2009	99	48
2010	122	54
2011	154	45

395. Table 19 indicates the number of requests processed by the OPFML through the Egmont Secure Web. The authorities indicated that information requested by foreign FIU is generally provided within 72 hours, via ESW; for complex cases replies are usually provided within a period of 5 working days.

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

Structure of the OPFML

396. The OPFML is managed by the Head with the assistance of the Deputy Head and is composed of sixteen officers employed on a permanent basis.

397. As indicated in the organisational chart provided by the authorities following the on-site visit, the OPFML consists of three separate departments: the Tactical Analysis Department composed of nine officers, the Financial Investigation Department composed of five officers and the Strategic Analysis Department composed of two officers.

398. The evaluators noted that at the time of on-site visit another department composed of two officers dealing with international cooperation matters was referred to by the authorities. This department is also indicated on the website of the OPFML and in an attachment to Order No. 96 on the internal structure of the OPFML. However, this department does not feature in the organisational chart provided by the authorities.

399. It was also noted that, at the time of the on-site visit, the Financial Investigation Department is composed of five officers, including an inspector, a senior inspector and a principal together with the Head and Deputy Head of the OPFML. However, in the organisational chart provided by the authorities the Financial Investigation Department is indicated as being composed of five officers besides the Head and Deputy Head of the Department. These inconsistencies prompted the evaluators to conclude that in practice the allocation and attribution of responsibilities between the various departments within the OPFML are still not clearly delineated.

400. The permanent staff of the OPFML is supplemented by ten officers of the CCECC which are seconded by the Director of the CCECC for an indefinite period to assist the OPFML in undertaking its functions and duties. Although the offices of the CCECC delegated employees are not located within the OPFML offices, except for one of the IT officers, the authorities pointed out that these officers are answerable to the Head of the OPFML. However, there is limited information on the manner in which this arrangement is regulated.

401. The organisational chart provided by the authorities indicates that the delegated staff consists of two legal officers, two IT officers, two foreign affairs officers, one officer from the finance division, one officer from the secretariat and two regional officers. Some inconsistencies emerged between the contents of the organisational chart and the information provided at the on-site meeting in relation to the delegated staff. This appears to indicate that the division of certain responsibilities between the permanent and delegated staff is still not clearly established.

402. An assessment of the internal structure of the OPFML appears not to have been properly undertaken to determine the strengths and weaknesses of each department of the OPFML and to allocate resources in accordance with the identified needs.

403. The activities of the OPFML are financed by the state budget allocated by the Government of the Republic of Moldova. The figures provided by the authorities indicate that the budget allocated to the OPFML appears to be rather low. The evaluators are concerned that in view of the limited budget, in practice the OPFML may have to rely on the CCECC to cover certain expenses, thus potentially having an impact on its independence.

404. Analytical software (GoAML, Visualinks and i2) is available to assist the analysts in the analysis of a case. Analysts also have access to WorldCheck.

Integrity of FIU authorities (c.30.2)

405. The evaluators were informed that the officers working within the OPFML are required to hold a degree in law, economics or international relations. However, they are not required to have any previous professional experience.

406. Additionally, all prospective employees are subject to scrutiny by the security service and awarded security clearance prior to their engagement as officers of the OPFML. All the employees of the CCECC including those of the OPFML are required to observe the Code of Ethics which is issued by the Director of the CCECC.

407. According to the Law on CCECC 1104-XV/2002, persons with prior convictions, cannot be employed with the Centre. Also, an employee of the CCECC cannot:
a) take another paid position except for such bound with teaching, scientific or creative activity;
b) be involved in entrepreneurial activity personally or through the third parties;
c) share membership in managerial bodies of an enterprise;
d) be the solicitor or third parties representative with the Centre's bodies;
e) use beyond official duties the information acquired, the financial and the logistic resources;
f) use official function in the interest of parties, other social and political associations, including trade unions and religious organizations.

408. For the duration of their employment with the Centre (CCECC), employees are obliged to transfer any shares that they hold in legal persons into the trust management of an independent person. In cases of violation of those provisions, the Centre's employee can be dismissed irrespective of the time the offence occurred.

Training of FIU staff (c.30.3)

409. The evaluators were informed that the officers of the FIU receive training from time to time but not on a systematic basis. It is debatable whether enough funds are available to the OPFML for training purposes.

Table 20: Conducted trainings

Conducted trainings		
Date	**Place**	**Topic**
October 17-18, 2007	Ljubljana, Slovenia	Regional Workshop on Insurance Supervision in AML/CFT field organised by Centre of Excellence in Finance
March 10-11, 2008	Tbilisi, Georgia	Anti-Money Laundering and Combating of Financing of Terrorism Training Seminar organised by EBRD
June 23-27, 2008	Vienna, Austria	AML/CFT Workshop on Information Technology for FIUs, Joint Vienna Institute
October 1-3, 2008	Davos, Switzerland	Combating the Financing of Terrorism, International seminar
October 22-23, 2008	Ljubljana, Slovenia	Regional Workshop on Insurance Supervision in AML/CFT field
November 25-27, 2008	Bucharest, Romania	Workshop on MTIC Fraud (VAT Fraud) and money laundering schemes
June 8-12, 2009		Workshop on Money Laundering and Terrorist Financing Risks
September 23-25, 2009	Chisinau, Republic of Moldova	Workshop on VAT Fraud
October 11-14, 2010	Chisinau, Republic of Moldova	Egmont Working Group and

		Committee Meeting
November 9-11. 2010	Chisinau, Republic of Moldova	TAIEX workshop on "VAT fraud"
November 20-27, 2010	Warsaw, Poland	Strategic Economic Needs and Security Exercise Program
August 30 – September 02	London, UK	study visit to the SOCA (Serious Organised Crime Agency) regarding exchange of experiences in AML/CFT area
September 12-14, 2011	Chisinau, Republic of Moldova	TAIEX workshop on "Combating money laundering and financing of terrorism"
September 27-29, 2011	Chisinau, Republic of Moldova	International workshop on "Prevention and combating financing of terrorism" organised by UNDC
November 15-16, 2011	Haag, Netherlands	"Access of the law enforcement agencies to the intelligence for AML/CFT purpose", international conference organised by Europol

Recommendation 32 (FIU)

410. Article 13¹(2)(k) of Law No. 190 and Clause 7(k) of Order No. 96 require the OPFML to collect and analyse statistical material regarding the efficiency of the prevention and combating of ML/FT, including the number of suspect transactions declarations, number of criminal cases and convicted persons, data on transactions of freezing, seizure and confiscation of the proceeds obtained from ML/FT.

411. The OPFML collects information on, *inter alia*, the number of threshold, cash or suspicious transaction reports filed by reporting entity, on cases opened by the OPFML, disseminated cases and requests sent and received from foreign FIUs.

412. Since transactions within a suspicious operation are considered to be individual STRs and all transactions related to the Transnistrian region must be forwarded as STRs as well, the actual number of suspicious based reports is not clear.

413. An assessment on the effectiveness of the analytical function of the OPFML based on various statistics, especially taking into consideration the limited number of prosecutions carried out and convictions achieved based on FIU disseminations, appears not to have been carried out by the OPFML.

Effectiveness and efficiency

414. The OPFML receives the large majority (95%) of suspicious transaction and activity reports (STRs) in electronic format, while the rest are submitted in hard copy by post. According to the AML/CFT Law, the STRs must be submitted within 24 hours from the moment when the request for a transaction is made by the client of a reporting entity.

415. According to clause 10 of Order No. 117, where it is impossible to send the forms electronically, reporting entities are required to send them in hard copies or saved on magnetic media in a sealed envelope. However, no further indication as to what would constitute 'impossibility' is provided for in the order.

416. The OPFML also receives two types of threshold-based transactions: cash transactions over 100,000 lei or equivalent and other transactions exceeding 500,000 lei.

417. The authorities explained that STRs are sent by reporting entities directly to the analysts within the Tactical Analysis Department, although this is not stated specifically in Order 117. The Head of the OPFML is not directly involved in the receipt of STRs.

418. Within twenty-four hours of the receipt of an STR, the analyst is required to draw up a preliminary report on the STR which includes a proposal on whether a case is to be opened. The report is then presented to the Head of the OPFML who takes the final decision. Where a decision to open a case is taken, a determination is made by the Head, in consultation with the analyst, on the prioritisation of a case. The evaluators were informed that such determination is reached on the basis of a series of factors, but mainly depends on the seriousness of the predicate offence, where this is evident. However, no objective criteria have been formally set out in writing on the basis of which the prioritisation is to be determined.

419. The preliminary report presented to the Head contains other proposals in relation to the analysis of the case, such as the potential involvement of the Financial Investigation Department and the possible expansion of the analysis to involve other analysts within the Tactical Analysis Department. Any such courses of action are decided on a case-by-case basis depending on the nature of the case. The evaluators noted that no methodology has been formulated in this respect to ensure that a systematic approach is adopted.

420. The analysis of a case is conducted in accordance with a written methodology, a copy of which was provided to the evaluators. Although the methodology constitutes a valid tool insofar as the form of the analytical report is concerned, the evaluators noted that the contents of the methodology in relation to the substance of the analysis appear to be rather generic and theoretic in nature. It was also noted that no reference is made in the methodology to the manner in which threshold transactions reports are to be treated and the circumstances where an analysis is to be initiated on the basis of such reports. Furthermore, no reference is made to the manner in which information is to be processed to create intelligence. As to the period of time within which a case is to be concluded by the analyst, the Methodology states that this is to be done within a reasonable term established by the Head of the OPFML. No precise limit for the conclusion of the case is prescribed.

421. One very positive development that was noted by the evaluators was the introduction of analytical software (Go Case, Visial Links, Macrostrategy and i2) to assist the analysts in the analysis of STRs. However, the authorities remarked that this is a recent development and further training is needed to exploit the full potential of such tools for analytical purposes. A methodological guide was drafted to assist the analysts in the use of such software.

422. The analysis of STRs is conducted by the Tactical Analysis Department which appears to be equipped with trained and experienced analysts. Each analyst within the Tactical Analysis Department is responsible for receiving and analysing STRs submitted by specific reporting entities and to effectively act as a contact point for any AML/CFT issues which each reporting entity may have. This system has its particular merits since the direct contact established between the analyst and the reporting officer concerned may help to foster a relationship of trust, thereby creating an optimal environment for the exchange of information.

423. The authorities confirmed that an analysis is mainly initiated on the basis of an STR. It was pointed out that although every transaction connected to the Transnistrian region is reported as a suspicion transaction report, the OPFML does not initiate an analysis in relation to such reports since these transactions are cleared through the National Bank of the Republic of Moldova. Such

transactions are merely monitored on an ongoing basis by the OPFML. It was explained to the evaluation team that Transnistria related STRs do not necessarily contain suspicious elements, but they must be reported automatically according to the Order 118. In such cases, the monitoring activity is aimed to detect any situation where a suspicion would be expressed by the reporting entities.

424. Although the OPFML may initiate an analysis without the prior receipt of an STR, this does not happen often in practice. The authorities pointed out that on a number of occasions an analysis was initiated on the basis of information received from the General Prosecutor's Office, other law enforcement agencies and following a request for information from a foreign FIU. In such cases, the OPFML cooperates with the foreign FIU and provides all necessary assistance with the analysis and investigation of the case. The authorities mentioned that the OPFML has cooperated with foreign FIUs (e.g. from Ukraine and Romania) on a number of large-scale cases.

425. As evident from Table 21 below, not every suspicious transaction report generates a case. In fact, the number of cases opened by the OPFML is significantly low when compared to the total number of STR disclosures (column 3 in Table 21) submitted by reporting entities. The authorities explained that such a huge discrepancy in the figures is owed to the fact that the figures representing the total number of STR disclosures include all the transactions connected to the region of Transnistria, which, as specified above, are required to be reported as STRs irrespective of the nature of the transaction and the amounts involved.

426. A breakdown of the total number of STRs into number of STRs (column 4) and the number of Transnistria reports STRs (column 5) was provided by the authorities. When pointed out by the evaluators that a large discrepancy was evident even upon a deduction of the Transnistria reports from the total STR disclosures (as represented in column 4 of Table 22 under category 'STRs'), the authorities explained that one single case may involve a multitude of suspicious transactions which are reported in individual reporting forms and are considered to be separate reports for statistical purposes.

427. The evaluators enquired whether the figures under the category 'STRs' could be further broken down to determine the actual number of instances where a suspicion was reported to the OPFML. The authorities pointed out that this was not possible. As a result the evaluators were not in a position to carry out a complete and proper assessment of the analytical function carried out by the OPFML.

Table 21: Statistical data on threshold transactions and STRs received and cases opened by the OPFML

	Threshold transactions/CTR	Total STR	STRs	Transnistria related STRs	FIU Cases
2005	1,640,080	40,220	27,020	13,200	177
2006	7,020,906	217,052	125,691	91,361	193
2007	9,303,092	177,682	87,154	90,528	197
2008	6,300,900	190,023	94,341	95,682	303
2009	9,701,866	311,367	181,493	129,874	317

2010	11,836,132	360,125	229,613	130,512	292
2011	5,309,086	326,011	204,776	121,235	268
Total	51,112,062	1,622,480	950,088	672,392	1,630

428. The evaluators also noted a number of inconsistencies between the statistics provided to the evaluators and the statistics reported in the annual reports of the OPFML. It was concluded that the authorities should reconsider the manner in which statistics are kept to ensure that they are in a position to review the effectiveness of the OPFML and the national systems in general.

429. The OPFML successfully postponed the execution of various suspicious transactions as indicated in table 23 (for further details on the mechanism governing the delay of execution of a transaction see relevant section under Recommendation 13). Furthermore, the statistics show that an encouraging percentage of the OPFML postponement orders resulted in charges being brought before the courts and ML convictions being achieved. This indicates that the intervention of the OPFML has had a positive tangible impact on the overall effectiveness of the AML/CFT regime in Moldova.

Table 22: Number of postponed transactions

	Postponed transactions	**Referred to CID**	**Investigations**	**Prosecutions**	**Convictions**
2007	41	15	11	3	4
2008	88	21	13	5	4
2009	106	25	24	10	1
2010	75	35	26	6	1
2011	36	16	6	3	2
Total	346	112	80	27	12

430. The assistance of the Financial Investigation Department is sometimes needed in the course of the analysis of a suspicious transaction or activity being carried out by the Tactical Analysis Department. If required, the Financial Investigation Department may undertake certain investigative measures with the aim of detecting and establishing certain facts which are not readily apparent from the analysis of information gathered by the Tactical Analysis Department. However, no detailed information was provided on the functions of the Financial Investigation Department and the manner in which the investigative functions of the Department are carried out.

431. It was noted that the OPFML handbook (issued after the on-site mission) simply states that the aim of a financial investigation is the identification of assets, including financial assets, subject to arrest and confiscation in accordance with the laws. It also states that the appropriateness of any measures for any financial investigation is determined by the 'executor' and coordinated with the management of the OPFML.

432. The strategic analysis department issues monthly reports which are made available to the Tactical Analysis Department to assist them in the performance of their analytical tasks. The OPFML handbook provides a general explanation of what constitutes a strategic analysis and its purpose. However, no explanation is provided on the manner in which the OPFML is to conduct such analysis and the manner in which the results of the analysis are to be used. Additionally, no reports prepared by the strategic analysis department were made available to the evaluators.

2.5.2 Recommendations and comments

Recommendation 26

433. Notwithstanding the recent welcome developments, the evaluators noted a number of factors which could potentially have a bearing on the effectiveness and efficiency of the OPFML.

434. One such factor relates to the disproportionate number of functions being carried out by the analysts within the Tactical Analysis Department, who appear to be conducting most of the activities of the OPFML (receiving the significantly high number of STRs and threshold reports, drawing up daily reports to be presented to the Director in relation to each STR received, conducting the analysis of each STR, requesting additional information, providing information to be exchanged with foreign FIUs, assisting law enforcement authorities on an ongoing basis to trace and identify assets, monitoring bank accounts on behalf of law enforcement authorities and monitoring compliance by reporting entities). The assignment of all these responsibilities on the Tactical Analysis Department may place a significant strain on the ability of the tactical analysts to conduct the analysis of STRs effectively and as a result may have an overall negative impact on the core analytical function of the OPFML.

435. The authorities are therefore encouraged to conduct an assessment of the internal organisation and structure of the OPFML to determine whether the Tactical Analysis Department is in a position to perform its functions effectively, to clearly define the functions of each department within the OPFML and of the delegated officers of the CCECC and to determine whether human resources are being allocated efficiently. Additionally, the delegation of staff from the CCECC to the OPFML should be more clearly regulated.

436. Another concern of the evaluators relates to the apparently fluid nature of the internal structure of the OPFML. As mentioned earlier, apart from the Tactical Analysis Department, it appears that the other Departments of the OPFML and the delegated officers of the CCECC do not have clearly-defined functions and responsibilities.

437. The evaluators noted a discrepancy between the number of STRs and the number of prosecutions initiated and convictions achieved on the basis of such reports on the other hand. Although, as stated before, such discrepancy appears to be the result of the high level of proof needed by the prosecution to initiate a ML case, the authorities should still assess whether the analytical function of the OPFML is effective in practice and establish to the widest extent possible the causes for the lack of effective action being taken by the authorities concerned on the basis of the analytical reports disseminated by the OPFML.

438. Moreover, although the Tactical Analysis Department appears to be equipped with trained and experienced analysts and sufficient IT tools, it is difficult to comprehensively assess the effectiveness of the analytical function of the OPFML since the manner in which statistics are being maintained does not enable the authorities to determine the actual number of suspicions and transactions which are being reported, the number of cases opened on the basis of such suspicions and the number of disseminations.

439. Therefore, the authorities should consider implementing a more structured system for the maintenance of statistics related to STRs and other threshold reports to ensure that the OPFML is in a position to provide the figures for the actual number of instances where a suspicion was reported to the OPFML.

440. In view of the large number of reports that the OPFML is required to manage, a comprehensive internal procedure for the processing of STRs and other threshold reports should be drawn up, which should detail the procedure to be followed from the receipt of a STR/threshold report to the dissemination of an analytical report. This procedures should include the criteria on the basis of which a case is to be opened following the receipt of an STR, the involvement of the Head of the

OPFML in the opening of a case, the manner in which cases are prioritised, circumstances where analysts are to cooperate in the analysis of a case, the manner in which CTRs and limited transaction reports are to be utilised for analytical purposes, the manner in which the different departments of the OPFML are to cooperate between them, a detailed methodology for the analysis of STRs/threshold transactions, the length of time within which the analysis of an STR is to be conducted, the manner in which a decision to disseminate a case is to be taken, the criteria on the basis of which the law enforcement authority to receive the analytical report is decided on and the circumstances where an operative investigation is to be conducted by the Financial Investigation Department.

441. The analysis methodology should provide for clearer provisions on the dissemination process, indicating in a clear manner the circumstances and criteria that shall be taken into consideration when determining which LEAs are to receive the OPFML analytical reports.

442. The authorities should take immediate measures to ensure that all the AML/CFT laws are brought in line with Law No. 190, especially where reference is still made to the CCECC rather than the OPFML. In particular, Order No. 117 should be amended to state that a reporting form is to be submitted to the OPFML rather than the CCECC.

443. Order No. 117 should set out those situations where it is acceptable to file a reporting form manually and clearly indicate the postal and electronic address of the OPFML.

444. Although the authorities remarked that it is highly unlikely in practice that a supervisory authority, other than the OPFML, would issue a reporting form, it is recommended that the necessary clarifications be carried out in the legislation to eliminate the possibility of such a situation from occurring.

445. Although the OPFML has direct access to various databases, not all information required for analytical purposes and information-exchange is contained within such databases. Hence, the evaluators believe that a requirement should be introduced to ensure that information which necessitates a request from the OPFML is provided on a timely basis.

446. The residual issues identified by the evaluators in relation to the independence and autonomy of the OPFML from the CCECC should be addressed by the Moldovan authorities.

Recommendation 30

447. The authorities should ensure that the OPFML is adequately funded to enable it to properly perform its functions without the need to rely on the resources of the CCECC.

448. An assessment should be carried out by the OPFML to determine whether human resources have been allocated in accordance with the needs of each Department. If additional staff is needed for OPFML to properly carry out its duties, the evaluation team recommend that the OPFML employs its own personnel rather than utilising CCECC employees.

449. Further training is needed to exploit the full potential of IT tools for analytical purposes.

Recommendation 32

450. Statistics should be maintained in a more systematic and comprehensive manner, especially in relation to the nature of the reports received (STRs, threshold based).

451. The OPFML should routinely maintain statistics on cases opened on the basis of a STR and cases opened on the basis of a cash or threshold transaction.

452. An assessment should be carried out by the authorities based on statistical data to determine whether the OPFML is performing its functions effectively.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	**Effectiveness:** • Lack of proper allocation of duties between different departments of the OPFML which may have a negative bearing on the proper functioning of the Tactical Analysis Department; • No clear methodology on the recipients of the FIU disseminations of the OPFML; • Inability to comprehensively assess the effectiveness of the analytical function of the OPFML due to incomplete statistics.

2.6 Law enforcement, prosecution and other competent authorities - the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27)

2.6.1 Description and analysis

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

Summary of 2007 factors underlying the rating

453. The Republic of Moldova was rated 'PC' for Recommendation 27, based on the following deficiencies:

- limited information and data available to assess the efficiency of the ML/FT investigation and prosecution process ;
- no legislative or other measures that allow competent authorities to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering;
- more focus on the investigation of the financial aspects of crime needed to achieve more effective asset recovery.

Establishment of designated law enforcement authorities responsible for ML and FT investigations (c.27.1)

454. In terms of Article 269(1) of the Criminal Procedure Code ("CCP"), the criminal investigative body of the Centre for Combating Economic Crime and Corruption ("CCECC") is the law enforcement authority which is responsible for the investigation of ML/FT in the Republic of Moldova. The evaluators were informed that various other authorities in the Republic of Moldova also have responsibilities in the field of ML/FT investigations, namely the Ministry of Home Affairs and the Anti-Corruption Prosecutor's Office. It was pointed out that the Anti-Corruption Prosecutor's Office is, *inter alia*, responsible for investigations of ML/FT offences committed by the President of

the Republic of Moldova, members of the Government of the Republic of Moldova, judges, prosecutors and criminal investigators (Article 270(1) of the CCP). The legal basis pursuant to which the Ministry of Home Affairs may investigate ML/FT offences derives from Article 271 of the CPC.

The General Criminal Investigation Directorate

455. The criminal investigative body of the CCECC is the General Criminal Investigation Directorate (CID) which comprises a number of directorates responsible for the investigation of economic crimes. Directorates One and Four of the CID, which report directly to the Head of the CID, have been specifically designated to investigate ML/FT offences and as stated during the on-site mission, receive the large majority of disseminations from the OPFML. There is no distinction between the responsibilities attributed to Directorate One and Four. Each directorate is composed of a head and nine officers.

456. The CID may initiate ML/FT investigations at its own initiative or on the basis of an analytical report disseminated by the OPFML. The authorities pointed out that the large majority of ML/FT investigations are initiated on the basis of an analytical report sent by the OPFML. No information was provided as to the basis on which the CID initiates ML/FT investigations independently of an OPFML dissemination.

457. The analytical reports are disseminated by the OPFML to the Head of the CID, who assigns the case to one of the directorates investigating ML/FT depending on the workload. The authorities explained that in practice, the OPFML would communicate directly with the Directorate One and Four to determine which directorate is to receive the report. Upon the receipt of an analytical report from the OPFML, preliminary investigations are carried out to determine whether an order to initiate a criminal investigation is to be issued by the CID. The authorities pointed out that not every analytical report generates a criminal investigation.

458. On the basis of a table provided by the authorities at an advanced stage of the evaluation process (Table 23 below), the evaluators noted that the figures for STR-related investigations initiated by the CID and investigations initiated by the CID independently of an STR did not vary significantly.

459. These figures contradict the statement made by the authorities during the on-site visit that the large majority of CID investigations are initiated on the basis of an STR. Additionally, whereas during the on-site mission it was stated that the CID receives the large majority of OPFML disseminations and therefore logically one would assume that it conducts the highest number of STR-related investigations, the figures indicate that the other authorities investigating ML/FT conduct the largest amount of STR-related investigations (146 by the CID and 676 by the other bodies).

460. These discrepancies cast a serious doubt on the validity of the statistics furnished by the authorities to the evaluators at the eleventh hour and indicate a degree of uncertainty among the authorities themselves as to the prevailing situation with respect to the investigation of ML/FT in the Republic of Moldova.

461. In terms of Article 269(2) of the CCP, all ML/FT investigations, irrespective of the manner in which they were initiated, are to be conducted under the control of a prosecutor.

Table 23: Statistical data on STR-related investigations and police-initiated investigations

Year	STR-related investigations by	Investigations initiated by

	CID	Anticorruption Prosecutor Office	Other investigative bodies of CCECC	Others	CID	Anticorruption Prosecutor Office	Other investigative bodies of CCECC	Others
2005	10	8	14	5	4	2	13	
2006	14	5	11	2	10	1	9	1
2007	12	3	25	1	8	1	11	
2008	27	15	36	10	21	13	24	3
2009	22	18	156	15	25	11	72	2
2010	32	12	163	5	19	14	81	1
2011	29	19	149	4	21	14	75	1
Total	**146**	**80**	**554**	**42**	**108**	**56**	**285**	**8**
	822				**457**			

Preliminary Investigation

462. Following the preliminary investigation, an order to initiate an ML/FT investigation is submitted by the CID to the Anti-Corruption Prosecutor's Office ("ACPO"). The authorities confirmed that as a rule, the ACPO always confirms the order to initiate an investigation. This procedure is in line with the provisions regulating the initiation of a criminal investigation set out under Article 274 of the CCP.

463. Article 274(1) provides that a criminal investigation body, such as the CID, shall issue an order for the initiation of a criminal investigation, provided that a reasonable suspicion that a crime has been committed exists. Article 274(3) further provides that the order to initiate a criminal investigation shall be confirmed by the prosecutor managing the criminal investigation within twenty-four hours of the issuance of the order. In terms of Article 274(5) the prosecutor may refuse to initiate a criminal investigation and shall confirm the refusal in a reasoned order. Article 274(6) provides that a refusal by the prosecutor may be challenged in an appeal before a court in line with provisions of Article 313 of the CCP.

464. The evaluators noted that, in terms of Article 274, an order is issued by the CID and confirmed by the ACPO only where a reasonable suspicion of ML/FT subsists. Indeed, the evaluators were informed that in the absence of a reasonable suspicion, a proposal is still submitted to the ACPO to enable the CID to initiate an investigation regardless. Notwithstanding the fact that in practice the ACPO does not withhold its consent in such circumstances, the evaluators are concerned that such a system may restrict the ability of the CID to initiate ML/FT investigations in all cases where ML/FT is suspected to have taken place.

The Investigation

465. In the course of an ML/FT investigation, the law enforcement authorities may exercise all the investigative powers set out under the CPC including the interrogation of suspects, conducting on-site investigations, conducting searches and seizing objects and documents to collect evidence and trace criminal assets.

466. Nevertheless, as noted in the Third Mutual Evaluation Report, the range of techniques which is available is fairly limited and the use of such techniques is restricted to serious crimes, especially

serious crimes and exceptionally serious crimes[46]. Such techniques are therefore not available to the investigative bodies when investigating money laundering offences, since such offences carry a punishment of up to five years. Furthermore, such techniques are also not available to other criminal investigation bodies investigating proceeds-generating crimes, since such crimes also do not qualify as serious crimes.

467. In addition to the powers granted under the CCP, the law enforcement authorities may exercise the powers set out under Law No. 45-XIII of 12 April 1994 on Operative Investigations, as amended by Law No. 243 of 24 November 2007. The powers granted to investigative bodies under Law No. 45-XIII are much wider than those available under the CPC. Such measures may be applied to all criminal offences and are not subject to any unduly restrictive conditions. In terms of Article 6 of Law No. 45-XIII, criminal investigation bodies, including the CID, may apply the following measures:

1) to undertake, with the authorization of the examining judge, the following operative investigation measures:
a) residence searching and installation of audio, video, photo, filming devices etc.;
b) residence supervision by usage of technical means;
c) tapping telephone wires and interception of other conversations;
d) control of telegraphic and other communications;
e) gathering of information from telecommunication institutions;
2) undertake other operative investigation measures:
a) interrogate citizens;
b) gather information;
c) apply field supervision;
d) institute proceedings and carry out factual documentation by using advanced methods and technique;
e) collect materials (evidence) for the purpose of comparative investigation;
f) perform controlled purchasing and delivery of goods found in free or restricted circulation;
g) search objects and documents;
h) identify persons;
i) search premises, buildings, land plots and transportation means;
j) check up of the mail of the convicted;
k) carry out discussions with the accused one with the use of polygraph;
l) use marking by applying chemical and other special substances;
m) operative experiment
n) infiltrate operatively into criminal organisations collaborators of operative subdivisions and persons confidentially cooperating with the bodies carrying out operative investigation activity;
o) check up transfer of cash or other extorted material values;
p) monitoring transactions performed through one or more bank accounts.

468. As noted in the Third Round Evaluation, although Law No. 45-XIII provides for a wide range of investigation techniques, the legal framework regulating the use of special investigation techniques should ideally be set out under the CPC, especially since the CPC was enacted in 2003 and therefore post-dates the enactment of Law No. 45-XIII in 1994. In the light of such consideration and in view of

[46] Under Article 16 of the Criminal Code Serious crimes are considered acts for which criminal law provides for a maximum punishment by imprisonment for a term of up to 12 years inclusively, extremely serious crimes are considered crimes committed with intent for which criminal law provides for a maximum punishment by imprisonment for a term of more than 12 years and exceptionally serious crimes are considered crimes committed with intent for which criminal law provides for life imprisonment.

the fact that the formalities governing the use of special investigation techniques set out under Law No. 45-XIII are vague, the legal position with respect to the application of such measures remains ambiguous and the risk that it may be eventually challenged in a court of law raises some concerns[47].

469. The authorities informed the evaluation team that in the course of an ML/FT investigation, irrespective of whether such investigation was initiated on the basis of an analytical report or otherwise, the law enforcement authorities co-operate closely with the OPFML. In fact, the OPFML is commonly relied upon by the law enforcement authorities to obtain additional information, whether such information is to be obtained from a reporting entity or from a foreign authority. As explained by the authorities, such reliance is also placed on the OPFML for the purpose of identifying and tracing proceeds of crime. In fact, the authorities were not in a position to provide explanations as to the manner in which proceeds of crime are identified and traced by the law enforcement authorities, especially in cases involving, for instances, complex banking transactions and corporate structures.

470. The evaluators concluded that law enforcement authorities rely heavily on the OPFML for the purposes of identifying and tracing the proceeds of crime and the investigations mainly involve the operative aspects such as the interrogation of suspects and the sequestration of assets when it is determined that they relate to crime.

471. Although the power to monitor transactions performed through a bank account was introduced in Law No. 45-XIII on Operative Investigations in 2007, the authorities stated that the monitoring is generally carried out by the OPFML at the request of the law enforcement authorities.

472. The authorities remarked that analytical reports disseminated by the OPFML are considered to be very useful by the law enforcement authorities, particularly due to the fact that the analytical report generally constitutes a reasonable suspicion that ML/FT is taking place, which is a requirement for the initiation of an ML/FT investigation. The authorities were uncertain as to whether the existence of a predicate offence is required to determine that a reasonable suspicion of ML exists and subsequently initiate a criminal investigation or whether the predicate offence must be proven for ML charges to be brought. The evaluators were left with the impression that ML investigations were being restricted to those cases where the predicate offence has already been proven.

473. The authorities do not routinely maintain statistics on whether the ML investigations relate to autonomous ML or self-laundering. On the basis of information obtained during the on-site interviews it appeared that very few cases in fact relate to autonomous ML in practice.

474. The authorities could not provide information on the manner in which a FT investigation differs from an ML investigation as they have no experience in such matters. No information was provided in relation to the FT investigation that was referred to in the Third Mutual Evaluation Report. (page 68).

475. The authorities explained that the low number of ML indictments and convictions achieved in the Republic of Moldova is due to the fact that investigations generally take a long period of time to be concluded. Therefore, the number of ML indictments and convictions increase at a slower rate than investigations. However, the evaluators concluded that such investigations appear to be rather protracted especially in the light of the fact that the number of convictions is disproportionate to the number of investigations. Furthermore, the authorities indicated that in the judicial stage, the ML

[47] Following the on-site visit, the authorities informed the evaluators that on 29.3.2012 the Moldovan Parliament adopted a new law (No. 59) regarding special investigative measures which will come into force on 8.12.2012. This new law is expected to resolve the issues identified by the evaluators. Also, the CPC was amended on 5.4.2012 by the Law No. 66, which introduced a new section (art. 132/1 – 138/3) – "The special investigative activity". The provisions came into force on 27.10.2012.

investigations are often merged and become one indictment and subsequently one conviction. The evaluation team cannot confirm or rebut this statement.

476. The evaluators were informed that the Criminal Investigation Body of the Ministry of Home Affairs is responsible for the investigation of drug-related offences and drug-related ML offences, and receives notifications from the OPFML. However, during the interview it became increasingly clear that the Ministry does not investigate the ML suspicions contained in the analytical report but merely uses the information to initiate an investigation on drug-related offences. The representative of the Ministry was unsure as to whether any parallel investigations were being conducted by other law enforcement authorities to determine whether money derived from drug-related offences was being laundered. The representative of the Ministry indicated that the seizure of funds accumulated from drug-related offences had already presented difficulties in cases where such funds had been transferred to third parties. A more detailed analysis on this issue is found under Recommendation 3.

Competent authorities investigating ML cases possibility to postpone or waive the arrest of suspected persons and/or the seizure of the money (c.27.2)

477. The evaluators were informed that there are no specific measures, whether legislative or otherwise, to postpone or waive the arrest of suspected persons and/or the seizure of money for the purposes of identifying persons involved in such activities or for evidence gathering. However, the authorities stated that such measures are generally taken by the prosecutor depending on the nature of the criminal investigation. In order to shore up their assertion they referred to two particular cases where the arrest of a suspect was postponed.

Additional elements (c.27.3)

478. As stated previously, the CID and other criminal investigation bodies may exercise the powers set out under Law No. 45-XIII of 12 April 1994 on Operative Investigations, which provide for the application of special investigation techniques.

479. However, as noted in the Third Round Evaluation, although Law No. 45-XIII provides for a wide range of investigation techniques which may be availed of by criminal investigation bodies, the legal framework regulating the use of special investigation techniques should be ideally set out under the CPC, especially since the CPC was enacted in 2003 and therefore post-dates the enactment of Law No. 45-XIII in 1994. In the light of such consideration and in view of the fact that the formalities governing the use of special investigation techniques set out under Law No. 45-XIII are vague, the legal position with respect to the application of such measures remains ambiguous and the risk that it may be eventually challenged in a court of law raises some concerns[48].

Additional elements (c.27.4)

480. Very limited information was provided as to whether the measures set out under Article 6 of Law No. 45-XIII are routinely used in a ML/FT investigation.

Additional elements (c.27.5)

[48] Following the on-site visit the authorities informed the evaluators that on 29.3.2012 the Moldovan Parliament adopted a new law (No. 59) regarding special investigative measures which will come into force on 8.12.2012. This new law is expected to resolve the issues identified by the evaluators. Also the CPC was amended on 5.4.2012 by the Law No. 66, which introduced a new section (art.art. 132/1 – 138/3) – "The special investigative activity". The provisions come into force on 27.10.2012.

481. Although there appears to be adequate co-operation and co-ordination between the FIU, the CID and the ACPO, it clearly emerged that there is a lack of co-operation and co-ordination with the other law enforcement authorities responsible for the investigation of ML/FT.

482. Very limited information was provided on co-operative investigations with competent authorities of other countries.

Additional elements (c.27.6)

483. Decision No 790 of 3 September issued by the Government of the Republic of Moldova regarding the adoption of the National Strategy on AML/CFT for the years 2010-2012, requires all authorities involved in the fight against ML/FT to convene regularly to discuss ML/FT trends and methods used at national and international level. The authorities confirmed that such meeting took place in practice but there is no evidence of the outcome.

Recommendation 30 (law enforcement)

Adequacy of resources to law enforcement and prosecution (c.30.1)

484. Directorates One and Four of the CID are each composed of a head and nine officers. The heads of Directorates One and Four report directly to the Head of the Criminal Investigation Department of the CCECC. Additionally in the ACPO there are a number of prosecutors who conduct ML cases. No information was provided on the other authorities involved in the investigation of ML/FT offences.

485. The number of officers investigating ML/FT offences appears to be adequate in proportion to the number of analytical reports disseminated by the FIU and the number of ML/FT investigations which are initiated. However, the authorities confirmed no software is available to the CID/ACPO to facilitate financial investigations.

Integrity of law enforcement authorities (c.30.2)

486. The evaluators were informed that the officers of the CID must be in possession of a law degree. They are subject to due diligence and clearance procedures before being employed. These appointments are regulated by Law 1104 on the CCECC.

487. No information was provided on the other law enforcement authorities.

Training of law enforcement staff (c.30.3)

488. Although the CID Directorates investigating ML/FT offences appear to have received general training on ML/FT investigations, further specialised training on the identification and tracing of assets appears not to be provided regularly.

Table 24: Training received by CID on ML/TF issues

October 1-3, 2008	Davos, Switzerland	Combating the Financing of Terrorism, International seminar
June 8-12, 2009	Siracusa, Italy	Workshop on Money Laundering and Terrorist Financing Risks
September 23-25, 2009	Chisinau, Republic of Moldova	Workshop on VAT Fraud
September 12-14, 2011	Chisinau, Republic of Moldova	TAIEX workshop on "Combating money laundering and financing of terrorism"

September 27-29, 2011	Chisinau, Republic of Moldova	International workshop on "Prevention and combating financing of terrorism" organised by UNDC

489. The other law enforcement authorities responsible for ML investigations appear not to have received sufficient training.

Effectiveness and efficiency

490. The statistical information provided by the authorities on ML investigations in the Republic of Moldova after the on-site mission appears to be in contradiction with the verbal explanations provided by the authorities during the on-site mission. This indicates that the authorities appear not to be entirely certain of the prevailing situation in the Republic of Moldova in terms of ML investigations. As a result, it is difficult for the evaluators, and indeed for the authorities themselves, to determine conclusively whether the system is effective.

491. The statistical data provided by the authorities on ML prosecutions indicated that the number of investigations resulting in prosecutions and convictions of ML is rather low. The evaluators concluded that this was primarily due to the fact that for charges of ML to be brought before a court, a conviction in relation to a predicate offence must be proven. Additionally, it appears that in a number of cases the prosecution of the predicate offence, rather than ML, would be pursued.

492. The evaluators concluded that the investigative bodies rely heavily on the OPFML for the purposes of identifying and tracing the proceeds of crime and its own investigations mainly involve the operative aspects such as the interrogation of suspects and the sequestration of assets when it is determined that they relate to crime.

2.6.2 Recommendations and comments

Recommendation 27

493. The authorities should consider reviewing the provision in article 274 of the CPC, which requires the existence of a *reasonable suspicion* for an investigation order to be issued. The evaluation team is on the opinion that an investigation should not be contingent upon a *reasonable suspicion* but merely upon a suspicion. Especially in those situations where there is no analytical report disseminated by the OPFML, the investigators should be free to conduct an investigation irrespective of the degree of information available as in certain cases, unless the investigation is initiated, the investigator would not be in a position to determine whether a reasonable suspicion exists. Requiring the element of reasonableness may result in certain investigations not being undertaken at all due to lack of information.

494. The CID and other investigation authorities should take a more proactive approach towards the identification and tracing of the proceeds of crime to enable them to take such measures without having to rely heavily on the OPFML.

495. The authorities were not in a position to provide statistics on whether the ML investigations relate to autonomous ML or self-laundering. However, from the on-site interviews it appeared that very few cases in fact relate to autonomous ML in practice. Not enough efforts appear to be focussed on the investigation of autonomous ML.

496. The authorities are encouraged to re-evaluate the legal framework regulating the application of special investigative techniques since the legal position remains ambiguous notwithstanding the fact that various recommendations were made in the Third Round evaluation[49].

497. Law enforcement authorities should be encouraged to actively conduct ML investigations even in the absence of a conviction in relation to the underlying predicate offence. Further training on this aspect would be a welcome development.

498. Comprehensive statistics should be maintained on the ML/FT investigations initiated by the various law enforcement authorities involved in the investigation of ML/FT. Statistics should routinely distinguish between autonomous ML and self-laundering investigations. The statistics should be evaluated to determine whether ML/FT investigations are being effective in practice.

499. Although the national AML/CFT strategy requires law enforcement authorities to co-operate and co-ordinate their operations to ensure a concerted approach to ML/FT investigations, this does not appear to have been carried out sufficiently in practice. Efforts should be made to enhance cooperation and communication between all the authorities involved.

Recommendation 30

500. A number of officers should be specifically trained to perform proceeds of crime identification and tracing. This should be complemented with adequate software to assist the investigation authorities in financial investigations.

501. The authorities should consider whether further resources are necessary to strengthen the CID directorates conducting ML/FT investigations. In particular, the authorities should consider introducing specialised software to assist the investigative authorities in conducting ML/FT investigations.

Recommendation 32

502. The authorities should consider maintaining statistics which distinguishing between autonomous and self-laundering ML investigations.

2.5.3 Compliance with Recommendation 27

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	• LEAs are not in a position to properly investigate ML/FT offences since the required expertise for the identification and tracing of assets is missing and complete reliance is placed on the OPFML for such purposes. **Effectiveness:** • Emphasis on the investigation of predicate offences rather than ML offences.

[49] Following the on-site visit, the authorities informed the evaluators that on 29.3.2012 the Moldovan Parliament adopted a new law (No. 59) regarding special investigative measures which will come into force on 8.12.2012. This new law is expected to resolve the issues identified by the evaluators. Also, the CPC was amended on 5.4.2012 by the Law No. 66, which introduced a new section (art. 132/1 – 138/3) – "The special investigative activity". The provisions came into force on 27.10.2012.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Laws, regulations and other enforceable means

503. Since the 3rd round MER of the Republic of Moldova (2007), several legislative and regulatory measures have been adopted by the authorities.

- Adoption of a new AML/CFT Law (Law no.190-XVI of 26 July 2007). Although this law was adopted before the adoption of the 3rd MER, it was not taken into account then due to the rule that legal measures must be in force and effect within two months after the on-site visit.
- Amendments to the Law on Financial Institutions regarding the right of financial institutions to request identification documents and information and the client's obligation to provide these documents and information. (Law no. 1030-XVIII of 24 September 2010).
- Amendments to the Law on Insurance.
- Law on Foreign Exchange Regulation no. 62-XVI as of 21 March 2008

504. Consequent upon the changes in the AML/CFT Law and respective bylaws, some supervisory authorities revised their regulations and issued new regulations:

- Regulation on bank's activity regarding prevention and combat of money laundering and terrorist financing (Attachment to the Decision of the Council of Administration of the National Bank of the Republic of Moldova no. 172 of 4 August 2011) (the AML/CFT Banks' Regulation);
- Regulation on Internal Control Systems within Banks approved by Decision of the Administrative Council of the National Bank of the Republic of Moldova, minutes no. 96, 30 April 2010, Official Monitor of the Republic of Moldova, No.98-99/368, 15 June 2010;
- NBM Regulation Nr. 208/2010 on banks' activities within the international money transfer system;
- Regulation on measures to prevent and combat money laundering and terrorism financing on financial market, issued by Decision 49/14 from 21 October 2011 published on 2 December 2011 by NCFM (the AML/CFT NCFM Regulation).
- Regulation on Foreign Exchange Entities (Decision of the Council of Administration of the NBM, no. 53 of 5 March 2009) attachment no.28 to the Regulation on Foreign Exchange Entities *"Recommendations on elaboration of programmes on prevention and combating of money laundering and terrorism financing by foreign exchange offices and hotels"*.

505. The AML/CFT Law is modelled after the EU 3rd MLD and addresses to a large degree the FATF Recommendations. The various Regulations in some occasions go into more detail than the law. The regulations are based on the authority of the NBM and NCFM to issue normative acts, which include regulations. Those normative acts are obligatory to the institutions and persons within the supervisory scope of the authorities, they contain sanctions and they are enforceable. Thus they are considered "*other enforceable means*".

Scope of application

506. According to Art. 4 AML/CFT Law, reporting entities are all *financial institutions*[50] and:

[50] Where the term *financial institutions* is defined by Moldovan Financial Institutions Law namely *a legal entity engaged in the business of accepting deposits or their equivalent, non-transferable by any payment instrument and using such funds either in whole or in part to make loans or investments for its own account and risk*

a) foreign exchange offices (other than banks);
b) professional participants in the non-banking financial market, with the exceptions of associate of economies and borrowing that detained a license of category;
c) organisations that have the right of rendering services related to the exchange of postal money orders and telegraphic or transfers of property.
d) natural or legal persons that practice entrepreneurial activity and submit in the conditions of the leasing agreement, to the borrower based on its request for a certain period the right of possession and use of a good the power of whom is with or without the submitting of the property or use right on the good at the expiration of the term of the contract.

507. There is no definition of the *financial institutions* in the AML/CFT Law, but the Moldovan authorities explained the evaluators that the definition is to be found in the Law "on Financial Institutions". According to Art. 3 of the said Law, a financial institution is "*a legal entity engaged in the business of accepting deposits or their equivalent, non-transferable by any payment instrument and using such funds either in whole or in part to make loans or investments for its own account and risk*".

508. However, even if not defined as *"financial institutions"* under Moldovan legislation, other financial services listed in the FATF Glossary are covered by the AML/CFT Law separately. For the sake of clarity, within this section of the Report the evaluation team used the generic term "Financial Institutions" as defined by FATF Glossary as well as the term *financial institutions* as defined by Moldovan Law on Financial Institutions which has a narrower scope and will be found in this section followed by an explanatory footnote.

509. According to Law on Financial Institutions, a *"bank"* is defined as a *financial institution* accepting deposits or their equivalents of individuals or their entities, transferable by different payment instruments and using these funds in whole or in part for lending and investing on its own account and risk.

510. Notwithstanding the narrow definitions provided by the Law on Financial institutions for the two concepts above, Article 26 lists the financial activities allowed to banks as *i.a.* receiving deposits; extending credit; borrowing funds; buying and selling for their own account or for the account of customers *i.a.* money market instruments, futures and options relating to the security market; providing payment and collection services, issuing and administering means of payment, money broking and other activities as approved by the National Bank.

511. The definition of professional participants in the non-banking financial market is not provided by the AML/CFT Law but the authorities indicated to the evaluation team that this definition is to be found in the Law of the National Commission of Financial Market where Art. 4 stipulates that this category covers professional participants to the securities market, insurance market, non-state pension funds, lending and saving associations, micro-financing organisations, mortgage organisations and credit bureaus.

512. There is no referral in the AML/CFT Law neither to the Law on Financial Institutions nor to the Law of the National Commission of Financial Market as providing definitions for the purpose of AML/CFT matters.

513. Art. 4 of the AML/CFT Law provides an exception from AML/CFT requirements. Evaluation team was explained that this exception refers to savings and credit associations which hold "A" category licenses and which are created as unions of natural persons joined together and having equal rights and obligations. In addition, they must be residents of the same Local Administrative Unit. An "A" Savings and Credit Association provides its members with loans (credits) and ancillary services (basic financial consulting). At the time of the evaluation team visit there were 299 "A"

license Savings and Credit Association out of the total number of 369 Savings and Credit Associations with the average value of a members' loan amounting to 7,764.2 MDL (roughly 480 EUR).

514. According to Moldovan authorities, this full exemption is based on the argument that "A" license Savings and Credit Association are allowed to operate, under the license conditions, only locally and they do not have the right to accept savings deposits from its members nor does it allow the setting up branches of subsidiaries. Moreover, according to the provisions of the Art 9(1)(d) of the Law nr 139-XVI on the Savings and Credit Associations from 21 June 2007, the Association is not entitled to accept financing/money from natural persons. Under these provisions, the only creditors "A" license Savings and Credit Association may be only be the reporting entities as described in the AML/CFT Law: micro financing organisations and /or commercial banks.

515. However these arguments are disputed by the assessors as the item 2 of the activities that must fall under the definition of Financial Institutions according to FATF Glossary makes reference to *"lending"* as any type of consumer credit regardless of the amount.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering/financing of terrorism

516. At the time of the present assessment, the risk-based approach is embedded in the AML/CFT Law and in related guidance and regulation. According to the legal requirements, reporting entities are obliged to establish due diligence procedures. These procedures should be standardised in each reporting entity's programme on prevention and combat of money laundering and terrorist financing (PCMLTF) and are subject to the supervisors' revision. The evaluators were told that indeed is the case but the understanding of the reporting entities of the existing guidance as well as regulations, raises concerns as to the effectiveness of the risk-based approach introduced by the AML/CFT Law.

517. The risk stemming from the Transnistrian region is considered low by the authorities, especially since all transactions (including wire transfers) in Moldovan Lei are effected through a clearing office of the NBM and there are no branches or subsidiaries of the Moldovan financial institutions in the area of Transnistria. The Moldovan authorities informed the evaluation team that there is a supervisory system in Transnistria, but no information was provided and the evaluators did not visit this area.

518. The Republic of Moldova has neither conducted a comprehensive nor a specific financial sector risk assessments. There is a clear need for a comprehensive risk assessment to properly judge the adequacy of the current approach[51].

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

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

Summary of 2007 MER factors underlying the rating

519. The third round MER had concluded a 'NC' rating for Recommendation 5 on the basis that:

[51] The Moldovan authorities informed about a risk assessment ongoing at the time of the pre-meeting. No further information was provided.

a. No requirement in Law or Regulation to undertake CDD measures:
   i. when establishing business relations;
   ii. when carrying out occasional transactions above the designated threshold (€15,000);
   iii. that are wire transfers in the circumstances covered by the IN to SR.VII,
   iv. where there is a suspicion of ML or TF;
   v. or where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.
b. No requirement in Law or Regulation to the need for verification on the basis of reliable independent source documents;
c. No enforceable requirement of general application to verify the legal status of the legal persons when CDD is required;
d. No enforceable requirement of general application to verify the legal status of the legal arrangement when CDD is required;
e. The definition of beneficial owner as set out in the FATF recommendations in respect of the ultimate control of the customer and the natural person(s) who exercise ultimate effective control over legal persons or arrangements is missing in law or Regulation;
f. No Law or Regulation requiring reasonable measures to be taken to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source;
g. The requirement to understand the control structure and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements is missing;
h. No clear enforceable requirement of general application to obtain information on the purpose and intended nature of the business relationship in respect of all physical and legal persons;
i. The notion of ongoing due diligence is insufficiently embedded in law or regulation;
j. No specific requirement of general application for financial institutions across the whole financial sector to perform enhanced due diligence;
k. No enforceable guidance for all financial institutions covering the policy on application of CDD measures to existing customers.

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

520. According to Art. 6(7) of the AML/CFT Law, financial institutions are not allowed to keep anonymous accounts or those on fictive names. However it has to be said that Art. 6 of the AML/CFT Law refers to "Enhanced due diligence measures" which is rather confusing in assessing whether the prohibition applies to all customers or only to the ones which fall under the ECDD requirements.

521. In respect of the banks, the requirement is more clearly stated under item 31 of the AML/CFT Banks' Regulation which clearly requires banks not to open and to maintain anonymous or fictitious accounts. Therefore, in respect of banks, the criterion 5.1 is fully met.

522. Difficulties arise in relation to the rest of the financial institutions that have to rely only on the AML/CFT provisions which appear to apply only for higher risk customers and not for all customers.

523. The evaluation team was also informed that numbered accounts have never existed in the banking sector and there are no anonymous accounts in the Republic of Moldova.

Customer due diligence

When CDD is required (c.5.2)*

524. According to Art.5(1) of the AML/CFT Law, the reporting entities are required to apply identification measures regarding the natural or legal persons, as well as beneficiary owner:

- before the establishment of business relationship,

- while carrying out occasional transactions amounting at least 50,000 lei[52] as well as electronic transactions amounting at least 15,000 lei[53], regardless of the fact that transaction is carried out in a single operation or in several operations,
- if there is a suspicion of money laundering or terrorism financing, regardless of any derogation, exemption or set thresholds,
- if there are doubts on the authenticity and the accuracy of the obtained identification data.

525. The provisions of the AML/CFT Law in respect of the banking sector are supported by the AML/CFT Banks' Regulation. Item 16 and following of said Regulation contains detailed provisions on how such identification measures should be carried out.

526. In respect of non-banking financial market participants, the AML/CFT NCFM Regulation echoes the requirements of the AML/CFT Law on identification measures.

527. The on-site interviews showed that the financial institutions were largely aware of the customers' identification requirements.

Identification measures and verification sources (c.5.3)*

528. Article 5(2)(a) AML/CFT Law stipulates that the reporting entities shall identify and verify the identity of natural or legal person and of the beneficiary owner on the basis of the identity documents, as well as data or information obtained from a reliable and independent source, *"inclusively the necessity to have possibility to report the activity or transaction in accordance with Art 8"*.

Banks

529. In addition to the AML/CFT Law, Art. 23(5) of the Law on Financial Institutions, further details the steps to be taken in order to identify a client and other person with whom the bank enters into business relationships. For this purpose a bank may request, through a reasoned request, the necessary information from public authorities, banks and other legal entities, and may take any other measures in order to obtain such information from other sources. Public authorities, banks and other legal entities are obliged to submit the requested information as soon as possible. Submittal of such information is not considered an infringement of the provisions on the banking, commercial or other secret protected by law.

530. The provisions of Art. 5(2)(a) of the AML/CFT Law and Art 23(5) of the Law on Financial Institutions are supplemented by the AML/CFT Banks' Regulation. Art. 17 of the AML/CFT Banks' Regulation relates to the identification of customers. Art. 24 of the AML/CFT Banks' Regulation sets out the rules for verification of the presented information for the identification of the customers and beneficial owners. It distinguishes between natural persons ("*individuals*") and legal persons ("*legal entities and individuals which carry out entrepreneurship activities*").

531. The interrelation between the cited provisions of the AML/CFT Law, of the Law on Financial Institutions and of the AML/CFT Banks' Regulation is not completely clear. While the AML/CFT Banks' Regulation refers to reliable and independent sources for the verification process of both natural and legal persons and goes into details on the different types of independent sources, the Law on Financial Institutions refers only to information to be obtained from external sources.

[52] Approximately €3,800.

[53] Approximately €1,000.

532. Following the on-site interviews, evaluators are of the opinion that these rules seem to be effectively applied. According to the internal procedures, potential customers are assigned a risk classification and identity cards of beneficial owners are copied and kept together with the account opening file.

Professional participants of the non-banking financial market

533. According to item 24 of the AML/CFT NCFM Regulation in order to establish business relations, the reporting entities must comply with the legal rules and regulations of the NCFM in preventing and combating money laundering and terrorist financing by obtaining the information required listed in the paragraph (for natural persons *i.e.* name and patronymic, if any, date and place of birth, identification number or other unique indexes contained in an unexpired official identity document containing photograph of the holder home address and/or residence and for legal persons *i.e.* name of the client, the registered and/or address where business operations are carried out of the legal person, telephone number, fax, e-mail address, if applicable, state identification number (tax code), information on persons who, according to the articles of incorporation and/or decision of the statutory bodies, which are vested with the power to lead and represent the entity, and their powers, the nature and purpose of the business and its legitimacy, the purpose and nature of the relationship with the reporting entity and the name of the beneficial owner).

534. The verification requirements are similar to the AML/CFT Banks' Regulation.

Foreign exchange entities

535. Paragraphs 96 and 97 of the FEE Regulation specify cases when the identification and verification should be performed and the identification and verification process of the identity which are similar to the ones prescribed in the AML/CFT Law.

536. In order to identify the person who directly performs the operation, the foreign exchange bureau shall require from the client the following identity documents: the identity document from the Moldovan passports system in case of residents and the passport issued by the competent authorities of the foreign state or the temporary residence permit issued by the competent authority of the Republic of Moldova in case of non-residents.

537. The Moldovan authorities explained during the pre-meeting that legal persons are prohibited from using exchange offices services (see explanations under criterion 5.4.)

Post Office and leasing companies

538. There are no additional legal requirements on identification measures and verification sources in respect of money and value transfer entities and leasing companies besides the requirements stipulated in the AML/CFT Law.

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

539. Art.5(2)(a) of the AML/CFT Law only obliges the reporting entities to require presentation of the identity document, while opening an account or concluding a business relationship and in cases when opening an account or a transaction is carried out by the an entrusted person, the proxy legalised in the established order will be required.

Banks

540. According to item 21 of the AML/CFT Banks' Regulation, banks shall determine whether the person opening the account or initiating a business relationship acts in his name, in cases where the opening of the account or of initiation of a business relationship is performed by an empowered person, the bank shall require an power attorney legalised in accordance with the law.

541. According to paragraph 17 (2) of the AML/CFT Banks' Regulation, in the case of legal entities and individuals which carry out entrepreneurship activities, banks shall obtain the following information: full and abbreviated name (if there is any), legal form, headquarter and mailing address other than the headquarter (if there is any), information on the state registration: state identification number (tax code) and date of state registration in accordance with the registration certificate and/or extract from the State Register issued by the body authorised with the right to make state registration, certified copy of documents of incorporation, as amended and supplemented, if applicable (or copy made by the bank form the original documents), information on the person's identity who are invested with the right to open and/or have the account, to lead and represent the person and individual which carry out entrepreneurship activities, telephone number, fax, e-mail, as appropriate, information on the nature and purpose of the activity.

542. The practical application of the Regulation was demonstrated to the evaluators during the on-site interviews.

Professional participants of the non-banking financial market

543. In respect of professional participants in the non-banking financial market Article 25 of the AML/CFT NCFM Regulation on measures to prevent and combat money laundering and terrorist financing on financial market requires that if an individual is empowered on behalf of the customer to open accounts or to perform transactions, the reporting entity should verify its powers and verify and identify that person. The AML/CFT NCFM Regulation does not however explicitly require institutions to inquire whether the customer is acting on his own behalf or on behalf of somebody else.

544. According to Article 20 (2) of the AML/CFT NCFM Regulation, the reporting entities should at least obtain the following information in respect of legal persons: name of the client, the registered and/or address where business operations are carried out of the legal person, telephone number, fax, e-mail address, if applicable, state identification number (tax code), documents of the original or certified copy, as amended and supplemented, information on persons who, according to the articles of incorporation and/or decision of the statutory bodies, which are vested with the power to lead and represent the entity, and their powers, extract from state register of legal persons, the nature and purpose of the business and its legitimacy, the purpose and nature of the relationship with the reporting entity and the name of the beneficial owner.

Foreign exchange entities

545. According to Art. 36 and 37 of the Law on Foreign Exchange Regulation, legal entities shall perform foreign exchange operations with banks. It has been explained to the assessors that as a result from this rule it is prohibited for legal entities to perform foreign exchange operations with any other reporting entity. Other legal arrangements do not exist in the Republic of Moldova, see R.34. As a consequence, c.5.4 does not apply to foreign exchange entities.

Post Office and leasing companies

546. There are no requirements in respect of identifying legal persons in Post Office and leasing companies[54].

Identification and verification of the beneficial owner (c.5.5)*

547. Article 3 of the AML/CFT Law defines beneficial owner as the natural person(s) who ultimately holds or controls the natural or legal person, on whose behalf a transaction is made or activity is carried out and/or which ultimately owns or controls a legal entity through direct or indirect ownership or control of at least 25% of shares or voting rights in that legal entity. Reporting entities are required under the AML/CFT Law to identify and verify the identity of beneficial owners.

548. Art. 5 (a) includes amongst the identification requirements the identification and verification of the identity of the beneficiary owner on the basis of the identity documents, as well as, data or information obtained from a reliable and independent source for the possibility to report to the FIU. Also, according to item (b) of the same article, the financial institutions are required to identify the beneficiary owner and to adopt adequate risk-based measures for verifying his identity, in order to be convinced of the identity of the beneficial owner and to better understand the structure of ownership and control of these persons.

549. There are no references in the AML/CFT Law in relation to the mechanisms for establishing the beneficial owner identifying the natural person with ultimate ownership or control of the legal entity or guidance on how the reporting entities should check whether the customer in front of them is acting on his own behalf as opposed to on behalf of another.

550. There is neither a requirement in law, regulation or other enforceable means to determine whether the customer is acting on behalf of another person, with the exception of accounts opened for investments and fiduciary assets (Art. 38 of the AML/CFT Banks' Regulation).

Banks

551. According to AML/CFT Banks' Regulation, the banks shall identify the beneficial owner of the customer and shall apply reasonable risk-based measures to verify its identity so as to be convinced who is the beneficial owner and to understand the ownership structure of the customer. In order to identify the beneficial owner the bank shall implement the regular CDD measures.

552. The identification of the beneficial owner of legal entities with a complex ownership structure (legal entity whose direct owners are not individuals), shall be determined by the bank based on the appropriate registration documents. No referral to what those documents should be is set out in the Regulation.

553. Art 18 in conjunction with Art 17(2) of the AML/CFT Banks' Regulation requires for the identification of legal entities information on among others, the name, headquarter, state registration, certified copies of the incorporation documents and on the persons' identity who are vested with the right to open and/or hold the account and those who may represent the legal entity, based on legalised

[54] A draft "Law on Nonbanking Financial Organisations is currently pending adoption by the Moldovan Parliament which will provide clear and strict rules and guiding principles for financial leasing companies relating to prevention of money laundering and terrorist financing.

powers of attorney. The natural persons' identity shall be ascertained and verified according to the general rules.

554. Art. 38 of the AML/CFT Banks' Regulation provides that if the customer establishes the business relationship with the purpose of investing and managing fiduciary assets, the bank shall identify the person on whose behalf the business relationship is established, the beneficiary on whose behalf the person acts, and shall determine the details of the nature of existing arrangements. The identification measures shall also include the founders of fiduciary administration, any other person who handed over assets in fiduciary management, any beneficiary of the fiduciary administration and any person entitled to dispose of the property. Apart from this provision there are no requirements to determine whether somebody is acting on behalf of another person.

555. The requirement to take reasonable measures to understand the ownership and control structure and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements (criterion 5.5.2) is addressed by Art 18 of the AML/CFT Banks' Regulation. This does not, however, explicitly cover cases to establish the person/s who ultimately exercise control over the customer.

Professional participants of the non-banking financial market

556. According to Art. 16 of the AML/CFT NCFM Regulation, the non-banking financial institutions are required to identify the beneficial owners of the transactions that are carried out by professionals. Art. 21 further prescribes that a reporting entity must identify the beneficial owner of its client and take reasonable steps to verify the identity of the beneficial owner on the basis of risk, using relevant information or data obtained from reliable sources so as to know who is the beneficial owner. To identify and verify the beneficial owner they must use the same procedures for identification and verification as for individuals.

557. The identification of beneficial owners of the client by reporting entities will comprise the following measures:

- for individuals (natural persons): if the account is opened on behalf of a person, the reporting entities will determine whether the person is working on its behalf (statement by the person on the beneficial owner).
- for legal persons: reporting entities must understand the nature of ownership and control mechanism over the legal entity and use reasonable measures to verify the identity of beneficial owners. In order to establish compliance with these requirements, they should identify the individuals who hold positions of control and individuals who develop policy (based on the incorporation documents, extract from the Register of state etc.).

558. The on-site interviews revealed that the private sector is rather confused about the methods and procedures needed to identify the beneficial owner[55]. Effectiveness is difficult to assess due to the recent adoption of the quoted Regulation (October 2011)

Foreign exchange entities

[55] In order to assist reporting entities in developing own AML/CFT programs, NCFM in close collaboration with the reporting entities has issued recently a Questionnaire for Client Identification. This document is applicable to both legal and natural persons that wish to enter into business relations with reporting entities. The document is structured as to obtain relevant information on the potential client. During the training seminars on the application of the Questionnaire, reporting entities were informed that it contains the minim basic requirement, the reporting entities being allowed to expand the questionnaire or solicit additional corroborating documents.

559. According to Art. 16 of the FEE Regulation, in cases where the operation is performed on behalf of another individual (the beneficial owner) the person who performs the operation shall submit, along with his/her identity document, the power of attorney legalised accordingly. Identification and verification of the identity of the beneficial owner shall be carried out in the regular identification process described under criterion 5.3 above.

560. Art. 17 of the FEE Regulation provides rules on the identification and verification process of the beneficial owner. (In the context of the Art. 10 of the FEE Regulation, the beneficial owners are those "*individuals in the name of whom the operations shall be performed*").

Post Office and leasing companies

561. There are no requirements or sector specific regulation in respect of identifying the beneficial owner for Post Offices and leasing companies.

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

562. According to Art. 5(2)(c) of the AML/CFT Law, all reporting entities shall obtain information on the purpose and the nature of the business relationship or on complex and unusual transactions.

Banks

563. The requirement to obtain information on the purpose and nature of the business relationship is echoed in item 17(1)(g) and (2)(g) of the AML/CFT Banks' Regulation.

564. According to additional information provided and in accordance with item 24 of the AML/CFT Banks' Regulation, this type of information on the purpose and nature of business relationship is provided by way of documents issued by a state authority.

565. No evidence was given that information is obtained beyond officially available information which may be cursory and may not contain relevant information.

Professional participants of the non-banking financial market

566. According to Art. 17 of the AML/CFT NCFM Regulation, professional participants in the non-banking financial market must obtain information on the purpose and nature of the business relationship as well as on complex and unusual transactions. There is no further reference on what type of information is required and how it is to be obtained[56]

Foreign exchange entities, Post Office and leasing companies

567. There are no requirements or sector specific regulation in respect of obtaining information on the purpose and nature of the business for foreign exchange entities, Post Offices and leasing companies.

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

568. According to Art 5(2)(d) AML/CFT Law , the reporting entities shall conduct ongoing monitoring of the transactions or of the business relationship. This should include the examination of

[56] The recently adopted Questionnaire for Client Identification requires information on the scope and nature of the business of the potential customer of the reporting entity.

transactions concluded throughout the course of the respective relationship with a view to ensuring that the transactions being conducted comply with the information provided to the reporting entity on the legal or the natural persons, the business and type of risk and the source of funds. Reporting entities are required to ensure that the documents, data or information held are updated.

Banks

569. In addition to the AML/CFT Law, item 27 of the AML/CFT Banks' Regulation requires banks to revise and to update whenever necessary but at least annually, the information related to identification of the customers and their beneficial owners. Furthermore, continuous monitoring actions include (item 28 of the AML Regulation):

a. determining the ordinary transactions (specific) of the customer;
b. detailed examination of transactions during the business relationship to make sure they are consistent with the information available to the bank and with the activity and risk associated with the customer. The examination of transactions should involve the bank having mechanisms/automated solutions in order to detect suspicious activities, transactions and persons. The detection of suspicious activities, transactions and persons can be accomplished by setting the threshold for a particular group or category of transactions, banking accounts. Special attention is to be paid to transactions exceeding these thresholds and to transactions that do not have a visible economic purpose (for example, those that seem to have no economic sense or that involve large amounts of money, which is not specific for normal or expected transactions of the customer);
c. verifying whether the documents and information gathered during the monitoring process of customers and transactions are updated and relevant, including for those customers or business relationships with a high degree of risk;
d. reporting to the administrator responsible the information necessary to identify, analyse and effectively monitor the customer accounts and transactions, including those of high-risk customers;
e. identification of suspicious activities, transactions, including potential transactions and the sources of funds used in these activities and transactions.

570. Following the on-site interviews, it appears that in practice these provisions are complied with at least partially due to the extensive system of transaction reporting. Furthermore, the evaluators were told of regular checks on whether a customer has become a politically exposed person during an ongoing business relationship, so that there appears to be a system of updating information. The intervals of these updates, however, were not specified.

Professional participants of the non-banking financial market

571. According to Section VI of this AML/CFT NCFM Regulation the procedures for on-going monitoring of accounts and transactions in respect of professional participants of the non-banking financial market are established. In particular, these procedures shall require:

a. determining the ordinary operations (of specific) customers;
b. monitoring operations to determine compliance client ordinary operations (specific) for the client or clients in similar categories;
c. availability of adequate management information systems to managers and the pooled analysis of information from all systems to identify, analyse and effectively monitor customer accounts with a degree of risk;
d. identification of suspicious transactions reporting entities, including occasional or potential sources and means used by the client in these operations.

572. According to paragraph 15 of the abovementioned Regulation reporting entities are required to continuously monitor transactions or business relationships of the client, to ensure that they are consistent with the information and are constantly updated.

573. There was no indication during the on-site visit that those provisions are not implemented in practice.

Foreign exchange entities, Post Office and leasing companies

574. There are no requirements or sector specific regulation in respect of on-going monitoring for foreign exchange entities, Post Offices and leasing companies except for those in the AML/CFT Law.

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

575. Article 6 of the AML/CFT Law sets out the enhanced due diligence measures required, based on the risk associated with the type of client, business relationship, product ("good") or transaction. Enhanced measures are required in cases where there is a higher ML or FT risk as well as in other cases as set out in the criteria established by the supervisory authorities. The measures to be applied are listed in respect of:

- Cases when the natural or legal persons is not physically present for identification purposes: the financial institution is obliged to apply one or more of three measures, i.e. requiring additional documents, data or information to establish the identity of the person; supplementary measures to verify and certify the documents received or their confirmation by a financial institution; or arranging for the first payment to be made from a financial institution's account in the customer's name;
- Correspondent banking relationship: the financial institution is obliged to apply one or more measures: checks on the respondent institutions, including gathering sufficient information to understand its reputation and the quality of supervision, an assessment of its AML/CFT policies, obtaining the approval of senior management before establishing the relationship; documenting the responsibilities of the parties, establishing that appropriate identification and verification measures have been carried out and that the respondent institution is able to provide upon request the relevant data;
- Transactions or business relations with PEPs: the financial institution is required to put in place corresponding risk-based procedures; to ensure senior management approval, to adopt adequate measures to establish the source of the wealth and to apply enhanced on-going monitoring.
- Cases when natural or physical persons receive or send goods from/to countries which do not have in place AML/CFT measures or when such measures are not adequate or when they are of a high risk given the high level of crime and corruption and/or are involved in terrorist activities
- wire transfers when there is insufficient information about the identity of the sender, as well as of transactions which may favour anonymity.

Banks

576. Section 3 of this AML/CFT Banks' Regulation stipulates that in order to enforce the AML/CFT Law, banks shall determine categories of customers, activities and transactions (operations), which have a high degree of risk-based on indicators set, where appropriate, by the volume of assets or income, type of requested services, type of activity, economic circumstances, the reputation of the country of origin, the plausibility of explanations offered by the customer, the thresholds set by the categories of transaction.

577. Additionally the AML/CFT Banks' Regulation further specifies cases of increased precautionary measures and the type of expected enhanced precautionary measures:

> (1) if the customers are not present personally for the identification (remote clients) – for the transactions referred to in item 16 letter b).
> (2) cross-border banking relationships (correspondent banking);
> (3) transactions or business relationships with politically exposed persons;
> (4) for customers who receive or send goods from/to the following countries and/or areas which:
>
> a. do not have regulations against money laundering and terrorist financing, or have inadequate regulations in this regard;
> b. representing a high risk due to high levels of crime and corruption;
> c. are involved in illegal manufacture of drugs;
> d. off-shore[57];
> e. that are involved in terrorist activities;
>
> (5) customers with accounts opened for investments and fiduciary asset management;
> (6) customers who issue bearer financial instruments, customers, professional participants on the securities market and other professional intermediaries such as pension funds, investment funds, lawyers, notaries who act for their customers;
> (7) customers that offer services linked with transfers of financial means (nonbank offers of payment services through special cash in devices, etc.);
> (8) electronic transactions, if there is insufficient information regarding the expeditor's identity, as well as transactions that could favour the anonymity.

Professional participants of the non-banking financial market, foreign exchange entities, Post Office

578. In addition to the AML/CFT Law the AML/CFT NCFM Regulation contains a section on *"Increased Precautions"* and covers cases of transactions involving legal persons residing in off-shore areas, non-face-to-face identification and non-customers, owners and costumers of beneficiaries receiving funds from abroad.

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

579. According to Art. 5(3) of the AML/CFT Law, identification measures do not apply in three circumstances:

- service operations of the public authorities with the State Treasury;
- life insurance policies on condition that the premium for the insurance or annual payment rates are below 15,000 lei[58], or on condition that a single paid premium does not exceed 30,000 lei[59];
- insurance policies issued by a pension fund, based on an employment contract or by virtue of activity, on condition that that such a policy cannot be compensated before the expiration of the term and cannot be used as a guarantee or caution for obtaining a credit.

580. Rather than providing for simplified due diligence measures, the law creates blanket exemptions from the CDD requirements. While the approach is largely modelled on the EU Third AML Directive and can be found in most EU countries, it is not fully in line with the FATF standard

[57] It is evaluator's understanding that the term refers to the respective attached to the Order 118

[58] Approximately €900.

[59] Approximately €1,800.

whereby minimum CDD (i.e. less detailed CDD) should nevertheless be accomplished, including in circumstances where the risk of money laundering and terrorist financing is low.

581. According to paragraph 38 of the AML/CFT NCFM Regulation, in cases where there is low risk, the professional participants to the non-banking financial market may apply simplified measures of knowledge of customers. Paragraph 39 stipulates that simplified measures should include knowledge of customers to obtain sufficient information about customers, ensuring the legitimacy of the reporting entity customer classification category of customers with low risk of money laundering and terrorist financing under the laws, monitoring their operations to detect suspect transactions and establishing a procedure can allow upgrading and appropriateness of the information held about customers so that the reporting entity to ensure that they remain in that class of customers.

582. No referral to simplified CDD measures is to be found in other subsequent sector specific regulation.

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

583. There are no specific provisions relating to overseas residents in the Moldovan legislation.

Risk – simplified/reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

584. Pursuant to Art. 5(3) in conjunction with Art. 5(1) of the AML/CFT Law simplified CDD is not available in circumstances that present a suspicion of money laundering or of terrorist financing.

Risk-Based application of CDD to be consistent with guidelines (c.5.12)

585. Art. 6 of the AML/CFT Law provides that the reporting entities apply identification measures established in accordance with the risk associated to each type of client, business relation, property or transaction. Reporting entities have to be able to demonstrate to competent authorities, including their supervising authority, the fact that the scale of enhanced due diligence measures is adequate, taking into account money laundering and terrorism financing risks.

586. Reporting entities shall apply enhanced due diligence measures above those stipulated in Art.5 (regular CDD), in cases when according to their nature they represent enhanced money laundering and terrorism financing risk, at least according to the cases provided by Law, as well as in other cases, according to the criteria established by supervising authority.

587. The AML/CFT Law does not include any specific provision permitting reporting entities to determine simplified CDD measures on a risk sensitive basis.

Banks

588. According to item 13 of the AML/CFT Banks' Regulation, customer acceptance procedures shall contain a description of bank customers who seem to expose the bank to a high risk of using it for money laundering and terrorist financing purposes. In order to minimize this risk, the information on customers shall be examined under a range of issues, such as: customers' experience in their field, country of origin, social position linked accounts, activities or other risk indicators established by the bank.

589. To assist banks in constructing their own risk-based system for CDD, the AML/CFT Banks' Regulation contains a section (Chapter III) devoted to the structure of a bank's programme for the prevention and combat of ML and TF.

Professional participants of the non-banking financial market

590. According to paragraph 38 of the AML/CFT NCFM Regulation, in case where there is low risk, the professional participants to the non-banking financial market may apply risk-based simplified measures customers due diligence

591. In respect of customers with a high potential risk (paragraph 45) reporting entities are required to have internal control systems that will highlight the lack of timely or adequate documentation insufficient for account opening, unusual transactions conducted through the customer's account, are required to pay more attention to information from third parties about these people and are required to provide the executive with the current situation with risk monitoring client accounts. High value transactions with such customers will require the approval of the executive body.

Foreign exchange entities, Post Office

592. No risk-based sector specific application of CDD is available.

Timing of verification of identity – general rule (c.5.13)

593. Article 5 of the AML/CFT Law clearly provides for the requirement to identify and verify the identity of a customer and its beneficial owner before the establishment of a business relationship or while carrying out occasional transactions. There is no room for a later identification procedure.

594. On the basis of the discussions with those parts of the industry met by the evaluation team, it appears that in general the financial institutions follow this requirement.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

595. There are no rules for special treatment of exceptional circumstances which would allow for a later verification process.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

596. According to Art. 6(8) of the AML/CFT Law, the reporting entities are obliged to abstain from account opening, establishing business relations, to stop or refuse transaction carrying out in cases where the identification measures were not carried out. In the case of an already existing business relation, the reporting entities are required to close the business relationship upon establishing that the identification and verification information and data obtained is not in accordance with the legislation in force and normative acts of the supervisory authorities. In accordance with Art.8, reporting entities are obliged to report such circumstances to the OPFML.

597. From the experience gained during the on-site mission, this rule seems to be applied. Great emphasis is devoted to the identification at the beginning of a business relationship. There was no indication that reporting entities treat CDD lightly during an ongoing business relationship

Existing customers – (c.5.17 & 5.18)

598. According to art. 16 paragraph 1 of the AML/CFT Law, the provisions are applied to all the new clients of reporting entity. For the existent business relationships, the new duties have to be completed within 6 months from the date of entering into force of the amendments, starting with the highest risk clients.

599. The authorities could convince the evaluators that the application of the rules on identification and verification are effectively applied to existing customers.

600. As already indicated, anonymous accounts, or accounts under fictitious names are prohibited in the Republic of Moldova. The examiners were informed that numbered accounts have never existed in Moldova.

Effectiveness and efficiency

601. The evaluation team welcomes the efforts were made by the authorities in order to bring the legislation in line with international requirements. In respect of CDD the AML/CFT Law is supported by bylaws.

602. All banks in the Republic of Moldova appeared to be generally aware of the identification obligations. They also appeared well aware of their obligation to retain the relevant documentation and the importance of a quick response to the authorities in case of a request for documentation.

603. The CDD regulation system is generally in line with the international standards. However, understanding of the standards in practice differs across the financial sector and appeared sometimes unclear to some financial sector participants, particularly foreign exchange entities.

604. The AML/CFT Law introduced a risk-based approach but leaves it to the reporting entities to decide on the applicable measures. The concept of a risk-based approach is diluted by a perceived literal approach of many reporting entities. This impression was gained during the on-site visit and confirmed by the study of the regulations and guidance issued by the NBM, NCFM and OPFML.

605. Concerns remain as to effectiveness especially for the non-banking sector. During the on-site interviews, it appeared to be little consideration for actual risks and threats by reporting entities when formulating their PCMLTFs, but the preferred approach appears to be incorporating the authorities' guidance literally.

606. Concerns are further caused by the burden on supervisory authorities to effectively supervise the risk-based approach. It appears that there is a huge reliance on the collection of data which contains limited informative value for purposes of AML/CFT. While the rules on identification and verification procedures of the beneficial owner who has 25% or more of shares or voting rights are extensive, the cases where somebody exercises ultimate effective control seem to be neglected.

607. While banks and financial institutions under the supervision of the NCFM seem to be fairly aware of their identification obligations under the AML/CFT legislation which is further enhanced by group-wide procedures in the case of subsidiaries of foreign credit institutions, awareness of the other participants in the financial market is of a lesser degree.

608. Foreign exchange entities (other than banks) apply identification requirements limited by the belief that many obligations do not have practical relevance for them. Effectiveness and efficiency was not demonstrated for the Post Office and leasing companies, partly due to lack of specific legislation and partly due to lack of awareness of AML/CFT risks.

609. The complete exclusion of "A" license savings and credit associations from the AML/CFT regime, including CDD is another area of deep concern.

Recommendation 6 (rated NC in the 3rd round report)

Summary of 2007 factors underlying the rating

610. The Third Round MER had concluded an 'NC' rating for Recommendation 6 on the basis that there were no general legal or regulatory provisions applicable to the entire financial and non-financial sectors covering the requirements of Recommendation 6.

Risk management systems, senior management approval, requirement to determine source of wealth and funds and on-going monitoring (c. 6.1- c. 6.4)

611. Article 3 of the AML/CFT Law defines politically exposed persons as natural persons, who are or have been entrusted with prominent public functions at the national and international level, as well as their direct family members and persons known as close associates.

612. In addition to Article 3 of the AML/CFT Law, in November 2010 the CCECC adopted Guidelines on the identification of PEPs by Order 178, which defines what exact individuals should be considered as PEPs: The term "*politically exposed persons* ("PEP ") applies to persons who perform important public functions in a state, their families and their close associates. The term of PEP includes persons whose past or current position can attract publicity, including outside the concerned country and whose financial situation may be additional public interest topic. In particular cases, local factors such as political and social environment, are taken into account in classifying a person as defined.

613. It appears that the definition of PEPs is broadly in line with the FATF definition of PEPs.

614. Article 6(2) of the Law requires reporting entities to carry out enhanced due diligence measures in transactions or business relationship with a PEP above those stated in Article 5. Also Article 6(5) requires reporting entities in transaction or business relationship with PEPs to ensure corresponding procedures, in accordance with the risk, for PEPs' determination.

615. Article 6(5)(c) of the AML/CFT Law requires reporting entities to ensure adoption of the adequate measures in order to determine the source of the funds implied in business relation or transaction.

616. Article 6(5)(d) of the AML/CFT Law requires reporting entities to ensure enhanced and permanent monitoring of business relation.

Banks

617. The AML/CFT Banks' Regulation in its item 37 adds value to the requirements of the AML/CFT Law. In the business relationships or transactions with politically exposed persons, the bank shall:

- have a risk management system that:
  a. determines whether a customer, a potential customer and/or its beneficial owner is or is not a politically exposed person;
  b. requires relevant information from the client and/or its beneficial owner, the existence of a reference to a source of information publicly available or access to a commercial electronic database with information about the politically exposed persons;

- obtain the approval of the executive member of the bank (branch manager) to establish a business relationship, and if the client or its beneficial owner later became a politically exposed person - to continue the business relationship;
- establish the source of funds and other property involved in the business relationship or transaction;
- request information on family members and persons associated with the politically exposed person at the same intensity as the bank identifies its customers in accordance with this Regulation;
- monitor increasingly and permanently the business relationship, including regularly updating the information about the customer and/or its beneficial owner of the politically exposed person.

618. The on-site interviews demonstrated that the representatives of the banking system were generally aware of the obligations arising from Law and Regulation in relation to PEPs. Some banks rely on internet check and some have access to specialised databases such as World check.

Professional participants of the non-banking financial market

619. According to paragraph 27 of the AML/CFT NCFM Regulation the reporting entities must have appropriate procedures to gather sufficient information from a client and beneficial owner thereof and to check the publicly available information to determine if the customer and beneficial owner thereof is a politically exposed person, and have to regularly update information obtained at account opening, as the customer and beneficial owner thereof may subsequently become a politically exposed person.

Additional elements

Domestic PEP-s – Requirements

620. The provisions and the requirement to apply enhanced due diligence is similarly applied to domestic PEPs.

Ratification of the Merida Convention

621. The Republic of Moldova has signed the 2003 United Nations Convention against Corruption in 2004. Ratification was pending at the time of the 3rd MER and was finally effected in 2007 (Law no. 158-XVI as of 26 July 2007).

Effectiveness and efficiency

622. While legal provisions are usually implemented in banks' internal AML/CFT programmes, there is a noted lack of effectiveness in other financial institutions (bureaux de change). Low effectiveness is a result of the combination of a lack of adequate measures to identify PEPs and a lack of awareness raising and training.

623. The evaluators also noted a slightly confused understanding of the term "politically exposed" in the sense of public persons, e.g. prominent persons known from TV, especially in the domestic arena. Whereas banks generally were aware of the provisions on PEPs, other financial institutions did not convey this picture convincingly (especially bureaux de change and insurance companies). Concerns are further raised by a diminished awareness of the problem by the supervisory authorities.

Recommendation 7 (rated NC in the 3rd round report)

Summary of 2007 factors underlying the rating

624. In the Third Round MER Recommendation 7 was rated 'NC' on the basis that there was a lack of enforceable AML/CFT measures on the issue of correspondent banking and no provisions at all outside the sector covered by the NBM.

Require to obtain information on respondent institution & Assessment of AML/CFT controls in Respondent institutions (c.7.1 & c.7.2)

625. The legal requirements relating to correspondent banking relationships are embedded in Art. 6(4) of the AML Law which is the section on enhanced due diligence measures. According to Art. (4) lit (a) and (b) of the AML Law, financial institutions are required to accumulate sufficient information regarding a correspondent institution in order to fully understanding the nature of its activity and ascertain from available public information its reputation and quality of supervision, and to evaluate the policy on prevention and combating money laundering and terrorism financing applied by the correspondent institution.

626. In addition, Art 36 of the AML/CFT Banks' Regulation provides that in correspondent banking relationships, the bank shall obtain at least information on the:

a) board and executive body of the correspondent bank, its most important activities, their place and the measures applied to prevent and combat money laundering and terrorist financing;
b) purpose for opening the account;
c) correspondent bank's reputation and quality of supervision from publicly available sources, including whether it was the subject of investigations or remedial actions related to money laundering or terrorist financing.

627. Furthermore, the bank is required to assess the adequacy and effectiveness level of policies of the correspondent bank on preventing and combating money laundering and terrorist financing.

628. Further provisions on the treatment of correspondent banking institutions are laid out in the AML/CFT Banks' Regulation.

629. There is no specific prohibition of establishing correspondent relationships with Transnistrian banks. Such prohibition may implicitly arise from the fact that Transnistrian banks do not carry a valid license under Moldavian or any other recognized state's law and any correspondent banking relationship would thus violate the provisions of the Law on Financial Institutions in conjunction with the AML/CFT Law.

630. A specific rule targeting the Transnistrian "banks" is to be found in the Decision by the Council of administration of the National Bank of the Republic of Moldova No. 286 of 18 November 2004 states that: *"According to the provisions of art.26, paragraph 1 of the Law on financial institutions, in order to perform financial activities and respectively to hold an account in banks abroad, the commercial banks need to hold the respectively license from the National bank of the Republic of Moldova. So called "banks" from the left side of the Nistru region are not licensed by the National bank of the Republic of Moldova, because the banks did not comply their organisational, administrative, financial situation and operations in accordance with the provisions of the Law on financial institutions and the normative acts issued in accordance with the provisions of this Law. Thus, opening by the so called "banks" from the left side of the Nistru region of accounts in banks abroad and performing operations through these accounts is an activity that does not correspond to the provisions of the mentioned law and, therefore, is illegal. In case of a possible acceptance by the*

NBM's licensed banks to perform transactions through banks from abroad with so called "banks" from the left side of the Nistru region would lead to the violations of the provisions of art.23 of the Law on financial institutions."

Approval of establishing correspondent relationships (c.7.3)

631. The requirement to obtain the approval by management bodies before setting new relations with correspondent banks is enshrined in Art. 6(4) lit (c) of AML/CFT Law and in Art. 36 (3) of the AML/CFT Banks' Regulation where it is stated that establishing the correspondence relationship is to be done after obtaining the approval of the bank's administrator. According to Article 3 of the Law on Financial institutions, *"administrator"* means a member of the Board of Directors, of the executive body, of the Audit Committee, the chief accountant, manager of a branch of the legal entity, as well as any other person who alone or together with other has the legal or statutory authority to enter into commitments for the account of such entity.

Documentation of AML/CFT responsibilities for each institution (c.7.4)

632. The requirement to establish the responsibilities of each institution by documents is enshrined in the law in Art. 6(4) lit (d) AML/CFT Law and in the AML/CFT Banks' Regulation which provides that the banks shall establish documentarily the responsibilities of the correspondent bank in preventing and combating money laundering and terrorist financing and the fact that the correspondent bank shall verify the identity of its customers, shall have effective know-your-customer rules.

Payable through Accounts (c.7.5)

633. According to Art. 6(4) lit (e) of the AML/CFT Law in relation to cross-border banking, financial institutions are required to ascertain the fact that, regarding correspondent accounts, the correspondent institution has checked the identity of the clients, whose operations are carried out via its accounts; has applied permanent due diligence measures and is able to provided, at request, relevant data regarding due diligence.

Effectiveness and efficiency

634. Banks generally seem to be aware of their obligations in the area of correspondent banking in the context of AML/CFT. Subsidiaries of foreign banks are likely to incorporate group-wide internal rules on the opening procedures of correspondent accounts

635. When asked about the banking correspondence with Transnistrian region, the Moldovan authorities pointed NBM Decision No. 286 of 18 November 2004, maintaining that direct connection between Moldovan banks and Transnistrian banks is prohibited. However, the evaluation team is on the opinion that the cited Decision only requires banks to monitor activities with correspondent relationships in order to avoid granting assistance to the so called banks from the left side of the Nistru region. But the Decision does not contain any express prohibitions in this regard.

636. According to on-site interviews, the evaluation team was told that in order to execute any payments (for utility bills for example, especially electricity bills by the Moldavian citizens to Transnistrian electricity providers), the NBM acts as an administrator of all payments through a Centre established in Transnistria which effects real-time payments in Moldovan Lei. The accumulated amount of incoming and outgoing payments is said to be about equal, but no information was provided as to the origin of the incoming payments.

Recommendation 8 (rated NC in the 3rd round report)

Summary of 2007 factors underlying the rating

637. Recommendation 8 was rated NC in the third round MER on the basis that despite the existence of a general requirement for banks to have internal measures needed to address the risks related to information technologies, there was a lack of specific provisions requiring the introduction of policies and procedures on non-face-to-face transactions and relations, and related to the specific risks of the new technologies in the financial sector.

Misuse of new technology for ML/FT (c.8.1)

638. There is no direct requirement for the financial institutions in the AML/CFT Law to pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity.

639. The legal requirements related to the implementation of policies on the prevention of misuse of technological developments for money laundering or terrorist financing purposes are established by the AML/CFT Banks' Regulation.

640. According to Art 9 and 10 of the AML/CFT Banks' Regulation, banks are required to develop programmes on the prevention and combating of money laundering and terrorist financing in accordance with the provision of the legislation in force, also taking into account the generally accepted practice in this field, including documents of the Basel Committee and of the FATF. When developing programmes, the size, complexity, nature and volume of bank activities, categories of customers, the degree of risk associated with different customers or their categories and the transactions conducted by them should be taken into account. Art. 35 of the same Regulation include non-face-to-face customers as high risk ones.

641. According to Art. 11(12) banks must include in their AML/CFT programmes and procedures provisions for identification and analysis of risks related to money laundering and terrorist financing, including ways to minimise the use of information technologies, (including new ones), developed in the process of the development of financial products and services offered by a bank.

642. During the on-site interviews the evaluators were told by the supervisor that all the policies established in the commercial banks are reconciled with the National Bank of the Republic of Moldova (including those connected to new technologies). The private sector appeared less aware of the need to approve such policies.

643. However it has to be noted that the AML/CFT Banks' Regulation was adopted just before the on-site visit and therefore, the effective and full implementation of the new requirements by the private sector was difficult to assess.

644. The AML/CFT NCFM Regulation (published after the on-site mission in the Official Monitor nr.206-215/1820 from 2 December 2011) addresses the issue of the misuse of technological developments in money laundering or terrorist financing schemes in case of non-banking financial institutions. Generally, Art. 6 requires that in developing their programs against money laundering and terrorist financing, reporting entities should take into account risks of money laundering and terrorist financing in order to minimize them. Information technology risk is listed and is defined further on as *"the risk that can occur following the launch of new information technologies and developing existing ones, since they may create conditions favourable for money laundering activities and terrorist financing"*.

645. There is no further guidance provided to FI as to what type of policies and procedures they should put in place to prevent the misuse of new technologies.

Risk of non-face-to-face business relationships (c8.2)

646. The evaluators were informed that as a rule, in practice all forms of relationships with a customer require an initial face to face identification and the NBM regulation do not permit non face-to-face account opening.

647. For occasional customers that are not personally present for identification, Art. 35 of the AML/CFT Banks' Regulation provides that the banks shall apply increased precautionary measures (*i.a.* in case of relationships by mail or telephone, e-mail, internet or other electronic means), using mechanisms such as digital signatures, biometric methods, session keys, etc.

648. At the first visit of the customer at the bank, the bank shall require the documents and information as provided by the Regulation. In addition, the bank shall apply one or more of the following measures:

a) to require customer identification documents issued by a responsible authority or body, including a specimen of signatures, other documents, if necessary, to complete the customer's file;
b) to take measures to protect the authenticity of documents in electronic sent to the bank;
c) to use the information provided by a bank where the customer has opened an account and to apply at least the same know-your-customer measures and to be subject to an effective supervision;
d) to require that the first payment to be made on behalf of customer through an account at another bank, which applies at least the same know-your-customer measures and is subject to an effective supervision, if necessary;
e) to establish and maintain a way of contacting the customer, independent of the procedure of conducting transactions with the remote customers.

649. The risk related to non-face-to-face business relations is addressed in some sector-specific secondary legislation for the non-banking financial institutions. Namely, according to item 6(4) of the AML/CFT NCFM Regulation in developing their programmes against money laundering and terrorist financing, reporting entities should take into account information technology risk that can occur following the launch of new information technologies and developing existing ones, since they may create conditions favourable for money laundering activities and terrorist financing.

650. There are no such requirements for Post Office and leasing companies, but the Moldovan authorities explained that such risks are not applicable for the two industries as all their activity rely on face-to-face relationship. However, the evaluation team is on the opinion that such a requirement is necessary for the leasing industry.

651. No programs explaining sector specific ML/TF vulnerabilities in relation to new technologies were developed by the Moldovan authorities, in order to assist the private sector in identifying the risks which are likely to be encountered in practice.

Effectiveness and efficiency

652. The interviewed representatives of the private sector informed the evaluators that in practice non-face-to-face transactions are exceptional and supplementary precautions are taken in such circumstances.

653. According to the legislation, the supervisory institution obliged to ensure that banks' policies connected to prevention of misuse of technological developments in money laundering or terrorist financing are in place is the NBM, but information provided to the evaluators by the representatives from the banking sector indicates that issues related to non-face-to-face business and new technologies are directly addressed to the FIU in practice. Addressing of these typically banking-industry problems to the FIU, which are not in its competence, shows that there are issues in communication between banking sector and the NBM and might cause difficulties in implementing the specific measures.

654. Since the AML/CFT NCFM Regulation was not in force at the time of the on-site interviews, its effectiveness cannot be assessed.

3.2.2 Recommendations and comments

655. Since the 3rd round mutual evaluation the Republic of Moldova has made welcome progress to aligning its AML/CFT legal framework with international standards.

656. To ensure effective implementation, efforts should be placed by the Moldovan authorities in the supervision of adequate application by the private sector of the newly adopted legal provisions related to new technologies risks.

657. The Moldovan authorities should provide guidance and awareness raising programs on the types of policies and procedures they should put in place to prevent the misuse of new technologies for ML/CF purposes.

Recommendation 5

658. A domestic ML/TF risk assessment should be conducted in order to have a national understanding of the risks the country is facing and which would allow for proper risk-based CDD programmes and policies to be adopted and implemented by the financial sector.

659. With one exception ("A" license Savings and Credit Associations) in the scope of application, the measures set out in the AML/CFT Law are broadly in line with the standard in their substance. Bylaws were enacted for those reporting entities within the supervisory competence of the NBM and the NCFM laying down in more detail the requirements. "A" license Savings and Credit Association should be included within the scope of the AML/CFT Law.

660. The Republic of Moldova should consider amending the AML/CFT Law in order to prohibit maintaining anonymous accounts in the non-banking financial sector in all cases. The assessment team was also informed that numbered accounts never existed in the banking sector.

661. The verification requirements set out in Art. 18 of the AML/CFT Banks' Regulation apply only for beneficial owners and are only based on a reasonable risk assessment therefore the verification requirements shall not apply for all customers. The Moldovan authorities are encouraged to adopt legal provisions in order to cover verification of the documents for all customers, based on reliable and independent sources.

662. Clear procedure in respect of the Post Office and leasing companies on identification measures and verification source should be established.

663. Some sectors such as securities, pension funds and payment services should develop a comprehensive preventive regime.

664. The Moldovan authorities are recommended to amend the AML/CFT Regulations to provide instructions, for the Post Office and leasing companies for situations where the transactions are performed on behalf of a legal entity or to the documents that should be required in such situation.

665. Rather than providing for simplified due diligence measures, the AML/CFT Law creates blanket exemptions from the CDD requirements.

666. The AML/CFT Law should contain a provision obliging financial institutions to check whether the customer is acting on his own behalf or on behalf of somebody else. Further guidance should be provided on the steps to be taken in respect of the identification of the beneficial owners.

667. Guidance should be adopted for the process of understanding the ownership and control structure and determination the ultimate beneficiaries of customers that are legal persons or legal arrangements, including cases when somebody exercises ultimate effective control.

668. Authorities should consider issuing guidance on the obligation to check the nature of a business relationship, including the manner of obtaining more accurate information on the actual nature of activity in order to complete the information contained in public registers.

Recommendation 6

669. The Moldovan authorities should consider requiring non-banking reporting entities to establishing the appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP.

670. More emphasis on awareness raising in relation the PEPs amongst non-banking financial sector is highly recommended to increase effectiveness.

Recommendation 7

671. It is recommended to impose safeguards against correspondent relationships with respondent institutions with insufficient anti-money laundering and terrorist financing controls and/or unregulated or un-supervised territories.

Recommendation 8

672. The AML/CFT Law should be amended to include a requirement for reporting entities to have policies in place or take measures to prevent the misuse of new technologies for ML/TF purposes to cover all financial institutions.

3.2.3 Compliance with Recommendations 5, 6, 7 and 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• Exclusion of "A" license savings and credit associations from the application of the AML/CFT Law; • No legal prohibition on keeping anonymous accounts in the non-banking financial sector for all customers; • Exemptions from CDD requirement exist; • No requirements or instructions on identification of the legal persons

		in case of Post Office and leasing companies; • No clear procedure in respect of Post Office and leasing companies on identification measures and verification of the source of funds; • No clear requirements to determine whether the customer is acting on his own behalf or on behalf of somebody else (except for accounts opened for investments and fiduciary assets). **Effectiveness:** • Effectiveness and efficiency of implementation is not demonstrated in non-banking financial institutions; • No domestic ML/TF risk assessment to allow effective application of the risk based approach in performing CDD.
R.6	**LC**	**Effectiveness:** • Lack of appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP; • Effectiveness and efficiency of implementation not demonstrated.
R.7	**LC**	• Insufficient safeguards against correspondent relationships with respondent institutions with insufficient anti-money laundering and terrorist financing controls.
R.8	**PC**	• No direct requirement for the financial institutions to pay special attention to any money laundering threats that may arise from new or developing technologies; • No requirements for the Post Office and leasing companies in respect of having policies in place or taking measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes. **Effectiveness:** • Effectiveness not fully demonstrated due to recent adoption of legal provisions.

3.3 Third Parties and Introduced Business (R.9)

3.3.1 Description and analysis

Recommendation 9 (rated N/A in the 3rd round report)

Summary of 2007 factors underlying the rating

673. R.9 was rated N/A in the 3rd round report because the intermediaries and other persons responsible for introducing business were not established institutions in the Moldovan commercial and financial communities.

Legal framework

674. At the time of the 3rd round report, the Moldovan financial institutions worked directly with their clients, except in the case of duly appointed agents of companies or those operating under power of attorney. There was neither a prohibitive nor regulating legal framework for introduced businesses.

675. The 3rd round report recommended to the Moldovan authorities to cover all essential criteria of R.9 in order to be prepared when financial institutions start relying on third parties and introduced business.

676. At the time of the 4th round on-site visit, according to the explanations provided to the evaluators by the Moldovan authorities, laws and regulations do not allow third party introducers but they do not specifically prohibit it. The prohibition would result logically from the CDD obligations in the sense that the financial institutions are obliged to apply the identification requirements directly on their customers. Neither the prohibition nor the requirement to apply identification procedures in direct contact are stated in the law.

Requirement to immediately obtain certain CDD elements from third parties; availability of identification data from third parties (c.9.1 & 9.2); Regulation and supervision of third party & adequacy of application of FATF Recommendations (c.9.3 & 9.4); Ultimate responsibility (c.9.5)

677. No legislation in force. See above.

Effectiveness and efficiency

678. The NCFM as the supervisory authority of insurance companies informed the evaluators that there are approximately 800 or more insurance agents and 64 insurance brokers operating on the territory of the Republic of Moldova. Both groups are considered insurance intermediaries and they are covered by Chapter IV of the Law no. 407-XVI of 21 December 2006 on insurance activities (Insurance Law).

679. According to Art. 48(1) of the Insurance Law the insurance agent is an individual or legal entity holding on behalf of an insurer a valid written authorisation, called mandate contract, to act in the name of the insurer. According to Art. 49(1) of the Insurance Law any legal entity can work as an insurance broker under the form of a joint stock company or limited liability company, holding a licence for its business.

680. The insurance brokers are considered to be professional participants to the non-banking financial market, and they are supervised by the NCFM (Art. 1(1) NCFM Law). Furthermore, they are reporting entities within the scope of Art. 4(b) AML/CFT Law. As such, there is a case of an established institution of third parties and introduced business in Moldova without due AML/CFT legislation along the lines of Recommendation 9. Thus, the assessors have established as a fact that financial institutions are using third parties and/or intermediaries within Moldova.

3.3.2 Recommendations and comments

681. The Moldovan authorities should adopt general legal or regulatory provisions applicable to third parties and intermediaries that cover the requirements of Recommendation 9 on intermediaries and introduced business.

	Rating	Summary of factors underlying rating
R.9	**NC**	• There are no general legal or regulatory provisions applicable to intermediaries and third parties in the case where financial institutions

		are relying on them for CDD purposes, despite evidence of it happening in practice.

3.4 Financial institution secrecy or confidentiality (R.4)

Summary of 2007 factors underlying the rating

682. In the third round MER, the Republic of Moldova received 'PC' for Recommendation 4. The rating was based on the following factors:

- The question of lawyers' professional confidentiality should be reconsidered;
- The Law on the NSC does not allow the exchange of information with foreign competent authorities;
- Insurance sector is not covered.

Description and analysis

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

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

683. Criterion 4.1 requires that no financial institution secrecy law inhibit the implementation of the FATF Recommendations particularly as regards the ability of competent authorities to access information they require to perform properly their functions in combating ML or FT; the sharing of information between competent authorities, either domestically or internationally; and the sharing of information between financial institutions.

684. The AML/CFT Law, similarly to the legislation that was in force at the time of the previous evaluation, is very clear on this subject providing in its Art. 12(2) and (3) as follows:

> *(2) The transmission by the reporting entities of information (documents, materials, other data) to the Office for Prevention and Fight against Money Laundering, to criminal investigation authorities, prosecutors' offices, courts and other competent authorities, in cases provided by this law, shall not be qualified as disclosure of the commercial, banking or professional secret.*
>
> *(3) The legislative provisions on commercial, banking or professional secret, cannot impede the agencies mentioned under paragraph (2) of this article, with the scope to execute this law, from receiving or lifting[60] the information (documents, materials, other data) about financial and economic activities and transactions of natural or legal persons.*

685. These provisions are quite similar to Art. 6(1) and (2) of the AML/CFT Law being in force at the time of the third round evaluation. Differences between the two laws are results of broadening the scope of this provision as follows:

> - the previous legislation referred to *"institutions carrying out financial transactions"* while the current one covers all reporting entities

[60] The evaluation team understood that "lifting the information" shall mean

- receiving and lifting of information was only exempt from the limitations of banking or commercial secrecy if there was" indication that activities of laundering of criminal proceeds are under preparation, under way or have been carried out or of terrorist financing" while this restriction is abandoned in the current legislation, provided that the information received from the reporting entities can be used only for the purpose of prevention and combating ML and FT (Art. 12 para 1).

686. Similarly to the previous legislation, the current law is worded in fairly broad terms and the evaluation team was not informed about any practical impediments to obtaining information from financial institutions and this equally applies to the transmission of information abroad following requests from other countries' authorities pursuant to Art. 13 of the AML/CFT Law.

687. In accordance with the AML/CFT Law, Art. 22(5) the Law on Financial Institutions (Law Nr. 550-XIII of 21 July 1995) provides that information considered as banking secrecy (i.e. any information about the person, goods, activity, business, personal or business relations of the bank, customers' accounts, (balances, turnovers, performed operations), the customers transactions, and other information about the customers, which became known to the bank) shall only be provided by the bank to the extent that providing such information is justified by the purpose for which is requested such as:

- at the request of the criminal prosecution, authorised by the investigating judge, regarding the concrete criminal case (subpara c)
- at the request of the court, in order to solve a pending case (d)
- at the request of the Information and Security Service, in order to exercise the duties related to state security assurance (h)
- at the request of the Centre for Combating Economic Crimes and Corruption, regarding the person who falls under the legislation on preventing and combating money laundering and terrorist financing (i).

688. Furthermore, Art. 22 (7) subpara (g) of the same Law specifies that providing the information to the Centre for Combating Economic Crimes and Corruption on any suspicious activity or transaction, in accordance with the law on preventing and combating money laundering and terrorist financing shall not be considered breach of the obligation of keeping the banking secrecy (in this context CCECC obviously refers to the FIU).

689. Nonetheless, the evaluation team noted that paragraph 9 of Article 22 of the Law on Financial Institutions prohibits banks to provide information on a client of another bank. This ban extends to the first and last names of natural persons as well as company names that are stated in the documents and contracts or mentioned in the transaction conducted by a client.

690. Concerning this matter, the Moldovan authorities argued that even if subsequent, sub-paragraph 7 of Art. 22 extends on situations provided by sub-paragraph 9. Also, they indicated that in any event, Art. 12 (2) of the AML/CFT Law prevails as *"lex specialis",* particularly since the Law on FI expressly mentions the secrecy lifting in case of information provided to the CCECC. This explanation was confirmed in practice by the private sector that didn't emphasis any impediment in filling in the STRs due to banking or professional secrecy provisions. In addition, Art. 23 specifies in paragraph 3 that banks shall inform the competent authorities on cases where cash or other valuables are derived from criminal activity, as prescribed by the law. Providing such information is not considered a violation of Art. 22.

Sharing of information between competent authorities, either domestically or internationally

691. Legislation that authorised the NBM to exchange information with foreign banking supervisory agencies as well as the National Securities Commission (NSC) to do so in relation to foreign competent authorities was already in place at the time of the previous evaluation and no relevant changes has since taken place in this field apart from the fact that the NSC was replaced by the National Commission on Financial Market (NCFM) by virtue of Law Nr. 192-XVI of 7 June 2007.

692. It was recommended in the third round that the legislation on insurance provide similar authority on international information exchange related to AML/CFT purposes, in which respect the Moldovan authorities made it clear that the above mentioned Law empowered the NCFM with supervisory authority over the insurance sector too. Since 2010 the NCFM has been member of the International Association of Insurance Supervisors with a potential to exchange information relevant to the insurance sector.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

693. The obligations stipulated by the AML/CFT Law in the area of correspondent banking relationships and wire transfers override the banking secrecy provisions in the Financial Institution Law and other Laws providing for commercial secrecy and presuppose the ability of financial institutions to share information for the purpose of Recommendation 7 and Special Recommendation VII (see analysis of these Recommendations).

694. Moreover, according to Art. 22 (5) (l) of the Law on FI, the information that is considered banking secrecy shall be provided by the bank, when the bank has a legitimate interest.

695. This ability to share information was confirmed on-site by the private sector who did not indicate any impediment in the information exchange on those matters.

696. However, given the lack of provisions concerning reliance on third parties (see analysis of Recommendation 9), it is unclear if financial institutions could provide information on their customers in the absence of a specific provision in this sense.

Effectiveness and efficiency

697. The information presented to the assessment team by the Moldovan authorities and the private sector did not reveal any instances where banking secrecy provisions limited the information exchange in practice.

Recommendations and comments

698. The provisions of the AML/CFT Law as well as those in the Law on Financial Institutions and other laws are generally satisfactory, particularly as the scope of this legislation has been broadened since the previous round of evaluation. The evaluators were not advised of any particular problems occurring in practice.

699. The Moldovan authorities are recommended to revise the provisions of paragraph 9 of Article 22 of the Law on Financial Institutions, to make it clear that it does not constitute an exception to the general AML/CFT secrecy-lifting regime.

Compliance with Recommendation 4

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

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

3.5.1 Description and analysis

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

Summary of 2007 factors underlying the rating

700. Recommendation 10 was rated PC in the 3rd round report on the following basics:

a. insufficient record keeping regulations for AML/CFT purposes, as general archiving regulations lack specific requirements;
b. registration/recording of transactions is limited to suspicious and threshold based transactions, as defined by the AML/CFT Law;
c. no explicit application to inquiries into terrorist financing;
d. no requirement in law or regulation to keep all necessary records on transactions and identification data for longer than 5 years, if requested to do so in specific cases by a competent authority;
e. no requirement to keep documentation after termination of relationship;
f. no requirement to disclose needed information on a timely basis to competent authorities.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1), Record keeping of identification data, files and correspondence (c.10.2), Availability of Records to competent authorities in a timely manner (c.10.3)

701. According to Article 7 paragraph 1 of the AML/CFT Law, the reporting entities are required to keep records of the information and the documents of the natural and legal persons, of the beneficial owner, the registers of identified natural and legal persons, the archive of accounts and primary documents, including business correspondence, for a period of least 5 years, after the business relationship ending or bank account closing. The reporting entities keep the accounting of all the transactions for at least 5 years after the transactions are ended, but upon request of the supervisory authorities, they should prolong the record keeping period.

702. It was explained by the authorities that foreign exchange offices have only occasional clients (individual persons) and therefore there is no ongoing process of business relationship. Thus, the provisions of art. 7(1) of the Law no. 190 – XVI of 25 July 2007, which establish *inter alia*, that the reporting entities shall keep the accounting of all the transactions for at least 5 years after the transactions are ended, is applicable for the foreign exchange offices.

703. There is no referral to the obligation for the financial institutions to keep records beyond the period of 5 years at the request of the Law Enforcement Authorities. Although the FATF Methodology requires the obligation to keep records longer at the request of the *"competent authority"* taking into consideration that the prolongation of the record keeping obligations are with a

view of providing, if necessary, evidence for prosecution of criminal activity, the interposition of the supervisory authority in the record keeping process might negatively impact effectiveness.

704. On the positive side, the evaluators welcome the improvement brought to the AML/CFT legislation since the 3rd round report by imposing the obligation for record keeping on every transaction.

705. There is no specific requirement in the AML/CFT Law to provide an obligation for record keeping in a manner that would allow the reconstruction of the individual transaction so as to provide, if necessary, evidence for prosecution of criminal activity. However, the CDD requirements cover the necessary components provided by the FATF Methodology. In addition, during the on-site visit, it was explained to the evaluators that in practice it was never the case for a transaction not to be re-constructed based on the information and documents maintained by the financial institutions.

706. According to the AML/CFT Law all the reporting entities are obliged to respond completely and promptly to the FIU and other empowered authorities, on the existence of business relations and their nature, between these entities and certain natural and legal persons. This represents significant progress since the 3rd MER, because the reporting entities are now obliged to report promptly.

707. In addition to the AML/CFT Law and various Regulations, the maintenance of banking documents is regulated by the Regulation on accounting in banks of the RM (*approved following the decision of the Council of Administration of the NBM no.238 of 10 October 2002*), chapter IV. The manager of entity shall bear the responsibility for adequate organisation and maintenance of accounting documents.

708. The period for keeping of banking documents is different, depending on the nature, purpose and which category they belong to. Banking documents shall be archived in accordance with the Indicator on the documents type and the period of maintaining by the public administration bodies, institutions, organisations and legal entities of the Republic of Moldova of 3 December 1997 as approved by the State Archive Service of the Republic of Moldova.

709. In order to align with the requirements of R.10, the Moldovan authorities adopted additional obligations on record keeping in Regulations on banks, foreign exchange entities, and professional participants of the non-banking financial market.

Banks

710. As stipulated in Chapter VI "Data storage" (paragraph 43) of the AML/CFT Banks' Regulations, banks shall keep the obtained documents and information relating to the identified customers and beneficial owners and their transactions (operations) at least five years after terminating business relation or closing the account. At the same time, banks shall keep documents and information obtained related to identification of customers and beneficial owners, as well as for their transactions (operations) for the active period of the business relationship. Banks, at the same time, shall keep record for transactions (operations) for a period of five years after their termination.

711. According to paragraph 44 of this Regulation procedures for storing documentation and information shall include at least the following:

1) keeping a register of identified customers and beneficial owner, containing at least: name/client name, tax code, account number, opening date, closing date);
2) keeping all the primary documents, including business correspondence;

3) keeping records on identification and verification of the customers and beneficial owners regarding the monitoring of operations of customers and keeping the supporting documents related to the operations;
4) keeping the information about transactions, including those complex and unusual;
5) archiving the information about the transactions and business correspondence in IT systems and keeping the archive safe and available;
6) when performing currency exchange operations in cash with individuals through foreign exchange bureaux, the bank shall apply the provisions related to record keeping in accordance with the Regulation on foreign exchange entities, approved by the Decision of the Council of administration of the NBM no.53 of 5 March 2009.

712. Banks are also required in accordance with paragraph 45 to ensure that the documents and information on the identification and verification of customers and beneficial owners, regarding monitoring customers operations, including supporting documents related to the operations, are accessible and available to the competent authorities in case of request. At the request of the competent authorities, the term regarding the possession and storage of the information relating to customers and their operations can be extended for a period specified in the request.

Professional participants of the non-banking financial market

713. In order to add value to the requirements of the AML/CFT Law in respect of record keeping, the AML/CFT NCFM Regulation stipulates additional requirements on record keeping.

714. In particular it requires reporting entities to have procedures for holding and retaining information, which will include the following:

1) maintain a register of identified customers for a period of at least five years (which will include at least: the names of client tax code, account number, date of opening, closing date);
2) keep records of all transactions for at least five years after the transaction occurred;
3) keeping the archived form of accounts and records on customer identification, including primary documents and business correspondence within at least five years after their accounts were closed.

715. Furthermore, reporting entities have to ensure access to documents and information the competent bodies regarding the identification and verification of customers, the beneficial owner, and on monitoring customer transactions, including documents, in case of a request.
716. During the on-site visit, joint stock companies and brokerage companies explained to the evaluation team that records are kept for 7 years *"as it is stated by the law"* and that from the electronic files the their company does not erase anything from the electronic files.

Foreign exchange entities

717. According to the FEE Regulation, foreign exchange entities are obliged to elaborate programmes to prevent and combat money laundering and terrorist financing, which echoes the requirements of the AML/CFT Law on record keeping.

718. Paragraph 28 of the Recommendation on the elaboration of AML/CFT programmes (Attachment 28 to the FEE Regulation) states that documents that shall be kept should include at least documents related to record keeping of operations and identified individuals. Pursuant to paragraph 29 the foreign exchange entities are required to ensure that documents and the information about the performed operations and identified individuals are accessible and available on a timely basis upon the request of the CCECC and other competent authorities.

719. According to para. 136 of the Regulation on Foreign Exchange Entities, the foreign exchange entity shall keep the documents related to the performed operations and identified individuals (the cash control register's band, the second copy of the currency exchange bulletins, registers specified in Attachments No. 9, No. 10 and No. 23, other documents related to the performed operations and identified individuals) at least 5 years after the operations have been completed. With the Decision of the Council of Administration of the NBM no. 233 of 27 October 2011 (in force since 23 December 2011), the previous period of record keeping of 7 years was modified to 5 years to be in a line with art. 7 (1) of the AML/CFT Law.

720. Although the representatives of the exchange bureaus informed the evaluation team that they do keep records for 7 years.

Post Office and leasing companies

721. There are no additional requirements in respect of Post Office and leasing companies on record keeping besides those stipulated in the AML/CFT Law.

Effectiveness and efficiency

722. During the on-side mission the evaluators established that all the financial institutions are familiar with their obligation for record keeping.

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

Summary of 2007 factors underlying the rating

723. Special Recommendation VII was rated NC in the third round mutual evaluation report of the Republic of Moldova based on the following factors:

- no regulatory requirements on full originator information regarding the use of credit and debit cards as a payment system for both domestic and cross-border transfers;
- no regulatory requirements for financial institutions to act as provided for in criteria VII.4, VII.5, VII.7, VII.8 and VII.9.

Obtain Originator Information for Wire Transfers (c.VII.1), Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2);

724. According to Art.5 (1) AML/CFT Law, the reporting entities are required to apply identification measures regarding natural or legal persons, as well as beneficiary owner on electronic transactions amounting at least 15,000 lei (approximately €1,000), regardless of the fact that transaction is carried out in a single or in several operations.

725. For the banks, the originator information for wire transfers is provided in the Regulation *"on the activity of banks within the international money transfer systems"* which came into force on 1 July 2011. The Regulation contains a special chapter *"Prevention of money laundering and combating the financing of terrorism by means of international money transfers systems"* that provides the relevant provisions required by SRVII in relation to the originator's information with respect to international transfers performed through international money transfer systems.

726. The provisions of this Regulation are applied to banks participating in the international money transfer systems through which money are transferred to/from abroad by/for individuals from the Republic of Moldova.

727. According to this Regulation, the participating bank shall develop and implement effective mechanisms for establishing the identity of the payer/beneficiary before providing the international money transfer service; the identity of the payer/beneficiary shall be made, at least, based on the identification documents, and if an empowered person makes the transfer, based on the identification documents and letter of attorney which shall be presented. The ordering participating bank shall ensure that the message accompanying the international money transfer shall include at least the following information on the payer:

- first and last name;
- unique reference number of the money transfer;
- address or national identity number, or date and place of birth.

728. There is no threshold for identification mentioned in the Regulation, therefore it appears that the identification requirements apply for all transfer regardless of the amount.

729. The representatives of the Posta Moldovei informed the evaluation team that in practice they perform CDD for all customers regardless of the amount. Also, it was mentioned that when performing out-going transfers (payments) copies of the identifications documents are sent together with the money to the receiving institutions and this obligations is provided for in "*regulations*".

730. The Moldovan authorities indicated that the referred "*regulations*" is in fact the *"Quality Assurance Plan No. 3 for Policy of Prevention and Fight Against Money Laundering and Financing of Terrorism"* issued internally and approved by the General Manger of the *"Posta Moldovei"*. This plan provides a general explanation and definition of money laundering and terrorism financing and indicates that the method for performing money transfers abroad applicable for *"Posta Moldovei"* is the *«Instruction on the international postal money transfers»* approved by the Administration Council of the National Bank of the Republic of Moldova no. 129 of 6 June 2002.

731. According to the *"Quality Assurance Plan",* when sending an international money transfer (notwithstanding the amount transferred) the postal servant shall provide complete name (name, surname, patronymic) and address of sender, sender's telephone number (if the sender has a telephone number) and to indicate the beneficiary's full name (name, surname, patronymic), address and telephone number (if the beneficiary has a telephone number) and other detailed information (series, number, where and when issued) on the sender's ID document (with the sender's photograph). Also, the purpose of money transfer and sender's signature shall be included.

732. In case of incoming payments, the reference number of the transfer executed via any money transfer system must be indicated together with the beneficiary's full name, address and telephone, the number and series of ID document with photograph, country/state that has issued the document, date of issue. The sender's name and amount of transfer must be added.

733. The staff of the Post Offices must register the ID data of their clients before conducting any operations for sending international money transfers and before payment of any transfers with no exceptions, notwithstanding the amounts of such transfers.

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3);

734. According to art. 4.4^1. of the Regulation on credit transfers No. 373 of 15 December 2005, the paying bank ensures that the electronic message accompanying the ordinary credit transfer includes, besides other information needed for its execution, the following information regarding the payer:

1) name/ first and last name;
2) bank account number;

3) address or fiscal code (IDNO/IDNP), or date and place of birth (except for the payment order used for performing the credit transfer in national currency, where the inclusion of "fiscal code" element is mandatory, in case the payer has a fiscal code).

735. Upon the receipt of an electronic message accompanying a credit transfer, in national or foreign currency, the beneficiary bank verifies if the message contains the full information on the identity of the payer. The lack of full information on the payer shall be considered by the beneficiary bank as a factor in assessing the potential suspicious nature of the respective credit transfer (art. 6.2.).

736. There are no requirements to include originator's information for domestic transfers performed by Posta Moldovei.

Maintenance of Originator Information (c.VII.4)

737. According to Art. 7 (1) of the Regulation on Credit Transfers No. 373 of 15 December 2005, in the event of a credit transfer based on a payment order on paper, as well as in the event of a credit transfer performed by the bank on its own behalf, a copy of the payment order (legalised with the signatures of persons entitled with the signature right and with the necessary stamps) is included in the file by the paying bank.

738. In addition, in respect of Posta Moldovei, according to *"Quality Assurance Plan"*, all subdivisions of SE «Poşta Moldovei» shall keep accounts of all transactions conducted within a specified period in accordance with the requirements of the country's competent authorities. The scope of accounting is to provide the basic information on the client and to examine any specific transfer at the request of competent authorities at any moment.

Risk-Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

739. Art. 6, para. 6 (b) of the AML/CFT Law requires that reporting entities should apply enhanced due diligence measures, in the case of wire transfers, if there is lack of sufficient information about identification of the sender as well as during transactions encouraging anonymity.

740. *Regulation on the Activity of Banks within the International Money Transfer Systems* stipulates in Art. 35 that the lack of complete information about the person who initiated the international money transfer will be considered by the beneficiary bank as a factor in assessing whether the respective international money transfer is suspicious.

741. The beneficiary participating bank assesses the potential suspicious character of the international money transfer according to criteria set in this respect and which comply with the law in force. If after applying the established criteria, the suspicious character of the international money transfer is determined, the participating beneficiary bank will take necessary actions in accordance with AML/CFT Law.

742. For domestic transfers, according to the *Regulation on Credit Transfers No. 373 of 15 December 2005*, the beneficiary bank assesses the potential suspicious nature of the credit transfer, whose message contains incomplete information on the payer, according to the criteria it establishes for that purpose in its internal procedures.

743. The evaluation team was informed on-site that in practice if such cases occur and the assessment leads to ML/TF suspicions, a report shall be sent to the FIU.

744. There are no specific risk-based procedures in case of transfers not accompanied by originator's information for Posta Moldovei or for domestic transfers.

Monitoring of Implementation (c. VII.6) and Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

745. Based on the Law no. 548-XIII of 21 July 2007, NBM has the right to issue regulation which, if applicable, are mandatory to financial institutions. Based on the same law, NBM conducts on-site inspections on the activity of the financial institutions. Departments have internal manuals on conducting on-site banks inspection which stipulate the detailed actions to be undertaken by the NBM inspectors at on-site inspections.

746. The supervisory authority on the activity of the Post Office is the Ministry of Information Technology and Communications. Its supervisory activity is based on the Law for Post Offices. Post Offices in the Republic of Moldova provide the following services: money orders, electronic money orders, financial services, other.

747. According to the Moldovan authorities, during on-site inspections, the NBM verified the commercial banks' procedures regarding the execution of the wire transfers Money remitters systems are considered as part of the banks, which means that supervisory authority is also the NBM.

748. During the on-site mission, the evaluators were told that in the Ministry of Information Technology and Communications only 2 or 3 employees carrying out inspections. There are no specialised inspections on AML/CFT.

749. The evaluation team was not provided with statistics or any other data demonstrating effective supervision for SRVII purposes.

750. Based on AIPS[61] date, in 2010 there were performed transactions with Transnistria as follows:

- from "Transnistria" to the right side of the river Nistru 6.576 payments were performed;
- from the right side of the river Nistru to "Transnistria" 5.774 payments were performed.

751. The evaluation team was explained that the transfers via the Post Office system in relation to Transnistria region are performed as transfers inside country. The sums of the transfers never exceed €1,000 per transfer. In practice, all these operations are subject to verification and customer identification process according the provisions of AML/CFT normative acts and are supervised by the Moldovan Post Office according Law on Post office.

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

752. There is no threshold for identification mentioned in the NBM Regulations or in the *Quality Assurance Plan*, therefore it appears that the identification requirements apply for all transfer regardless of the amount.

753. Additionally, NBM started to collaborate with the international card payment systems that are present in Moldavian market. As a result, the bank will insert in the transfer message the PAN[62] instead of account number of the originator.

Effectiveness and efficiency

[61] AIPS stands for automated interbank payment system through which all interbank transactions (initiated by banks on their own behalf or on behalf of their clients) in Moldovan Lei are processed.
[62] primary account number.

754. The effectiveness of the measures taken by the Moldovan authorities in respect of the implementation of the standards of SRVII cannot be fully assessed due to recent adoption of the Regulation on the Activity of Banks within the International Money Transfer Systems (which came into force four months before the on-site visit).

755. During the on-site interviews the representatives of the banks seemed to be aware of the provisions concerning the provision of the originator's information and to apply them in practice.

756. The Post Office is not concerned by the NBM *Regulations on the Activity of Banks within the International Money Transfer Systems* nor by *Regulation on credit transfers* and therefore applies the provisions aiming the wire transfers on the basis of internal regulation namely the *Quality Assurance Plan*. However, this document doesn't contain any referral to domestic transfers. The representatives of the *Posta Moldovei* indicated that they do include originator's information in domestic transfers but in assessor's view this is done on a voluntary basis.

757. There are no instructions on the behaviour or attitude to adopt by the banks in case where the in-coming transfer is not accompanied by the required information except for assessing it as potential suspicious transaction. During the on-site meetings, various participants expressed different opinions on the matter ranging from the refusal of the transaction to acceptance and further requirement to complete the information addressed to the payment institution.

758. Major deficiencies arise in relation to effective monitoring of the compliance with the rules and regulations implementing SRVII mainly connected to the supervision of the Post Offices, due to the lack of resources in the Ministry of Informational Technology and Communications.

3.5.2 Recommendation and comments

Recommendation 10

759. An express requirement should be included in AML/CFT Law for the transaction records to be sufficient to permit reconstruction of individual transaction so as to provide, if necessary, evidence for prosecution of criminal activity.

760. Law enforcement authorities should be amongst the *"competent authorities"* empowered by Law to request the financial system the prolongation of the record-keeping period (effectiveness).

Special Recommendation VII

761. The Moldovan authorities should adopt regulation in respect of the SRVII requirements on domestic transfers for *Posta Moldovei*.

762. The Moldovan authorities are strongly encouraged to improve monitoring and supervision in this area, especially in respect of transfers performed by *Posta Moldovei*.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• No express legal provision that the transaction records should be sufficient to permit reconstruction of individual transaction so as to provide, if necessary, evidence for prosecution of criminal activity; • Law enforcement authorities are not empowered to request the

		prolongation of the record keeping period
SR.VII	**LC**	• No regulation in respect of the SRVII requirements on domestic transfers for Posta Moldovei; • Insufficient supervision/monitoring for wire-transfers related matters impacts effectiveness.

3.6 Monitoring of Transactions and Relationship Reporting (R. 11 and R. 21)

3.6.1 Description and analysis

Recommendation 11 (rated PC in the 3rd round report)

Summary of 2007 factors underlying the rating

763. In the 3rd round MER of the Republic of Moldova Recommendation 11 was rated 'PC' pursuant to the following factors:

- Lack of general enforceable obligation to pay special attention to all complex and unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.
- No enforceable requirement to examine the background and purpose of such transactions and set forth the findings in writing.

Special attention to complex, unusual large transactions (c. 11.1)

764. The obligations related to the complex and unusual transactions are stated in Art. 5 (related to the identification requirements of the natural and legal persons and of the beneficiary owner) paragraph 2 letter c) of by the AML/CFT Law, which requires the reporting entities to obtain information on the purpose and the nature of the business relationship or of the complex and unusual transaction. Within the AML/CFT Law there is neither legal definition nor obligation to pay *"special attention"* to those transactions. There is no definition of the scope of these transactions or any patterns or other guidance in this respect.

765. In order to align the legal provisions with the requirements of R.11, additional measures in respect of unusual transactions were adopted in different regulations on banks, foreign exchange entities.

Banks

766. According to item 11 paragraph 6 of the AML/CFT Banks' Regulation, they are required to have procedures in place and take enhanced due diligence measures when performing complex and unusual transactions without a clear economic or lawful purpose, as well as to the significant and suspicious transactions.

767. Further on, according to item 29 of the AML/CFT Banks' Regulation, banks shall pay special attention to all large, complex or unusual transactions, which have no economic or legal purpose, such as significant or unusual transactions for the customer. The bank shall examine the nature and purpose of these transactions and shall take enhanced security measures in accordance with the requirements of the regulation. In such situations, the bank shall obtain supporting documents for the transactions and determines the source of used funds (contracts, invoices, shipping documents, customs declaration, certificate on salary, tax reports, activity reports and other documents).

768. There is no further guidance as to what those transactions might consist in (patterns, as exemplified by FATF under essential criterion 11.1).

Foreign exchange entities

769. Recommendations from the Attachment No.28 of the FEE Regulation comprise provisions according to which the cashier of the foreign exchange office or foreign exchange bureau of the hotel shall pay attention to the complex and unusual operations, shall obtain the information regarding the purpose of such operations and shall register the obtained information in order to make it available to the competent authorities (Attachment No.28 of FEE Regulation, item 18 of Recommendations).

770. No definitions of further guidance are provided.

Professional participants of the non-banking financial market and Post Office

771. There are no additional requirements adopted for professional participants of the non-banking financial market and Post Office to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.

Examination of complex and unusual transactions (c. 11.2)

772. No provisions exist for financial institutions to examine as far as possible the background and purpose of unusual transactions and to set forth their findings in writing are included in the AML/CFT Law. Financial institutions are only obliged to obtain the information about the purpose of the complex and unusual operations and to take enhanced security measures.

773. In case of banks, the AML/CFT Banks' Regulation provides that the banks shall examine the nature and purpose of these transactions and shall take enhanced security measures in accordance with the requirements of the regulation.

774. Furthermore, the Regulation stipulates that enhanced precautionary measures implemented by the bank shall include: implementation of information systems appropriate for information management, to enable the provision of timely information necessary to identify, analyse and effective monitoring of transactions, including reporting to the competent authority in accordance with the law.

775. The rest of the financial sector (except for banks) is not covered by any obligation to examine complex and unusual large transactions.

776. There is no requirement to set forth the findings of the examination of the unusually large transactions in writing.

Record-keeping of finding of examination (c. 11.3)

777. There is a legal definition (in the AML/CFT Law, NBM Regulation and Regulation on FEE) and requirement for the reporting entities on record keeping, which include complex and unusual transactions. According to the legislation this information shall be kept for 5 years and shall be available for the competent authorities.

778. The record keeping requirement does not extend to the findings of the examination of the complex and unusual transactions.

Effectiveness and efficiency

779. The evaluators were informed that in practice, when unusually large transactions are identified, the banks shall obtain the supporting documents for the transactions and shall determine the source of used funds (contracts, invoices, shipping documents, customs declaration, certificate on salary, tax reports, activity reports and other documents).

780. The rest of the financial sector was not fully aware of the obligation to examine the unusually large transactions and they considered as a form of suspicious transactions reporting.

781. The evaluators received information from the NBM that there is no statistics about results of the examinations of unusual and complex transactions or of the reports sent to the FIU on this respect. It appears that financial institutions are not fully aware how to deal in practice with unusual large transaction and rely on the threshold reporting system.

Recommendation 21 (rated NC in the 3rd round report)

Summary of 2007 factors underlying the rating

782. Recommendation 21 in the third round MER of the Republic of Moldova was rated 'PC' based on the following factors:

- Lack of general enforceable obligation to examine transactions with persons from countries, that do not or insufficiently apply FATF recommendations, with no apparent economic or visible lawful purpose, and to make written findings available to assist competent authorities;
- No mechanism in place to apply countermeasures apart from automatic suspicious transaction reporting.

Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1), Examination of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c 21.2)

783. According to art. 6 paragraph 6 letter a) of the AML/CFT Law, reporting entities shall adopt enhanced due diligence measures in situations when natural or legal persons receive or sent funds from /to the countries that lack norms regarding money laundering and financing of terrorism or have inadequate norms regarding this subject or represent enhanced offence and corruption risks and/or are involved in terrorist activities. There are no further explanations in the AML/CFT Law as to what constitutes *"countries that lack norms regarding ML and TF"*. Also, the requirement refers only to transactions performed in relation to countries, but not to business relationships or clients from those countries but located in other jurisdictions.

784. Order No. 118 - Guide to Suspect Activities or Transactions under the incidence of the Law on Prevention and Combating of Money Laundering and Terrorism Financing, provides guidance to reporting entities on the identification of suspicious activities and transactions and includes an extensive list of criteria and indicators of suspect ML/FT activities or transactions within both the financial and non-financial sector. Various lists of countries which are considered to pose a higher risk of ML/FT are annexed to the Order.

785. The Moldovan authorities indicated that the lists are updated periodically namely every time when the FATF revises its lists. In addition, NBM in its capacity of supervisory authority, is sending

letters to all the supervised entities informing on the changes related to the lists. However, the evaluation team identified a time gap in the listings due to the legislative process[63].

786. The Order 118 also requires reporting entities to automatically report any payments made to or from the Transnistrian region, but does not include it as a high risk jurisdiction.

787. There is no legal provision within the AML/CFT Law about elaboration, actualisation and publishing of lists with countries that do not or sufficiently apply FATF Recommendations. The evaluators received contradictory indications about which institution is responsible for providing guidelines and assistance in this respect.

788. There is no requirement in the AML/CFT Law for the reporting entities to examine the transactions with no apparent economic or visible lawful purpose from countries that not or insufficiently apply FATF Recommendations.

789. However, the NBM AML/CFT Regulation provides in Art. 28 that in the process of continuous monitoring of the client's activities, the bank shall pay a special attention to the transactions that do not have a visible economic purpose (for example, those that seem to have no economic sense or that involve large amounts of money, which is not specific for normal or expected transactions of the customer).

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c 21.3)

790. According to art. 33 (4) of the NBM AML Regulation, the bank, in addition to the standard CDD measures, shall increase the precautionary measure for customers who receive or send goods from/to the following countries and/to areas that:

a) do not have regulations against money laundering and terrorist financing, or have inadequate regulations in this regard;
b) representing a high risk due to high levels of crime and corruption;
c) where it can be held illegal manufacture of drugs;
d) off-shore;
e) that are involved in terrorist activities;

791. There is no direct referral to Order 188 Annexes, but the denomination of the type of countries/areas in NBM AML/CFT Regulation corresponds to the titles of the tables in Order 118.

792. According to art. 34 of the NBM AML/CFT Regulation enhanced precautionary measures implemented by the bank shall include (together with usual CDD measures) the ability to warn the customers that have activities or transactions with a high risk of money laundering and terrorist financing, about the need to increase the *"know-their-business partners"* measures and, where applicable, about the necessity to terminate the business relationships or refusal to carry out operations with such customers.

793. There are no provisions to apply counter-measures apart from ECDD in respect of those countries that do not apply or insufficiently apply the FATF Recommendation for the non-banking financial institutions.

Effectiveness and efficiency

[63] The last letter send by the OPFML to the NBM is from 25.4.2012 and it includes changes made by the FATF in the lists on its February 2012 meeting.

794. Financial institutions are informed about the various weaknesses in the AML/CFT systems, including those countries that do not or insufficiently apply FATF Recommendations by means of lists published periodically as Annexes to Order 118.

795. In addition, in case of banks, from 2009 until 2011, the NBM submitted 8 letters in order to inform the industry about the weaknesses of the AML/CFT system in different countries/areas.

796. The awareness of the private sector on the countries that do not or insufficiently apply the FATF Recommendations appeared uneven. While the banking sector appeared largely aware of the requirements related to Recommendation 21, the rest of the financial sector was less clear.

797. During the on-site interviews, the evaluation team received information that there is a list published in the official gazette with the suspicious geographical zones. According to representatives from the banking sector, they have to report all the transaction made from/to that zones. These reporting concerns most of total number of STRs submitted to the FIU. The evaluators were told that the above-mentioned reporting restrain the banks to focus more on other suspicious transactions.

798. Banks from the left side of the Nistru region are not licensed by the National bank of the Republic of Moldova and according to decision No. 286 of 18 November 2004 of the NBM, they do not comply with the provisions of the Law on Financial Institutions and the normative acts issued subsequently. The NBM considers that any direct correspondent relation with banks operating in Transnistria does not correspond to the provisions of the mentioned law and, therefore, is illegal.

799. The counter-measures applied by the financial sector are limited to ECDD and submitting reports to the FIU in certain cases. The banks can also warn the customers about the activities or transactions with a high risk of money laundering and terrorist financing, and, where applicable, about the necessity to terminate the business relationships or refusal to carry out operations with such customers. No such cases were reported in practice.

3.6.2 Recommendations and comments

Recommendation 11

800. There is no definition/explanation for complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, to assist financial institutions in effective implementation. Therefore, the evaluation team strongly advise the Moldovan authorities to adopt such guidance.

801. The Moldovan authorities should consider adopting requirements for all financial institutions to examine as far as possible the background and purpose of unusual transactions and to set forth their findings in writing.

802. FI should be required to keep the findings of the examinations of the unusually large transactions for 5 years and make them available for competent authorities.

Recommendation 21

803. The requirement to pay special attention should be extended to transactions performed by customers from countries that do not apply or insufficiently apply FATF Recommendation not only to transactions with funds from/to those countries.

804. A requirement should be established for the all financial institutions (not only for banks) to examine the transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations.

805. The Republic of Moldova should establish mechanisms for non-banking financial institutions to apply counter-measures in respect of those countries that insufficiently apply the FATF Recommendations.

806. The Moldovan authorities should place efforts to increase awareness of the private sector on weaknesses in the AML/CFT systems of other countries and especially on countries that do not or insufficiently apply FATF Recommendations.

3.6.3 Compliance with Recommendation 11 and Special Recommendation 21

	Rating	Summary of factors underlying rating
R.11	**PC**	• There is no definition or further guidance for the financial institutions to identify complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose; • No requirements for non-banking FI and Post Offices to examine as far as possible the background and purpose of such transactions; • No requirement to set forth the findings (of the examinations) in writing; • No requirement to keep records on the findings of examinations of unusual large transactions; • Effectiveness not demonstrated.
R.21	**PC**	• The requirement to pay special attention refers only to transactions performed in relation to the countries that do not apply or insufficiently apply FATF Recommendation and do not extend to business relationships with clients from those countries; • No requirements for non-banking financial institutions to examine the transactions with no apparent economic or lawful purpose related to countries which do not or insufficiently apply FATF Recommendations; • Counter-measures limited to ECDD for the non-banking financial institutions.

3.7 Suspicious Transaction Reports and Other Reporting (R. 13, 14, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13 (rated PC in the 3rd round report) & Special Recommendation IV (rated NC in the 3rd round report)

Summary of 2007 factors underlying the rating

807. In the Third round MER of the Republic of Moldova Recommendation 13 was rated 'PC' and Special Recommendation IV was rated 'NC'. Rating of Recommendation 13 was based on the following factors:

- The reporting system is in place, but the concept of suspicious transaction lacks all the elements established in essential criteria 13.1, 13.2;
- Attempted transactions not covered;
- Overall reporting system performance is still fairly ineffective.

808. Rating of Special recommendation IV was based on the following factor that no explicit mandatory obligation for financial institutions to report STRs when they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations and those who finance terrorism apart from transactions involving residents of countries which inadequately implement FATF standards.

Requirement to Make STRs on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

Suspicious Transaction Reports

809. The requirement to report suspicions of ML/FT is primarily set out under Article 8 of AML/CFT Law. This obligation is supplemented by various provisions under other laws and regulations.

810. Pursuant to Article 8(1), reporting entities are obliged to immediately inform the OPFML of any suspect transaction or activity which is being prepared, carried out or finalised.

811. A definition of a *"suspect transaction or activity"* is provided under Article 3 of AML/CFT Law which states that a suspicious activity or transaction arises when a reporting entity knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted.

812. The evaluators noted that whereas Article 8(1) refers to a suspect transaction or activity which is being prepared, carried out or finalised, the definition of *"suspect transaction or activity"* under Article 3 refers to a suspicion that ML/FT is being or has been committed or attempted. The variation in the text used in these two provisions may cause some ambiguity.

813. The evaluation team also noted that, whereas Criterion 13.1 requires the reporting of suspicions that funds are the *proceeds of a criminal activity*, Article 8(1) requires the reporting of suspect transaction or activities of *ML/FT* which is being or has been committed or attempted and do not refer to *proceeds from criminal activity*. Therefore, Article 8(1) limits the scope of the reporting obligation and set a higher standard for reporting entities, restricting their reporting activity.

814. Additionally, Article 8(1) requires reporting entities to file a report within twenty-four hours following the receipt of a "*request*". Since knowledge or suspicion may not always arise within the context of a request to carry out a transaction or activity, this requirement also falls short of meeting the FATF essential criteria which simply requires the existence of *funds* that are the proceeds of a criminal offence.

815. Although Article 4 of the AML/CFT Law states that the provisions of the AML/CFT Law shall apply to financial institutions no definition of *"financial institutions"* is provided. As described above, the definition is only to be found in the Law on Financial Institutions.

816. The requirement to report suspicions under Article 8(1) applies equally to both ML and FT and therefore criteria 13.2 and IV.1 are covered by this provision. However, the shortcomings identified in

relation to SR. II might possibly have a negative impact on the overall effectiveness of the FT reporting obligation.

817. "Terrorism financing" is defined by Art. 3 of the AML/CFT Law as "*actions, stipulated in art.279 of the Criminal Code oriented towards the directly or indirectly making available or intentional collection by any natural or legal person by any means of property of any nature, obtained by any means for providing welfare or financial support of any nature for the purpose of using this property or services or in the knowledge that they will be used partly or wholly in terrorist activities*".

818. It has to be noted that the reporting obligation provided by the AML/CFT legislation refers to "*transactions*" and not to "*funds*" which are suspected to be linked or related to or are used for terrorism, terrorist acts of by terrorism organisations. This is clearly not in line with essential criterion IV.1 as it limits the obligation of reporting and does not cover assets (including funds) which are in the possession of terrorists or used for terrorism or terrorist organisations but which are not used in a transaction.

819. During the on-site interviews, confusion between the reporting obligations resulting from SRIII and SRIV requirements was apparent and the evaluators noted several interlocutors were not clear about the distinction between the two.

820. The evaluators were informed that all transactions which are linked to the Transnistrian region are automatically considered to be suspicious and are required to be reported to the OPFML. However, the legal obligation to report such transactions does not appear to be expressly set out under the AML/CFT Law or any other law. The only reference to such transactions is made in Clause 4 of Order No. 118.

821. In terms of Article 10(3), if in the course of their prudential activities supervisory authorities identify any suspicions of ML/FT, they are required to inform and submit any relevant material to the OPFML immediately. The authorities informed the evaluators that such reports have been submitted on various occasions, but they do not appear to be regarded as STRs for statistical purposes due to the fact that they are not in a reporting "form". The Moldovan authorities informed the evaluation team that the information contained in such notifications is used for analytical purposes as any other STRs.

Delay of execution of a transaction

822. Article 13¹(1)(e) of the AML/CFT Law and Clause 7(e) of Order No. 96 provide for the power of the OPFML to issue postponement orders with respect to suspicious activities and transactions.

823. Article 14(1) of the AML/CFT Law requires reporting entities to suspend the carrying out of a suspect transaction on the basis of an order issued by the OPMLFT for a period of time specified in the order but in any case not longer than five working days.

824. There is no requirement in the AML/CFT Law or any other law which requires reporting entities to refrain from carrying out a transaction which is suspected to involve ML/FT and to inform the OPFML of such transaction, which is normally the preceding step before a postponement order is issued. The authorities remarked that the absence of such requirement does not have any bearing on the effectiveness of the postponement measure since reporting entities are required to report a suspect transaction which is being prepared or attempted. However, the evaluators are concerned that since reporting entities are not precluded by law from carrying out a transaction suspected to be linked to ML/FT, a report may be filed with the OPFML only after the transaction is executed, thereby defying the purpose of the postponement mechanism.

825. The authorities remarked that the period of time within which a postponement order is to be issued by the OPFML, from the point in time when the OPFML becomes aware of the suspect transaction which is to be executed, varies depending on the circumstances of the case.

826. Once a transaction is suspended, the OPFML will gather further information to determine whether reasonable grounds for the existence of a suspicion subsist. Where the OPFML determines that reasonable grounds do exist, the CID is immediately notified. The evaluators were informed that the CID would normally initiate a criminal investigation and where necessary make a request for a sequestration order to be issued by the instruction judge.

827. In terms of Article 14(1) if the five days period for the postponement of a transaction is not sufficient, the OPFML can request an instruction judge to extend such period of time for a maximum of thirty working days. A request to extend the period of postponement would be made before the expiration of the period of postponement and would have to be subject to motivated grounds. The authorities explained that the motivated grounds are to be determined by the judge since they are not expressly stated in the law.

828. Where the postponement order is extended the suspect is notified of the postponement order. The suspect may challenge the postponement order issued by the OPFML and the extension ordered by the judge.

829. Statistics provided by the authorities indicate that the mechanism for the postponement of transactions has been implemented effectively.

Table 25: Postponement of transactions

	Postponed transactions	Referred to CID	Investigations	Prosecutions	Convictions
2007	41	15	11	3	4
2008	88	21	13	5	4
2009	106	25	24	10	1
2010	75	35	26	6	1
2011	36	16	6	3	2
Total	346	112	80	27	12

Reporting Forms

830. Order No. 117 of 20 November 2007 (as amended by Order No. 114 of 22 August 2011) provides for a detailed reporting form for every reporting entity listed under the AML/CFT Law. Clause 10 of Order No. 117 requires reporting entities to submit such forms electronically by completing the special forms annexed to the Order. Where it is impossible to send the forms electronically, reporting entities are required to send them in hard copies or saved on magnetic media in a sealed envelope.

831. The reporting forms require reporting entities to provide information on, among other things, the type and nature of the operation being reported, the amounts involved in the reported operation, the details of the identity of the suspect and the grounds for suspicion. The order also provides clear and precise instructions on the completion and submission of such forms.

832. The evaluators were informed that the OPFML receives the large majority (95%) of suspicious transaction and activity reports (STRs) in electronic format, while the rest are submitted in hard copy

by post. The authorities explained that STRs are sent by reporting entities directly to the analysts within the Tactical Analysis Department although this is not stated in Order 117.

833. Pursuant to Clause 5 of Order 117 a special form is to be completed for every suspicious activity or transaction which falls under one of the qualitative indices set out under Article 6 of AML/CFT Law or the indices set out under the Guide on Suspect Activities or Transactions. Since Article 6 sets out the requirement to apply enhanced customer due diligence measures in certain specific circumstances, it is unclear what this provision is referring to in the context of reporting. Clause 5 might be understood to restrict the requirement to complete a special form only where the suspicion involves one of the situations set out under Article 6. The authorities could not provide a satisfactory explanation with respect to the interpretation of such a provision.

Guidance on reporting

834. Order No. 118 and Order No. 40 (Guidance) provide an extensive list of criteria and indicators of suspect ML/FT activities or transactions within both the financial and non-financial sector.

835. Pursuant to Clause 5 of Order 117 reporting entities are required to submit a reporting form in relation to any transaction or activity which is listed under the Guidance either on the basis of the list of the objective criteria set out under the Guidance or on the basis of the criteria set out in the approved programmes and policies of the reporting entities (Article 2^1 of Order No.118).

836. Order 118 includes criteria and indicators of suspicious transactions and activities within the context of: banking, savings and credit, micro financing and mortgage loans; trading of foreign currency in the non-banking sphere; transactions relating to movable assets, the insurance sphere, non-state pension funds sector, leasing activity, the activity of independent professionals and the activity of other institutions (post offices, real-estate agencies, etc.). In addition. Order 118 contains suspicion indicators related to various activities such as cash or cashless operations, loan agreements, international settlements, payments by bank cards, and other indicators assisting the reporting entities in establishing the general suspicious nature of transactions.

837. On the basis of these legislative provisions, as the authorities confirmed, reporting entities are effectively required to systematically report the transactions or activities set out under Order No. 118 without having determined whether an actual ML/FT suspicion subsists.

838. The authorities explained that the mechanism of systematic reporting was introduced in the Republic of Moldova to ensure that the effectiveness of the AML/CFT regime would not be impaired by underreporting. While the evaluators commend the initiative of the Moldovan authorities, the mechanism does give rise to a number of issues.

839. As a result of this initiative, the Moldovan reporting system depends to a large extent on the typologies and criteria established by the OPFML, which cannot realistically be familiar with all the ML/FT vulnerabilities and typologies in every sector. Therefore, there is a risk that certain important typologies and other criteria are completely omitted from the Guidance and as a consequence not reported to the OPFML.

840. The authorities reacted to this finding by pointing out that the impact of this shortcoming would be diminished by the requirement of reporting entities to report suspicious transactions or activities identified on the basis of their internal control programmes. However, during the interviews held with various representatives of banks, it clearly emerged that the primary focus of reporting entities is on the systematic reporting mechanism. In fact, this mechanism appeared not to be entirely favoured by banks as, in their opinion, it detracts the focus from actual suspicions

841. The evaluators also noted that the low level of reporting by reporting entities (see Table 26), except for banks, indicates that the requirement to systematically report transactions listed in the Guidance is not being fully observed by reporting entities since it is assumed that otherwise the statistical figures for reporting would be much higher. Indeed, it would be very difficult for the OPFML and other supervisory authorities to monitor reporting entities' compliance with this requirement in practice.

842. Another issue identified with respect to this reporting mechanism relates to the fact that such a system will potentially result in large quantities of reports being submitted to the OPFML (as in fact it already appears to be the case with banks) causing a strain on the resources of the OPFML. This could have a negative impact on the effectiveness of the analytical function of the OPFML since the OPFML, rather than focussing on the more serious cases, is required to analyse every report submitted by reporting entities, irrespective of whether the report contains an actual suspicion of ML/FT.

Reporting obligation under other laws

843. In addition to the AML/CFT Law, the reporting obligation is found under the following laws and regulations:

- Item 40 of NBM AML/CFT Regulations;
- Clauses 41-45 in Attachment 28 to the FEE Regulation.

844. Item 40 of the Regulations requires financial institutions to inform the OPFML immediately of any suspect activity and transaction, which is being prepared, performed or finalised. Financial institutions are also required to inform the OPFML immediately of any activity or transaction that appears to be linked to terrorism, terrorist acts, terrorist organisations or persons that finance terrorism.

Cash and Threshold-based Transaction Reports

845. Articles 8(2) and (3) of the AML/CFT Law require reporting entities to report threshold-based transactions.

846. In terms of Article 8(2) the data of cash transactions exceeding 100,000 lei (approximately €7,000) or their equivalent, which are carried out as a single transaction or a series of transactions which appear to be correlated, shall be reported to the OPFML within ten days from the date when such transactions have been carried out.

847. In terms of Article 8(3) the data of threshold transactions with a total value exceeding 500,000 lei (approximately €30,000), shall be reported to the OPFML by not later than the fifteenth day of the month immediately following the operational month.

848. The evaluators noted that there is no definition of a series of transactions and no indication as to how determine whether a number of transactions are correlated.

No Reporting Threshold for STRs (c. 13.3 & c. SR.IV.2)

849. Although no thresholds apply to the reporting obligations there are a number of transactions which are exempt from the reporting requirement under Article 8(4). These include transactions that are conducted between financial institutions, transactions conducted between a financial institution and the National Bank of the Republic of Moldova, transactions conducted between financial institutions and the National Treasury and transactions involving payment of commissions for the maintenance of accounts and other banking fees. The authorities explained that these exemptions were

introduced since the ML/FT risks posed by such transactions were considered to be non-existent. However, the evaluators believe that the exempted transactions should not automatically be considered not to pose any risk of ML/FT and should therefore not be completely exempted from the reporting requirement.

850. Article 8 of the AML/CFT Law does not expressly refer to the reporting of *attempted transactions* but the authorities maintained that those transactions are covered by the reference in Article 8(1) to a transaction that *"is being prepared".* Furthermore, the definition of suspect transaction under Article 3 refers to a transaction that *"is being or has been attempted".* Also, the authorities mentioned that in practice reports of attempted transactions were reported to the OPFML on a regular basis. However, statistics distinguishing between transactions which have been carried out and attempted transactions are not maintained.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

851. Reporting entities are required to report suspicions of ML/FT irrespective of the nature of the underlying activity.

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

852. It is not clear whether this additional element is implemented in practice since the offence of ML does not clearly refer to the offences which are considered to be predicate offences but merely to *"illegal proceeds".*

Effectiveness and efficiency R.13

853. As evident from Table 26 below, there is a major discrepancy between the number of STRs (ML) submitted by banks and the reports submitted by other reporting entities. The evaluators consider the reporting level by all reporting entities, except for banks, to be extremely low. Although, the authorities remarked that the OPFML is focussing considerable resources to raise awareness among all reporting entities on their reporting obligations, the OPFML should consider revising its strategy to achieve more effective results.

Table 26: STRs (ML) submitted by reporting entities

Reporting Entities	2005	2006	2007	2008	2009	2010	2011	Total
Commercial banks	40,212	217,049	177,677	190,000	311, 324	360, 083	325, 971	**1,622,316**
Insurance companies	0	0	4	7	17	19	28	**75**
Notaries	0	0	0	0	0	2	0	**2**
Currency exchange	0	2	0	0	2	4	0	**8**
Broker companies	0	0	2	12	14	2	6	**36**
Securities' registrars	6	0	3	3	2	8	1	**23**
Lawyers	0	0	0	0	1	1	0	**2**
Accountants/auditors	0	0	0	1	2	3	0	**6**
Company service providers	0	0	0	0	0	0	0	**0**
Casino	0	0	0	0	3	0	0	**3**
Lombard	0	0	0	0	0	0	0	**0**
Leasing companies	0	0	0	0	2	0	5	**7**

Total	**40,218**	**217,051**	**177,686**	**190,023**	**311,367**	**360,122**	**326,011**	**1,622,478**

854. The number of cases generated by the OPFML on the basis of the large number of STRs received is significantly low as indicated in Table 28 below. The authorities explained that such a discrepancy in the figures is due to the fact that one single case may involve a multitude of transactions relating to suspicious ML operations, which transactions are reported in individual reporting forms and are considered to be separate reports for statistical purposes.

855. The evaluators concluded that since reporting entities are required to systematically report transactions and activities listed in the Guidance, such cases do not always contain a clear suspicion of ML/FT and therefore no case is opened by the OPFML. The evaluators were also informed that the figures provided under the category 'STRs' include all the transactions connected to the region of Transnistria, which as specified above, are required to be reported as STRs irrespective of the suspicious nature of the transaction and the amounts involved.

856. The evaluators also noted a number of inconsistencies between the statistics provided to the evaluators and the statistics reported in the annual reports of the OPFML. It was concluded that the authorities should reconsider the manner in which statistics are kept to ensure that they are in a position to review the effectiveness of the reporting regime.

Table 27: Statistical data on STRs received and cases opened by the OPFML

	Total STRs	**FIU Cases**
2005	40,220	177
2006	217,052	193
2007	177,682	197
2008	190,023	303
2009	311,367	317
2010	360,125	292
2011	326,011	268
Total	1,622,480	1,630

857. The evaluators have doubts about the effectiveness of the reporting regime in the Republic of Moldova. The primary concern of the evaluators relates to the extremely low number of STRs filed by financial institutions other than banks, which is mainly the result of the widespread low level of awareness of the features of the reporting requirement by non-banking financial institutions. This was evident during the meetings held with various representatives at the on-site visit.

858. The requirement to systematically report all transactions and activities featuring under the Guidance on reporting without any consideration being given as to whether a suspicion of ML/FT actually subsists might possibly distract banks and other reporting entities from a process of internal-reporting filtering which is an essential part of an effective reporting regime.

859. Additionally, the systematic reporting mechanism makes the reporting system to a large extent dependable on the typologies and criteria established by the OPFML, which cannot realistically be familiar with all the ML/FT vulnerabilities and typologies in every sector. Therefore, there is a risk that certain important typologies and other criteria are completely omitted from the Guidance and as a consequence not reported to the OPFML. Under these circumstances it is difficult to determine with certainty whether the level of reporting by banks is adequate.

860. The deficiencies with respect to the legal provisions setting out the reporting requirement may also potentially impact on the effectiveness of the reporting regime. As noted above, Article 8(1) requires reporting entities to report a suspicion that ML/FT is being or has been committed or attempted whereas the essential criteria merely require the reporting of the existence of proceeds deriving from a criminal activity. The reporting requirement is also restricted by the requirement to file a report within twenty-four hours following the receipt of a *"request"*.

861. The shortcomings identified in relation to R.1 might negatively influence the level of reporting, especially since the ML offence does not specifically refer to an underlying criminal activity but to *"illegal income"* and *"illegal proceeds"*.

Special Recommendation IV

862. The OPFML received five reports of a suspicion of FT (between 2006 and 2010), and no cases were opened in relation to any of such reports. The authorities explained that an initial analysis of these cases indicated that no suspicion of FT subsisted and no further action was undertaken.

863. The financial sector appeared generally aware of the FT reporting obligations, even if in some cases the interlocutors were not entirely clear of the distinction between the obligations under SR IV and under SR III.

864. The effectiveness of the FT reporting may be negatively affected by the shortcomings identified with respect to SR II.

Recommendation 14 (rated PC in the 3rd round report)

Summary of 2007 factors underlying the rating

865. Recommendation 14 was rated 'PC' in the Third round MER of the Republic of Moldova based on the following factor that the scope of Article 4.1.g should be clarified, together with the applicable sanctions.

Protection for making STRs (c. 14.1)

866. Criterion 14.1 requires that financial institutions and their directors, officers and employees be protected by law from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU. This requirement is addressed by Art. 15(3) of the AML/CFT Law which provides as follows:

> *(3) The reporting entities and their employees are exempted from disciplinary, administrative, civil and penal liability for submitting the information to the competent authorities for the purpose of executing the provisions of this law, even if this caused material or moral damages.*

867. This provision is very similar to Art. 6(4) of the AML/CFT Law which was in force at the time of the previous evaluation report, except that the new legislation is broader (as regards *"reporting entities"* instead of *"organisations that carry out financial operations"*) and, on the other hand, more precise in its scope (referring to the act of reporting instead of acting *"in compliance"* with the provisions of the law). Individuals working for the reporting entities remained to be protected, in accordance with Criterion 14.1 above. Considering the definition of "suspect transaction or activity" (Art. 3 of the AML/CFT Law) this protection can apparently be available even if the underlying

criminal activity was not precisely known and regardless of whether illegal activity actually occurred though the Law does not enter in details on this issue.

868. In addition to that, Art. 8(7) of the AML/CFT Law obliges the reporting entities to provide for further protection as follows:

> *(7) The reporting entities ensure the protection of their employees against any threats or hostile action regarding the reporting of suspect activities and other transactions.*

869. Notwithstanding this, the current legislation does not seem to cover all directors, officers and other natural persons directing, managing or representing a reporting entity if these cannot be considered "employees" of the entity. That is, directors, officers etc. being not in a labour-law relationship, based on a contract of employment, with the respective entity, are apparently left out of the scope of Art. 15(3) and 8(7) above.

Prohibition against tipping off (c.14.2)

870. Turning to the prohibition of "*tipping off*" it is Criterion 14.2 that requires the same range of persons (as referred to above under Criterion 14.1) be prohibited by law from disclosing the fact that a STR or related information is being reported or provided to the FIU. The provision by which this requirement is addressed is Art. 8(6) of the AML/CFT Law:

> *(6) The reporting entities and their employees are obliged to refrain themselves from communicating to natural and legal persons who carry out the activity or transaction, or to third parties about the transmission of the information to the Office for Prevention and fight against money laundering*

871. This provision is slightly different from the respective legislation being in force at the time of the third round evaluation. Prohibition of "*tipping off*" was then prescribed by Art. 4(1) g of the AML/CFT Law which only covered disclosure to third parties (thus excluding the "*second parties*" i.e. the natural or legal persons who actually carried out the respective transaction).

872. Although this provision only refers to "*transmission of information*" to the FIU (while the previous legislation explicitly covered "*filing the information on the limited or suspicious financial operations*") the structure of Art. 8 leaves no doubt that paragraph (6) necessarily covers any reports stipulated in the preceding paragraphs, that is, STRs, cash transaction reports (over 100,000 MDL) and other transactions (over 500,000 MDL) as well.

873. With regard to the uncertainty the third round evaluation team had found in respect all possible cases of notification, it needs to be noted that Criterion 14.2 only refers to *"tipping-off"* related to STRs, which aspect had undoubtedly been covered already at the time of the previous evaluation and no changes have since been reported in this respect.

874. Provided that the situation regarding suspicious transactions is clear, it goes beyond the scope of FATF R.14 whether cash and other transaction reports are also covered by this regime, particularly as these are automatically triggered by the amount subject to transaction thus the parties carrying out a transaction exceeding the respective limit (100,000 or 500,000 MDL) must eventually be aware that a report will be made.

875. The AML/CFT Law does not go further in this respect as it does not contain a comprehensive set of sanctions available for breaches of the tipping off obligations. Instead, Art. 15(1) only provides that the violation of the provisions of the law *"refers to the disciplinary, administrative, civil or penal liability, in accordance with the legislation in force"*.

876. The Criminal Code can only be applied if the act of *"tipping-off*" amounts to complicity. As for administrative or disciplinary consequences, the Moldovan authorities made reference to Art. 38(1) of the Law on Financial Institutions which authorises the National Bank to apply sanctions if it determines that the bank (financial institution) or any of its shareholders or administrators are guilty of an infraction consisting of, among others, violation of the obligations stipulated by the legislation regarding the prevention and combating of money laundering and terrorism financing.

877. Nonetheless, the sanctions listed under Art. 38 are, by their character, only applicable to financial institutions (either directly or through their management) and not to natural persons liable for "*tipping off*". The latter can only be sanctioned indirectly, if the respective financial institution applies disciplinary or civil actions against them, based on the applicable provisions of the Labour Code or the Civil Code (depending on whether the person is actually employed by the financial institution). That said, there are still no specific penalties for failure to comply with the provision that prohibits "*tipping-off*".

Additional element – Confidentiality of reporting staff (c.14.3)

878. According the Art. 24 (e) of the Law 1104-XV/2002 CCECC, the employees shall keep state and other law protected secrets, not divulge information acquired on the fulfilment of professional duties, including those touching private life, honour and dignity of the citizens. No clear reference is made to the names and personal details of staff of financial institutions that make a STRs, but the authorities ensured the evaluation team that the above mentioned legal provision covers such data, which are kept confidential by the FIU in practice.

Effectiveness and efficiency R.14

879. There had been no sanction available for penalising the disclosure of reports ("*tipping-off*") at the time of the third round evaluation and hence the phenomenon was considered "*essentially an ethical matter*". Despite the recommendation made in this respect, the examiners of the present round could not find any substantial development in this field.

Recommendation 25 (c. 25.2 – feedback to financial institutions on STRs/ rated NC in the 3rd round report)

880. According to Annex 1 to the Order 117, the CCECC shall inform the reporting entities, whenever possible, about the results of examination of information presented by them. During the on-site mission the evaluation team noticed that the only mechanism of providing feedback to financial institutions was the control of correctness of completion of submitted STRs.

881. Furthermore, on the occasion of training seminars, the OPFML informs the reporting entities of sanction lists and ML/FT trends and typologies. Many representatives of reporting entities referred to the sanction lists as a very relevant source and information provided. Without limiting the importance of sanction lists this observation raises concerns as to the understanding of the general and wide scope of CFT measures.

882. The feedback provided in the annual reports is of a general nature. Reference is made to statistics on the number of STRs and threshold transactions reported during the year under review. No information is provided concerning disseminations based on STRs. Sanitised cases are also provided to illustrate cases which were analysed by the OPFML in that year. However, further contribution from the Strategic Analysis Department to further elaborate on typologies present in Moldova would be a welcome development.

Table 28: Training provided by OPFML

	2007	2008	2009	2010	2011
Banks	5	2	2	1	3
Insurance	3	1	1	1	2
Notaries	1	3	2	1	1
Brokers on capital market	2	1	3	2	2
Insurance brokers					2
Auditors			1	2	2
Lawyers				1	
Posta Moldovei		1	1	2	1
Leasing companies				1	3
Casinos			1		1
Microfinance organisations, credit associations					1
Bureau of exchanges		1			1

883. It appears that Criteria 25.2 is not fully met.

3.7.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

884. Article 3 and Article 8(1) of Law No. 190 should be completely aligned to avoid any possible ambiguity in respect of the requirement to report a transaction or activity which is being prepared, carried out or finalised under Article 8(1) and the definition of a suspect transaction or activity under Article 3 which refers to a transaction or activity that is being or has been committed or attempted.

885. The reporting obligations should extend to the requirement to report *"funds"* that are suspected to be the *proceeds of criminal activity* as opposed to suspected of *ML and FT*.

886. Reporting should not be restricted to a *"request"* for a transaction or activity.

887. The authorities are encouraged to further enhance their strategy to increase awareness among financial institutions on the reporting requirement. The authorities should also carefully assess the effectiveness of the systematic (tick box based) reporting mechanism set out under Clause 5 of Order No. 117. Furthermore, the reference under Clause 5 of Order No. 117 to the reporting of activities or transactions suspected to be related to ML/FT under one of the qualitative indices set out under art.6 of the AML/CFT Law should be clarified.

888. The reporting obligation provided for FT should extend to *"funds"* which are suspected to be linked or related to or are used for terrorism, terrorist acts or by terrorism organisations.

889. It is also recommended that the authorities review the manner in which statistics on reporting are maintained to enable them to review the effectiveness of the reporting regime.

890. The reporting obligations under other laws should be aligned with the reporting obligation under Article 8 of AML/CFT Law. This applies especially to Regulation 8.2 of the Regulations issued by the National Bank on the prevention of ML/FT which contains wording which is different than that used under Article 8 of Law 190.

891. No transaction should be automatically exempted from the reporting requirement (Exemptions: transactions that are conducted between financial institutions, transactions conducted between a financial institution and the National Bank of the Republic of Moldova, transactions conducted

between financial institutions and the National Treasury and transactions involving payment of commissions for the maintenance of accounts and other banking fees).

Recommendation 14

892. The protection provided by Art. 15(3) and 8(7) of the AML/CFT Law should explicitly be extended to directors, officials and other natural persons contributing to the direction, management or representation of a reporting entity if these persons cannot be considered "employees" of the entity.

893. The examiners reiterate the recommendation made by the previous evaluation team to clarify the issue of sanctions in the AML/CFT Law in case of non-compliance with the prohibition of "tipping-off". This breach should explicitly be threatened by law with proportionate and dissuasive sanctions applicable both to the reporting entity, its directors, officers and employees.

Recommendation 25/c. 25.2 [Financial institutions and DNFBP]

894. The Moldovan authorities should provide information on results of financial investigations conducted by the FIU pursuant the STRs, to financial institutions.

895. The financial institutions should be informed on recent ML trends (typologies).

3.7.3 Compliance with Recommendations 13, 14, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• The scope of the reporting requirement does not to extend to the reporting of "*funds"* suspected to be the proceeds deriving from *"criminal activity"*; • The reporting obligation provided for FT is limited to *"transactions"* and does not extend to *"funds"*; • Reporting is limited to a "*request*" for a transaction or activity; • Issues regarding the definition of *"suspicious transactions and activities"*; • Certain exemptions applicable to the reporting regime. **Effectiveness:** • Low level of reporting by non-banking financial institutions; • Low level of awareness of the reporting requirement by non-banking financial institutions; • Concerns on the effectiveness of the systematic reporting mechanism (tick box approach).
R.14	**PC**	• Protection of non-employee natural persons (directors, officers etc.) who take part in directing, managing or representing a reporting entity is unclear. **Effectiveness:** • No specific sanctions applicable to natural persons for the violation of the prohibition of "tipping-off".

R.25	**PC**	In relation to Criteria 25.2 • No information on results of financial investigations conducted by the FIU is available to financial institutions; • Little information is provided to financial institutions on recent trends (typologies).
SR.IV	**PC**	• Reporting is limited to a "request" for a transaction or activity; • Issues regarding the wording used for the reporting requirement and the definition of "suspicious transactions and activities"; • The reporting obligation provided for FT is limited to "transactions" and does not extend to "funds"; • Deficiencies in FT offence might limit the reporting obligation. **Effectiveness:** • Low level of awareness among reporting entities on FT reporting and unclear distinction between reporting obligations under SRII and SR III; • Concerns on the effectiveness of the systematic reporting mechanism.

Internal controls and other measures

3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15 (rated PC in the 3rd round report)

Summary of 2007 MER factors underlying the rating

896. The Republic of Moldova was previously rated PC in respect of Recommendation 15, mainly based on concerns regarding the effective implementation of internal controls in the non-banking financial sector.

897. The Republic of Moldova referred to the following legal acts as covering the requirements under R.15:

- AML/CFT Law;
- Law of the National bank of the Republic of Moldova;
- Law on financial institutions;
- Regulation on the internal control systems within banks;
- AML/CFT Banks' Regulation;
- FEE Regulation.

898. The information now provided in the detailed assessment questionnaire by the Moldovan authorities again primarily refers to banks and foreign exchange offices. However, since the relevant provisions in the AML/CFT Law apply to all participants in the financial sector, the legal framework has improved compared to the situation at the time of the 3rd round report.

Internal AML/CFT procedures, policies and controls (c.15.1)

899. Pursuant to Article 9(1) of the AML/CFT Law, financial institutions are obliged to establish due-diligence policies and methods regarding the clients, in the area of evidence keeping, internal control, risk assessment and management, compliance and communication management in order to prevent and counter activities and transactions linked to money laundering or terrorist financing.

900. Also Article 9(3) of this Law requires the reporting entities to approve proper programmes on prevention and combating money laundering and financing terrorism (PCMLTF), according to the recommendations and normative acts approved by the supervising authorities, including at least the following:

a) methods, procedures and internal control measures, inclusively proper programmes on receiving information from the empowered authorities in the purpose of verifying natural and legal persons;
b) names of managerial employees responsible for ensuring the compliance of the policies and procedures to legal requirements on anti-money laundering and terrorism financing;
c) "know-your-customer" rules, with the aim of promoting ethical and professional standards in this area and preventing the institution from being used, intentionally or unintentionally, by organised criminal groups or their associates;
d) an ongoing personnel training programmes, strict selection of employees, so as to ensure their high professional profile;
e) auditing, with a view to exercise internal system control.

901. The AML/CFT Law does not make reference to the obligation to include in those procedures the detection of unusual and suspicious transactions and the reporting obligation.

902. These PCMLTF constitute an important element in the application of the risk-based approach and are required from all financial institutions. In conjunction with the legal basis in the AML/CFT Law the supervisory authorities NBM and NCFM issued guidance by way of their regulations as to the content of these PCMLTF.

Banks

903. In addition to the AML/CFT Law an obligation to establish internal procedures is also stipulated in the AML/CFT Banks' Regulation. Chapter III of this Regulation clearly describes what should be included into the internal programme of banks, in particular it includes CDD measures, record keeping, detection of unusual and suspicious transactions, reporting obligation and other requirements.

Professional participants of the non-banking financial market

904. According to Section III of the AML/CFT NCFM Regulation reporting entities are required to establish internal procedures, which include CDD measures, record keeping, reporting obligation and to detect unusual or suspicious transactions.

Foreign exchange entities

905. Art 137 of the FEE Regulation requires foreign exchange offices and the hotels to develop programmes on prevention and combating money laundering and terrorist financing. According to Chapter II of the Attachment no.28 to the FEE Regulation, this programme shall at least include management's duties, CDD rules, procedure for record keeping, reporting obligation, procedures on ensuring the compliance.

Compliance Management Arrangements (c.15.1.1 and c.15.1.2.)

906. According to Article 9 (2) of the AML/CFT Law reporting entities are obliged to include in their PCMLTF the name of a managerial employee responsible for ensuring the compliance of the policies and procedures with the legal requirements of AML/CFT. The Item 47 of the AML/CFT Banks' NBM Regulation explicitly requires the appointment of an administrator from the bank's executive body.

907. According to Art 11(1)(f) of the NBM Regulation, the banks are obliged to have internal procedures in order to adequately implement AML/CFT measures regarding the access in a reasonable time of responsible staff for the information necessary for the performance of their obligations. For the non-bank financial institutions there are no legal requirements for the AML/CFT compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

Independent Audit Function (c. 15.2)

908. According to AML/CFT Law, the reporting entities must approve proper programs on prevention and combating money laundering and financing terrorism, according to the recommendations and normative acts approved by the supervising authorities, which shall include auditing.

909. This provision seems complementary to the main provisions on internal auditing in the Law on Financial Institutions. However, both the AML/CFT Law and the Law on Financial Institutions remain silent as to the audit function, size and duties.

910. Details on internal audit requirements are contained in the NBM Regulation on internal control systems within banks. According to paragraph 15 the evaluation of internal control systems adequacy and efficiency shall be carried out by the unit (section, division and department) of internal audit in accordance with this Regulation's provisions. The unit of internal audit is required to be independent in its activity and to report directly to the board of the bank.

911. Pursuant to paragraph 16 of the Regulation, the internal audit unit shall independently evaluate the adequacy and compliance the bank's set of policies and procedures, with the legislative provisions, and shall communicate the evaluation results to the board of the bank, the commission of censors[64] and to the executive body.

Employee training (c. 15.3)

912. According to the AML/CFT Law reporting entities are obliged to include a requirement for an ongoing personnel training programme in their PCMLTF requirements.

913. The obligation to have training Programmes is further included in the AML/CFT Banks' Regulations and the FEE Regulation. Both regulations contain descriptions on how training should be organised, *e.g.* training newly employed personnel and the *"first line"* personnel (employees who are directly in contact with customers) on the verification of the identification of new clients; monitoring the customers' existing accounts on an ongoing basis; finding suspicion indicators and reporting the suspicious activities and transactions etc… (Art 49 of the AML/CFT Banks' Regulation).

914. For the other non-banking financial institutions there are no concrete requirements what should be included in the training programmes of the financial institutions.

[64] Auditors

Employee screening (c.15.4)

915. Pursuant to Article 9(3)(d) of the AML/CFT Law reporting entities are obliged to operate strict selection of employees, so as to ensure their high professional profile. The AML Regulations for banks and non-banking financial market participants echo the requirements of the AML/CFT Law. However it is unclear what should be included in the screening procedures. The assessors were provided with a sample of a bank's internal rules on staff screening, which includes a criminal record check.

Additional elements (c. 15.5)

916. The AML/CFT compliance officer (called *"administrator"* under Moldavian law) must be a member of the bank's executive body. Thus, he is unable to act independently and to report to senior management above the compliance officer's next reporting level or the board of directors.

Effectiveness and efficiency

917. The evaluation team noted an awareness of the importance of an AML/CFT officer's function. However, concerns remain regarding the gap between the official allocation of the function and the hierarchical level of actual work done.

918. In practice, it was observed that officially, the AML/CFT functions are placed high up in the hierarchy within organisations and are allocated as a co-duty to managerial functions. Actual work is performed by employees at a lower level and effectiveness of the AML/CFT officer's decisions could not be established by the evaluators.

919. Following the on-site interviews the evaluation team is concerned about the adequacy of staffing of this function.

920. Concerns do also exist regarding the timeliness of access to information, as the law does not provide for an ad-hoc provision giving the compliance officer right to access relevant information.

921. Awareness seems to have been risen since the 3rd round report, but compliance in the non-banking financial sector appears to be still low.

Recommendation 22 (rated N/A in the 3rd round report)

Summary of 2007 MER factors underlying the rating

922. In the third round mutual evaluation report, the Republic of Moldova was rated 'N/A' for Recommendation 22.

Consistency of the AML/CFT measures with home country requirements and the FATF recommendations (c. 22.1 & 22.2), Additional elements (c. 22.3)

923. There are no legal requirements for foreign branches and subsidiaries of Moldovan financial institutions to observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local laws and regulations permit.

924. During the on-site visit the evaluation team was informed that Moldovan financial institutions, and more specifically banks, insurance companies and financial intermediaries, do not have foreign branches.

925. However, there are no provisions within the Moldovan legislation which prohibit the financial institution from having foreign branches, which means that it would be possible for them to open foreign branches in the future. Art. 37 (2) of the Law on Financial Institutions even explicitly mentions *"branches and subsidiaries, including those abroad…"*.

926. In respect of banks, the Decision of the Council of Administration of the National Bank of Moldova No. 84 of 28 April 2011 approves the Regulation on branches, representatives and secondary offices of the banks. This demonstrates the possibility of Moldovan banks to establish subsidiaries. However, there is no referral to any AML/CFT measures needed to be taken by the branches and subsidiaries operating abroad.

927. Therefore the requirements of Recommendation 22 are not met.

Effectiveness and efficiency

928. Effectiveness and efficiency could not be assessed since financial institutions in the Republic of Moldova do not have foreign branches and subsidiaries in practice.

3.8.2 Recommendation and comments

Recommendation 15

929. There should be requirements for all reporting entities (besides banks) to establish and maintain internal procedures, policies against money laundering and terrorist financing and controls to detect unusual and suspicious transactions and report them to the FIU.

930. A requirement for timely access to customer identification data and other CDD information, transaction records, and other relevant information for the AML/CFT compliance officer and other appropriate staff should be established for non-banking financial institutions.

931. The audit function's duty to test compliance with the internal procedures, policies and controls to prevent ML and FT should be clarified and integrated into the legal provisions on the audit function.

932. The Moldovan authorities should ensure that the training programme includes information of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting.

Recommendation 22

933. The Moldovan authorities should implement requirements of Recommendation 22.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• No requirements for all reporting entities to establish and maintain internal procedures, policies and controls to detect unusual and suspicious transactions and report to the FIU;

		• No requirements for the non-banking financial sector, that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information; • No requirement for the non-banking financial system to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls. **Effectiveness:** • The question of effectiveness arises for financial sector participants other than banks.
R.22	**NC**	• No legal requirements for foreign branches and subsidiaries to observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit.

3.9 Shell Banks (R.18)

3.9.1 Description and analysis

Recommendation 18 (rated PC in the 3rd round report)

Summary of 2007 MER factors underlying the rating

934. In the 3rd round the Republic of Moldova was rated 'PC' for Recommendation 18 on the following basis:

- there is no specific requirement for financial institutions to discontinue correspondent banking relationship with shell banks;
- No legal requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

Prohibition of establishment of shell banks (c. 18.1)

935. According to Art. 12 of the Law on Financial Institutions, no one shall engage into financial activities, including acceptance of deposits or of equivalent of thereof without a license issued by the National Bank of the Republic of Moldova. No one shall use the word *"bank"* or derivatives of the word *"bank"* in respect of a business, without a license issued by the National Bank, unless such usage is recognized by law or international agreement, or unless it shall be clear from the context in which this word and its derivatives are used that it does not concern financial activities. No foreign bank shall be permitted to engage directly in any financial activity in the Republic of Moldova unless the activity is undertaken through a branch office or subsidiary for which a license has been issued by the National Bank.

936. The National Bank of the Republic of Moldova shall grant a license only if it is assured that:

a) the bank will comply with the provisions of the Law on Financial Institutions;
b) the qualifications, experience, and integrity of its administrators and shareholders with significant interest are appropriate for its business plan and for the financial activities that the

bank will be licensed to engage in;
c) the financial condition of the bank will be satisfactory.

Prohibition of correspondent banking with shell banks (c. 18.2)

937. According to Art. 6 (Enhanced due diligence) the financial institutions are not allowed to establish business relations with shell banks or with a bank that is known as allowing shell banks to use its accounts.

938. Article 31 of the AML/CFT Banks' regulation echoes the AML/CFT Law stating that banks shall not establish or continue a business relationship with a fictitious bank or a bank known that allows another fictitious bank to use its accounts.

939. No further guidance is provided to the banks as to how to identify instances where a bank is a shell bank or even if it is not a shell bank it has business relations with other shell banks.

Requirement to satisfy respondent financial institutions of use of accounts by shell banks (c. 18.3)

940. As mentioned above, the Moldovan financial institutions are required not to allow establishing or continuing business relations with banks that allow shell banks to use its accounts.

941. There are no formal requirements for the financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell companies.

942. However, the Moldovan authorities indicated that Art. 36 of the AML/CFT Banks' Regulations (on the general provisions of the correspondent banking relationship) apply and it is sufficient to verify that the financial institutions in the foreign country do not permit their accounts to be used by shell banks. It has to be said that this requirement applies only for banks and not for all financial institutions.

943. According to item 1.8 of the Instruction on opening of accounts abroad no. 279 of 13 November 2003, it is prohibited for banks from the Republic of Moldova to open accounts in shell banks abroad, defined so in accordance with the documents issued by the BASEL Committee on banking supervision. When opening an account abroad, the banks from the Republic of Moldova should examine the foreign bank regarding its physical existence and its supervision conducted by the competent authority in accordance with the legislation including by determining the name and address of the supervisory body.

944. There is no further guidance provided to the private sector concerning the way they can be able to verify that their correspondent banks are not servicing shell banks and therefore there is still lack of understanding among market participants in this respect.

Effectiveness and efficiency

945. During the on-site interviews the financial institutions representatives demonstrated that they were aware of the legal obligations in respect of the requirements concerning shell banks and they had systems in place designed to verify to a certain extend that the correspondent bank is not a shell bank. However, the private sector was unclear on how they make sure in practice that their partners (banks) are not used by third parties which might qualify as shell banks.

946. During the on-site mission the evaluators have found no indication that banks in the Republic of Moldova have any kind of direct corresponding relations with shell banks or with banks known as allowing shell banks to use its accounts.

3.9.2 Recommendation and comments

947. The evaluation team welcomes the improvements brought to the legislation to cover the obligation to discontinue the business relationship with a shell bank as recommended in the 3rd round report.

948. Although the general provisions on the correspondent banking requirements may apply, the Moldovan authorities should take legislative steps to expressly require all FIs to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

949. The practical application of these requirements needs to be complemented by more guidance from the supervisory authorities to assist private sector to identify shell banks or correspondent banks which are servicing shell banks.

3.9.3 Compliance with Recommendations 18

	Rating	Summary of factors underlying rating
R.18	**LC**	• No specific requirement for the banks to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. **Effectiveness:** • Insufficient understanding among market participants on how to verify that their correspondent banks are not servicing shell banks.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The Supervisory and Oversight System - Competent Authorities and SROs / Role, Functions, Duties and Powers (Including Sanctions) (R. 23, 29, 17 and 25)

3.10.1 Description and analysis

Summary of 2007 MER factors underlying the rating

950. The Republic of Moldova was previously rated PC in respect of R.23 based on the need to clarify the allocation of responsibilities and the lack of a list of competent authorities in the AML/CFT Law.

951. Since the 3rd round report the supervisory system for the non-banking financial market has been changed, as the National Commission on Financial Market (NCFM) was created as the supervisory authority for non-banking financial institutions.

Authorities/SROs roles and duties & Structure and resources

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

Regulation and Supervision of Financial Institutions (c. 23.1)

952. The main legal provision for the regulation and supervision of Financial Institutions in the area of AML/CFT legislation is Art. 10(1) AML/CFT Law.

> "*The regulation and control of the manner of execution of this law is insured by the following public institutions empowered to supervise the reporting entities, according to the competence established by law:*
> *a. Office for Prevention and Fight against Money Laundering;*
> *b. National Bank of the Republic of Moldova;*
> *c. National Financial Market Commission*
> *d. The Ministry of Information Technology and Communications"*

953. The allocation of supervisory powers for the area of AML/CFT over a specific type of reporting entity to a specific authority is not contained in the AML/CFT Law but the Moldovan authorities indicated that this derives from the AML/CFT Law in conjunction with the sector specific laws (e.g. Law on Financial Institutions, Law on Insurance).

Designation of Competent Authority (c. 23.2)

954. As mentioned above, the OPFML, the National Bank of the Republic of Moldova, the National Financial Market Commission and the Ministry of Information Technology and Communications are empowered to supervise the Financial Institutions.

955. According to Article 10 of the AML/CFT Law, the bodies empowered to supervise the financial sector, can issue orders, decisions, recommendations and other normative acts; verify and monitor the implementation of the AML/CFT law relating to compliance requirements towards collection, recording, storage, identification and disclosure of transactions and the implementation of internal control measures and procedures.

956. Pursuant to paragraph 4 of Article 10 of the AML/CFT Law, the empowered authorities are obliged to confirm whether the reporting entities apply written policies, practices and procedures, including strict "*know-your-customer*" rules, with the aim of promoting high ethical and professional standards in the respective area and preventing this from being used, intentionally or unintentionally, by organised criminal groups or their associates; to determine whether reporting entities comply with their own policies, practices and procedures targeted towards the detection of the activity of money laundering and terrorism financing; to inform reporting entities on money laundering and terrorism financing activities, including new methods and trends in this area; to identify the possibilities of money laundering and terrorism financing of the reporting entities, to undertake, as necessary, proper measures to prevent the illegal usage of these and to inform the reporting entities about the possible abuses.

Office for the Prevention and Fight against Money Laundering

957. The OPFML as a specialised, independent division within the CCECC has the following supervisory duties (Art. 13(2) AML/CFT Law):

- (c) issue regulations, guidelines and normative acts to bring in line the national legislation with international legal acts in the field;
- (j) at the request of other authorities empowered to supervise the reporting entities to fulfil the control and the verification of the observance of this law by the reporting entities;
- (m) Identify law infringements in the field of prevention and fight against money laundering and terrorism financing and sanction in the limit of its competencies;

958. The duties of the OPFML are not restricted to a certain type of reporting entity. In the context of section 3.10 of this report items (c), (j) and (m), covering guidance and sanctions, are of special relevance.

959. The Moldovan authorities explained that the main reason for the OPFML's assumption of supervision duties is to prevent situations where there is no supervisory body for the reporting entities. In practice, the OPFML is acting as a supervisory body in several cases to ensure the practical implementation of the AML/CFT Law provisions. For example, currently, in the Republic of Moldova there is no supervisory body for the leasing companies which are under the AML/CFT Law requirements. Also, the supervisory authority for the Post Office of Moldova does not fulfil its tasks in the AML/CFT area. In these situations, the OPFML uses its powers given by the AML/CFT Law for supervisory purposes.

960. The OPFML explained that this model of supervision has a temporary character and this specific competence of the OPFML will disappear once the remaining issues related to the supervision of the reporting entities will be settled.

961. Neither the OPFML claimed, nor the evaluators could identify any formal basis for this approach which seems to happen outside any legally formalized procedure.

National Bank of the Republic of Moldova

962. The rights and obligations of the NBM are set out in the Law no. 548-XIII on the National Bank of the Republic of Moldova as of 21 July 1995. The NBM is in charge of licensing, supervising and regulating the activities of financial institutions[65]. The NBM supervises the payments system of the Republic of Moldova and performs the foreign exchange regulation in the territory of the Republic of Moldova.

963. The supervisory powers of the NBM are specified in Art. 44 of the NBM Law and empowers the NBM to cause any financial institution to take remedial actions or to enforce penalties provided in the Law on Financial Institutions, if a financial institution has violated the provisions of the Law on Financial Institutions or a regulation of the NBM. The corresponding provisions for foreign exchange activities are Art. 62 and 63 of the Law no. 62-XVI on Foreign Exchange Regulation as of 21 March 2008.

964. Thus, the sanctioning power is based on a reference to the Law on Financial Institutions which covers AML/CFT only cursorily in its Art. 23. The NBM regulations, among which the AML/CFT Banks' Regulation, have more practical importance in relation to AML/CFT supervision.

National Financial Market Commission

965. The NCFM was established in 2007 and combines a number of departments previously attached to other authorities or ministries, such as the National Securities Commission. The NCFM acts as a regulator and supervisor.

[65] According to Art. 2 NBM Law a "Financial institution means a juridical person engaged in the business of accepting deposits or the functional equivalent, that are not transferable by different payment means and using such funds in whole or in part to make loans or investments for the account of and at the risk of the person carrying on the business."

It is assumed by the assessor that this definition includes "banks", which are defined as follows:

> "Bank means a financial institution engaged in the business of accepting from natural or legal persons deposits or the functional equivalents, that are transferable by different payment means and using such funds in whole or in part to make loans or investments for the account of and at the risk of the person carrying on the business."

966. The National Financial Market Commission regulates and authorises the activity of professional participants to the non-banking financial Market and supervises the observance of legislation by them. Its legal basis is Law no. 192-XVI of the National Commission of Financial Market as of 12 November 1998. According to Art. 4(2) of the NCFM Law, the professional participants of the non-banking financial market are *"the professional participants of the securities market, professional participants of insurance market, non-state pension funds, lending and savings associations, micro-financing organisations, mortgage organisations and credit bureaus."*

967. The NCFM Law does not explicitly mention a competence to supervise compliance with the AML/CFT Law. The Moldovan authorities explained that such competence implicitly arises by the back-up clause in Art. 9(1)(r) of the NCFM Law which allows for the "*use of other rights arising from the legislation governing activity displayed by the participants of the financial market, the present law, other legislative acts and Regulations issued by the National Commission*".

968. Given the lack of an explicit competence to supervise compliance of AML legislation by the NCFM, it is refutable whether the AML/CFT NCFM Regulation, issued by the NCFM on 21 October 2011 can remedy this shortcoming[66].

The Ministry of Information Technologies and Communications

969. The Ministry of Information Technology and Communications is the supervisory authority of the Moldovan Post Office, according the Law on the Post Office. The Ministry represents the Government and coordinates the postal activity conducted by legal and natural persons in the Republic of Moldova. The Ministry implements the Government's policy by means of licensing and control of performance by postal operators and their official duties. No specific AML/CFT requirements are mentioned.

Recommendation 30 (all supervisory authorities) (rated PC in the 3rd round report)
Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)

970. The NBM is structured into five departments under the lead of the Council of Administration and the Governor. Each department is headed by a Director and reports to the Deputy Governor, except for the Internal Audit Department which reports directly to the Governor of the NBM. Departments are further divided into divisions, sections and units. Within the Department of Banking Regulation and Supervision there is the Division of "Banking control and monitoring of activities of prevention and combating of money laundering and terrorism financing". Other divisions and units involved in AML/CFT are those dealing with licensing, regulation and control of the activity of foreign exchange entities, control of foreign exchange operations, legislation and the supervision of payment systems.

971. During 2009-2011 the NBM's staff members participated in different trainings and seminars both organized in the Republic of Moldova either by national authorities (CCECC, NBM, etc.) or international specialised bodies (International Monetary Fund, World Bank, etc.) and organized by specialized supervisory or other type of institutions in Austria, Germany, France, Italy, Ukraine and Romania. In 2009 NBM's personnel participated in 3 national organized seminars and 5 international organized seminars; in 2010 NBM's personnel participated in 3 national organized seminars and 6 international organized seminars; in 2011 NBM's personnel participated in 4 national organized seminars and 5 international organized seminars.

[66] The Moldovan authorities informed the assessors at the pre-meeting about a draft amendment to Art. 9(2) of the NCFM Law which would explicitly mention the regulation and supervision of compliance with the existing AML legislation.

972. In accordance with the information provided by the Moldovan authorities the NBM staff has been receiving the necessary trainings in 2009-2011, however it is not clear what range of relevant topics was covered during these seminars and if those seminars were related to the AML/CFT issues.

973. The resources of the NBM appear largely adequate allowing for on- and offsite supervision.

974. The organisational structure of the NCFM is modelled after the different types of participants with General Directorates for specific types of participants (e.g. General Directorate for Insurance Supervision, General Directorate for Securities Supervision). The supervisory control of the participants is affected on-site and off-site. In the course of on-site inspections the NCFM experts also check on compliance with the AML/CFT NCFM legislation.

975. Furthermore, the NCFM has established a Working group on the Implementation of the MONEYVAL Recommendations which consists of high ranking officials and a few specialists. It is chaired by the deputy chairman of the Council of Administration, who acts as the coordinator of the Group. Its members are from various NCFM Directorates:

- General Executive Directorate, responsible for structuring and presenting information on preventing and combating ML/TF on the non-banking financial market;
- Foreign Relations and Development Directorate, General Executive Directorate, Secretary of the Group, responsible for carrying out activities in preventing and combating ML/TF on the non-banking financial market;
- General Directorate of Legal Assistance, responsible for the legal assistance of Group in its activities;
- Regulation and Authorization of Professional Participants Directorate, General Directorate of Securities Supervision, responsible for monitoring activities of preventing and combating ML/TF in the field of securities market;
- Collective Placements Regulation and Supervision Directorate, General Directorate of Collective Placements and Microfinance, responsible for monitoring activities of preventing and combating ML/TF in the collective investment and microfinance field;
- Insurance Regulation and Authorization Directorate, General Directorate of Insurance Supervision, responsible for monitoring activities for preventing and combating ML/TF in the insurance field.

976. Resources of the NCFM do not appear adequate for the effective supervision of all supervised entities, given the number of reporting entities compared to the number of staff dedicated to AML/CFT supervision and its range of duties. For both supervisory authorities professional standards and integrity of employees seem to meet the requirement and some training is in place.

977. The evaluation team established during the on-site visit that the Ministry of Information Technology and Communications has only 3 employees who are obliged to monitor and supervise the Post Office, including for AML/CFT purposes. During the on-site interviews the evaluators were told that the Ministry encounters serious difficulties in executing their AML/CFT obligations due of lack of resources and expertise. There is no evidence of AML/CFT training.

978. The structure of the OPFML has no dedicated unit to deal with the supervisory issues. The supervision is carried out by the employees of the Analysis and Investigation Departments.

Authorities' powers and sanctions

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

Summary of 2007 MER factors underlying the rating

979. In the Third round MER the Republic of Moldova was rated 'NC' for Recommendation 29 on the basis that the issue of powers has not been seen in relation to the allocation of responsibilities. Powers are not clearly conferred by the AML/CFT Law, since supervisory bodies are not listed.

980. This shortcoming has been remedied by the new provision of Art. 10(1) AML/CFT Law, which lists the public institutions that are empowered to supervise for AML/CFT purposes. However, as further explained under R.23, the allocation of supervisory powers for the area of AML/CFT over a specific type of reporting entity to a specific authority still lacks clarity as it is not contained in the AML/CFT Law but must be derived from the AML/CFT Law in conjunction with the sector specific law. Thus, it is not possible to verify and confirm whether all Financial Institutions in the sense of the FATF Methodology are indeed under the supervision of a competent authority.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1)

981. The supervisory powers to monitor and ensure compliance by financial institutions with adequate AML/CFT legislation are stated in Art. 10(2) AML/CFT Law.

982. According to Art. 10(2) AML/CFT Law, the bodies empowered to supervise the reporting entities, may within their powers execute this law and international recommendations:

a. issue orders, decisions, recommendations and other normative acts;
b. approve the Guidance on suspicious activities or transactions, instructions on how to fill out and transmit special forms on reported activities or transactions, the special form for reporting entities, the Guidance for the identification of transactions suspected of financing of terrorism, Guide on the identification of politically exposed persons, instructions for preventing the use of domestic banking and non-banking system in the legalization of illicit proceeds and terrorism financing, and other instructions to implement the policies on recovery of illicit proceeds and terrorism financing;
c. verify and monitor the implementation of this law relating to compliance requirements towards collection, recording, storage, identification and disclosure of transactions and the implementation of internal control measures and procedures.

983. This legal provision is mirrored and reinforced in the NBM Law, providing the NBM with the necessary powers to fulfil its tasks. The NBM has the right to issue decisions, regulations, instructions and directives which are normative acts. Normative acts are obligatory for financial institutions and they are published in the Official Monitor of the Republic of Moldova (Art. 11 NBM Law). Surprisingly, a similar rule in the NCFM Law, cannot be found. Thus the assessment team is of the opinion that the legality of the supervisory acts of the NCFM is not guaranteed.

984. With regard to the Ministry of Information Technology and Communications, no such legal basis in sector specific laws was established and it remains doubtful whether the empowerment of Art 10 AML/CFT Law indeed suffices to meet the requirements of c.29.1.

985. The powers of the OPFML have been dealt with in a different location of this report. Suffice it here to point to the complimentary powers of the OPFML in respect to supervision, especially for participants of the financial market outside the supervision of NBM and NCFM (Post Office, leasing companies), which in practice are the only supervisory measures in the area of AML/CFT for those participants.

Authority to Conduct AML/CFT inspections by Supervisors (c. 29.2)

986. The legal basis for conducting AML/CFT inspections is not the same for all supervisory authorities.

Banks

987. According to Article 44 of the NBM Law, the National Bank is exclusively responsible for the licensing, supervision, and regulation of financial institutions activity. To that end, the National Bank shall be empowered:

- to issue necessary regulations and to take actions in order to execute its powers and duties under this Law, through proper licensing and supervision standards and to establish the procedure of application of regulations and actions mentioned above;
- to cause an inspection to be made, at its discretion, by any of its officers or by any other qualified person appointed to that effect, of any financial institution and to examine its books, documents and accounts, the conditions of its affairs and whether it is in compliance with the Law and regulations;
- to require any officer or employee of the financial institution to furnish to the National Bank such information as requested for the purpose of enabling the National Bank to supervise and regulate financial institutions;
- to cause any financial institution to take remedial actions or to enforce penalties provided in the Law on Financial Institutions if the financial institution or its employees:
    - have violated the provision of the Law on Financial Institutions or a regulation of the National Bank;
    - have violated a fiduciary duty;
    - have begun the unsafe or unsound operations of the financial institution or any of its subsidiaries.

988. In respect of foreign branches and subsidiaries pursuant to Article 37 of the Law on Financial Institutions every bank and each of its branches and subsidiaries, including those abroad, shall be subject to inspections by inspectors of the National Bank or by auditors appointed by the National Bank. The inspection of the bank that is a branch or subsidiary of a foreign bank or has a significant interest in the foreign bank is made by the auditors charged with supervision of financial activities in that country.

989. The evaluation team had also been informed that the NBM refers to its Manual on on-site controls: on-site controls shall include checking the correspondence of policies and internal procedures on prevention and combat of money laundering, as well as their practical implementation, and also covers the daily documents of transactions and operations and the fulfilment of suspected and limited reporting forms. The Moldovan authorities indicated that during on-site inspections, the NBM checks the manner in which banks implement the detection and reporting system of STRs, CTRs and other threshold transactions.

Foreign exchange entities

990. As was mentioned previously in the Law on the National Bank of the Republic of Moldova the NBM's supervisory powers encompass foreign exchange entities. In addition to the powers of the NBM in respect of foreign exchange entities, according to paragraph 142 of the FEE Regulation while performing on-site inspections, the control team shall verify the observance by the foreign exchange entity of the provisions of the Law on Foreign Exchange Regulation No.62-XVI as of March 21, 2008, of the AML/CFT Law in the context of the currency exchange activity in cash with individuals, as well as of the normative acts worked out by the National Bank of the Republic of Moldova on based on these laws.

Professional participants of the non-banking financial market,

991. Regarding the NCFM's authority to conduct on-site inspections the legal situation is less clear. The NCFM Law does not provide for a clear competence to conduct on-site inspections, but this competence is regarded as an outflow from the general supervisory powers.

992. This lack clarity in the legal provisions has a direct impact on the supervisory activity on various industries under NFCM supervision as during on-site interviews some categories of reporting entities were not clear whether the FIU or NFCM is the competent supervisory authority for AML/CFT purposes[67].

Post Office, leasing companies

993. There is no general supervisory authority authorised to conduct inspections including on-site inspections, to ensure compliance in respect of Post Office and leasing companies. Assessors were informed that inspections of the Post Office are carried out by the NBM under the provision of NBM Decision No 129 from 6 June 2002 on Money Transfers Instruction. However, the legal situation is unclear as according to other authorities, the OPFML is in charge with the supervision of those entities left outside the scope of the prudential supervision.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1)

994. There is no legal basis in the AML/CFT Law meeting the formal requirements for the supervisory authorities to compel production of records, documents and alike. However, some sector legislation contains such requirements.

Banks and foreign exchange entities

995. The Law on the National Bank of the Republic of Moldova contains the necessary legal provisions to provide the power to compel production of records, documents etc., without the need to require a court order from functional institutions.

996. According to Article 44 of the NBM Law, the NBM may obtain documents from a financial institution and examine its books, documents and accounts, the conditions of its affairs and whether it is in compliance with the AML/CFT Law and regulations. In addition to this power, pursuant to Article 47(1) of the NBM Law, financial institutions are obliged to provide the NBM with any information and data as required for the carrying out of its functions and responsibilities.

Professional participants of the non-banking financial market

997. According to Art 29 of the NCFM Law, the NCFM has the power to obtain access to any documents, verbal or written explanation necessary for carrying out the NCFM's controlling functions over the supervised entities.

Post Office and leasing companies

998. The Moldovan legislation does not contain any legal provision that will empower the supervisory authorities to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance, which will also include all documents or information related to accounts or other business relationships, or transactions, including any analysis the financial institution has made to detect unusual or suspicious transactions.

[67] The Moldovan authorities informed the assessment team at the pre-meeting that there is a draft Law on leasing companies which will bring leasing companies under the supervision of the NCFM.

Powers of Enforcement & Sanction (c. 29.4)

999. The AML/CFT Law covers the power of sanctioning in its Art. 15(1). Pursuant to this article, the violation of the provisions of the AML/CFT Law refers to the disciplinary, administrative, civil or penal liability, in accordance with the legislation in force. This provision contains neither an allocation of sanctioning power over a specific group of financial market participants to a specific supervisory authority nor any specific sanctions or fines. In fact, these general provisions are further detailed in the sector specific laws and in the laws on the supervisory authorities, namely NBM and NCFM and in regulations issued by those two authorities.

1000. According to the Art. 38 of the Law on Financial Institutions, the NBM may apply the following sanctions if it determines that the bank (financial institution) or any of its shareholders or administrators are guilty of an infraction consisting of the legislation regarding the prevention and combating money laundering and terrorism financing:

> d) impose fines to the bank up to 0,5% of the capital of the bank and/or to the administrator within 1 to 10 average salaries on financial activities according to data of the National Bureau of Statistics for the month preceding the date of infraction, including for non-compliance to the decision of suspending the transaction, issued by the body entitled with powers related to the prevention and combating money laundering and terrorism financing;
> e) withdraw the confirmation issued to the administrator of the bank (financial institution);

1001. A similar provision is contained in Art 54 of the Insurance Supervision Act and in Art 66 of the Law on the securities market. With regard to other financial market participants the situation is unclear.

1002. Serious concerns do however exist with regard to that fragmented legal situation as it is not possible to identify whether all entities within the scope of the AML/CFT Law are adequately supervised and whether all supervisory authorities do have adequate powers and competences.

1003. The liability envisaged by the AML/CFT Law does not apply to entities' directors and senior management, the liability of the sector specific laws extends only to the administrator, but not to senior management.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

1004. The AML/CFT Law is a basic legal framework which sets out the main principles aimed to cover the FATF Recommendations to a large degree literally. The amendments to the AML/CFT Law are a welcome improvement compared with the 3rd round evaluation. Yet, the AML/CFT Law is not detailed enough to cover all essential elements and needs further elaboration in bylaws, as has been effected by the NBM, and the NCFM with their regulations. Consequently, where these bylaws are missing, there is a continuous lack of compliance with the FATF Recommendations.

1005. "A" Savings and Credit Associations are excluded from the AML/CFT legal regime and hence supervision in this respect is completely missing.

1006. The evaluators reached the conclusion that AML/CFT supervision is effectively carried out by the NBM with regard to the *financial institutions* within its remit (banks and foreign exchange entities). The effectiveness of the NCFM's supervision over the non-banking financial market participants is assessed to be of a sufficient degree in line with the FATF Recommendations. With respect to the remaining non-banking financial market participants (Post Office, leasing companies) there is a lack of legal clarity which was not compensated by the amendments to the AML/CFT Law.

1007. It is generally noted that all representatives of supervisory authorities refer to the important role of the OPFML. Observations made in the course of interviews with public stakeholders during the on-site visit created the impression that great reliance is placed on the OPFML to monitor compliance with the provisions of the AML/CFT Law. There was frequent reference to the CCECC's powers to issue guidance and to impose sanctions which could create the impression that a parallel competence of the respective supervisory authority and the OPFML exists.

1008. During the on-site visit supervisory authorities regularly referred to the OPFML for the conduct of on-site visits without providing further information on the type and details of such OPFML inspections. Given the number of OPFML staff and its work load, the evaluators have concerns as to the human resources and technical capacity of the OPFML to carry out inspections for supervisory purposes.

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

Summary of 2007 MER factors underlying the rating

1009. The 3rd round MER recommended that the AML/CFT Law should include a clear list of administrative penalties applicable to the different breaches of the AML/CFT Law, possibly with reference to the sanctions available in the Code of Administrative Penalties.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

1010. In order to address the MONEYVAL recommendations on the sanctioning regime for non-observance of the provisions of the AML/CFT Law, the Administrative Code was amended and the amendments came into force on 12 August 2011.

1011. The penalties for violation of the provisions of the AML/CFT Law are provided in Art. 291^1 of the Administrative Code[68].

1012. According to the new article, infringement of the legislation on prevention and combating of money laundering and terrorist financing through: non-compliance with the requirements relating to the identification of legal or natural persons and the beneficial owner, or for non-dissemination in established terms (e. g. deadlines for submitting STRs) or dissemination of erroneous or incomplete information on suspicious activities or transactions finalised or carried out, through one operation with a value exceeding 500,000 lei (€31,700), as well as those carried out through more operations during a period of 30 calendar days, with the mentioned value, shall be fined. This is a very partial list, and the possible breaches in respect of transactions above the threshold are very unclear.

1013. The fines amount from 100[69] to 150 conventional units for natural persons (~ from €133 to €200), and from 300 to 500 conventional units for legal persons (~ from €400 to €670). The evaluators are of the opinion that the amounts of the possible fines are far from being dissuasive for the financial sector. Furthermore, contemplating the minimum and the maximum limits of the fines, it is difficult to assess that they might be *"proportionate"*.

1014. The new legal provision represents welcome progress for the implementation of Recommendation 17. However, Art. 291^1 of the Contravention Code comprises a list of potential breaches in the AML/CFT legislation, which do not cover the full range of potential AML/CFT

[68] Only the text of the new article was provided by Moldovan authorities.

[69] According to the art. 64 of Criminal Code *"one conventional unit"* is equivalent of 20 Moldovan lei.

breaches (*i.a.* failure on record-keeping requirements, failure to identify high-risk customers, failure to perform enhanced CDD on PEPs or any other requirement in the Methodology, which has to be in place by law, regulation or other enforceable means).

1015. During the on-site visit the Moldovan authorities indicated that only the FIU can apply administrative sanctions for non-observance of the obligations under AML/CFT legislation. However, depending on the size and importance of the sector, other supervisory authorities (e.g. National Bank of the Republic of Moldova) can apply sanctions for breaching the obligations under AML/CFT legislation.

1016. When it comes to the Financial Institutions, the authorities pointed out that the legal basis for imposing sanctions is Art. 10 the Moldovan AML Law which states: "*The regulation and control of the manner of execution of this law is insured by the following public institutions empowered to supervise the reporting entities, according to the competence established by law: Office for Prevention and Fight against Money Laundering, National Bank of Moldova, National Financial Market Commission, Ministry of Justice, Ministry of Information Technology and Communications, Ministry of Finance, Licensing Chamber*". However this law does not apportion responsibility between the named supervisors as to which supervisory authority is responsible for the supervision of which category of reporting entity.

1017. According to Art.38 of the Law on Financial Institutions, the NBM may apply the following sanctions if it determines that the *financial institution* or any of its shareholders or administrators are guilty of an infraction consisting of inter alia: a violation of this Law or regulations of the National Bank; and obligations stipulated by the legislation regarding the prevention and combating money laundering and terrorism financing, which compliance control falls under the competences of the National Bank:

a. issue written warning;
d. [70]impose fines to the bank (financial institutions) up to 0.5% of the capital of the bank (financial institution) and/or to the administrator within 1 to 10 average salaries on financial activities according to data of the National Bureau of Statistics for the month preceding the date of infraction, including for non-compliance to the decision of suspending the transaction, issued by the body entitled with powers related to the prevention and combating money laundering and terrorism financing;
e. withdraw the confirmation issued to the administrator of the bank (financial institution);
f. limit or desist the activity of the bank (financial institution);
h. withdraw the license or authorisation.

1018. In case of the foreign exchange entities, both the National Bank of the Republic of Moldova and the FIU can apply sanctions. According to Art. 63 paragraph (1) of the law 62-XVI of 21 March 2008 on Foreign Exchange Regulation, the NBM shall apply sanctions to foreign exchange under the provisions of the quoted Law, and also under Law 548-XIII of 21 July 1995 on the National Bank of the Republic of Moldova, the law on financial institutions 550-XIII of 21 July 1995 as well as by virtue the provisions of the normative acts issued by the NBM.

1019. Limited information was provided regarding the non-banking financial institutions, Post Office, leasing companies and other supervisory authorities. The NCFM informed the assessors that it has the right to withdraw licenses from reporting entities and to prescribe conformity with legal and regulatory requirements. Its rights to do so are not contained in the Law on the NCFM, but in sector specific laws, e.g. Art 54 of the Insurance Law, Art 65 of the Law on the Securities Market, although

[70] Non-consecutive numbering of litterae is due to cessation of individual litterae.

it is noted that none of these sanction provisions make explicit reference to violations of the AML/CFT Law or any other AML/CFT legislation. The legal basis for sanctioning of the Post Office and leasing companies is unclear.

Designation of Authority to Impose Sanctions (c. 17.2)

1020. As described above, the designation of authorities to impose sanctions follows the system for designating supervisory competences to authorities and is regulated in Art. 10(1) AML/CFT Law.

1021. However it is still unclear how the AML/CFT monitoring and sanctioning responsibilities are divided in practice between different public authorities and what is the role of other institutions empowered to supervise the reporting entities, according to the competence established by law (see art. 10 of the AML/CFT Law).

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

1022. Art 38(1)(d) of the Law on Financial Institutions provides for sanctions against the financial institution and/or to the administrators. The administrator of a financial institutions is defined as a member of the Board of Directors, of the executive body, of the Audit Committee, the chief accountant, manager of a branch of the legal entity, as well as any other person who alone or together with other has the legal or statutory authority to enter into commitments for the account of such entity. At the same time, the National Bank may withdraw the confirmation issued to the administrator (Art 38(1)(f)).

1023. A similar provision exists for insurances and insurance brokers providing for a sanctioning regime largely in line with the essential elements of the FATF Recommendation (Art 54(2)(b) of the Law on Insurance).

1024. Regarding the securities intermediaries, the sanctioning provision is Art 66 of the Law on the Securities Market. According to Art 67 the *"persons who violate this Law and other normative acts […] shall be held responsible […]"*. No definition of the term "persons" could be found in the Law on the Securities Market. On other occasions, e.g. licensing requirements, there is mentioning of *"officers"* (Art 53(3)(f) of the Law on the Securities Market) who may be considered equivalent to *"persons"* as mentioned in Art 67.

1025. However, it is unclear if it is possible to sanction directors and senior management of Post Office and leasing companies. The assessors were informed that it were possible under Art. 291^1 of CC, but this provision is only available to the law enforcement authorities, not to the supervisory authorities.

Effectiveness and efficiency (R.17)

1026. The legal texts that are referred to in order to implement the sanctioning regime for AML/CFT breaches in the Republic of Moldova appears unclear and incomplete. A series of disparate legal acts are referred to in order to describe the sanctioning regime, but the connection between all those and the AML/CFT sanctioning regime is very unclear.

1027. The evaluators were informed that the NCFM indeed imposed sanctions against an insurance company for failure to report two transactions. The sanction consisted of a prescription of conformity and pecuniary fines.

1028. As emphasised by the tables below some fines were imposed to the private sector both by general supervisory authorities and by the FIU. However, taking into consideration the low level fines

available as financial sanctions, the evaluation team is of the opinion that the effectiveness of the sanction regime in the Republic of Moldova is an area for improvement.

1029. Effectiveness of Article 291[1] of the Contravention Code could not be assessed due to its recent adoption.

Market entry

Recommendation 23 (rated PC in the 3rd round report)

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

1030. According to Art. 10(5) AML/CFT Law, the Public Administration authorities, according to the competence established by the legislation, shall undertake proper measures in order to prevent the establishment of the control over the reporting entity or the obtaining of the control share capital and /or of controlling parts, by organised criminal groups or their associates.

1031. This general provision is detailed in some sector specific laws, although in Art. 10 (5) of the AML/CFT Law, those public administration authorities are not listed.

1032. The law on Financial Institutions defines a significant interest as a direct or indirect holding of an interest in a legal entity, that represents the equivalent of 5% or more of the equity or of the voting rights, or that allows to exercise a significant influence over the management or policies of that entity. Any transfer of an equity interest reaching the threshold of significant interest or reaching or exceeding the limit of 25%, 33% and 50% requires the written authorisation of the NBM. The amount of all equity interest in a bank owned directly or indirectly by resident persons of off-shore zones or off-shore countries as well as or by groups of persons acting in concert, within which there is a person from an off-shore zone or country, shall not exceed 5%.

1033. According to Regulation 42/09-01 on Holding Significant Interest in a Bank, the person desiring to hold a significant interest in a bank or to increase such interest so to reach or exceed the limits of 25%, 33% and 50% shall submit a written application to the bank's council in the form prescribed by the annex. After the submission and examination of all required documents, the bank's council shall make a written request to the Governor of the National Bank of the Republic of Moldova, accompanied by the list of persons desiring to hold a significant interest in the bank or to increase such interest so to reach or exceed the limits of 25%, 33% and 50% and the required information with regard to each particular applicant, pursuant to annexes to the Regulation.

1034. The application form requires for natural persons *i.e.* identification data, data on assets, liabilities, own funds (the difference between the total assets and the total debt) of the individual, including the income statement of the individual for the last year, source of income and a list of affiliated persons and for legal persons *i.e.* name and address, settlement account number and servicing bank, except for the case when the applicant is a bank, name, position and professional activity of administrators for the last ten years, the list of persons affiliated to individuals. In cases where the applicant is a bank additional information is required.

1035. The National Bank shall examine the completeness and the compilation of the application in compliance with the annexes to the Regulation. In case when the documents correspond to the provisions of this Regulation, the National Bank shall inform in writing the Bank's Council / the applicant about the beginning of examining the application.

1036. The NBM will grant written approval only if it is fully convinced that the bank will comply with all the provisions of the Law on Financial Institutions and the qualifications, experience, and integrity of applicants to hold a significant interest are appropriate for the business plan of the bank and for the financial activities in which the bank has been licensed for.

1037. During the on-site interviews the NBM authorities informed the evaluation team that during the licensing procedures the AML/CFT department is consulted in ML/TF suspicions might arise both in case of banks and exchange offices.

1038. Regarding the fit and proper qualifications of directors and senior management, the Law on Financial Institutions contains provisions on the qualifications, experience and integrity of its administrators in the context of the licensing procedure. These requirements are further detailed in the NBM Regulation on the requirements of bank's administrators (Decision of the Council of Administration of the NBM No. 134 of 1 July 2010). The NBM Regulation contains an extensive list of information to be submitted by the bank to the NBM in order to obtain the confirmation of the NBM for the position of an administrator (including criminal record checks).

1039. The information which must be provided to the NBM appears adequate to assess the fit and proper qualifications of an applicant for the position of an administrator. Minor concerns remain as to the feasibility of the NBM to assess the sheer amount of information and to reach a conclusion on that basis, but the assessors were advised that the NBM is allowed sufficient time to analyse thoroughly. It is however acknowledged that this system may carry benefits and provided there is sufficient staff to scrutinise that information, may prove effective.

Foreign exchange entities

1040. For exchange offices the situation is broadly similar.

Professional participants of the non-banking financial market

1041. Art 29 of the Law on Insurances deals with qualified participations and requires information of the NCFM and in cases when threshold are surpassed/undercut a preliminary approval of the NCFM is necessary. These rules do, however, not require any specific steps in relation to fit- and properness of shareholders. Art 31 of the same law requires the insurer to hire sufficient staff, but does not contain provisions on the qualifications or fit and properness of its senior management.

1042. Art. 53 of the Law on Securities is supposedly the legal basis for compliance with this criterion for professional participants on securities markets. Officers are required to be inter alia of a good report, but there are no provisions as to the fit and properness of such companies' shareholders.

1043. Similar *"fit and proper"* requirements are also applicable to financial institutions subject to NCFM supervision namely the professional participants of the non-banking financial market. According to Art. 12 of the NCFM Law, appointed members of the Administrative Council could only be citizens of the Republic of Moldova, having a record of experience on finance, economy or banking for at least 10 years, good civic and professional reputation and having no incompatibilities whatsoever as listed by the law. Amongst these incompatibilities Art. 27 quotes having previous criminal records, or be in close relations with the President of Moldova.

1044. There are no additional legal provisions or regulation to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest of the leasing company in the Republic of Moldova. There are no fit and proper requirements for the Post Office and for the leasing companies.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

1045. Moldovan authorities explained to the evaluation team that there is no legal provision for authorising independent value transfer (MVT) services. Such services are provided in practice by some banks within the scope of their licence and by "Posta Moldovei" (national post service)[71]. According to the Moldovan authorities MVT service providers are regarded by the authorities as clients of banks and no direct licensing or any other relation is maintained between the authorities and the MVT service providers.

1046. The exchange service is regulated by the Law on Foreign Exchange Regulation no. 62-XVI as of 21 March 2008 and the FEE Regulation. The license for carrying out currency exchange activities in cash with individuals is issued by the NBM.

Licensing of other Financial Institutions (c. 23.7)

1047. It is undisputed by the Moldovan authorities that they do not exercise any form of regulation or supervision over the Transnistrian financial institutions.

On-going supervision and monitoring

Recommendation 23 & 32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4)

1048. According to the law the NBM and the NCFM apply their full range of prudential measures to AML/CFT matters where it is appropriate to do so. Prudential measures cover the elaboration of normative acts and guidelines, on- and off-site inspections and analysis.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

1049. The supervision of the value transfer services provided by banks, are subject to the same licensing and monitoring principles and mechanisms.

1050. The supervision of the Posta Moldovei is assigned to the Ministry of Information Technology and Communications. No information on supervisory actions by the Ministry of Information Technology and Communications was provided. During the on-site visit, the evaluators were told that AML/CFT is effectively supervised in the course of the ordinary supervisory procedure but no further details were provided. It is not clear in how far the OPFML fills this supervisory gap.

1051. Foreign exchange offices are supervised by the NBM. While the NBM law uses distinct terminology for its functions with respect to foreign exchange offices compared to financial institutions, the competences in essence are the same. Supervisory measures comprise of the issuance of normative acts, including regulations, and on-site inspections. In the course of the on-site inspections the NBM verifies the foreign exchange offices' internal PCMLTF and compliance with AML/CFT provisions and the internal PCMLTF. There is no indication of an ongoing monitoring process. In the light of the

[71] The Moldovan authorities informed the assessors during the pre-meeting that the Parliament of Moldova recently approved the Law on payment services and e-money based on which all money transfer operators, including non-bank operators, will be licensed and supervised by the NBM. Additionally, the NBM will maintain a current list of the names and addresses of licensed money transfer operators and will be responsible for ensuring compliance with licensing requirements. It should be mentioned that banks provide money transfer operations based on the license issued by the NBM and provisions of Art 26 of the Law on financial institutions. The supervision of the value transfer services provided by banks, are subject to the same licensing and monitoring principles and mechanisms.

information provided regarding on-site inspections, which covers roughly a third to a half of all foreign exchange offices each year, this results in a two- to three-year cycle of monitoring measures.

Supervision of other Financial Institutions (c. 23.7)

1052. Assessors have not identified other financial institutions in the Republic of Moldova.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

Table 29: Inspections of banks by the NBM

Year	Complex inspections[72]	Thematic inspections	No. of violations of CDD requirements	Fines	Warnings
2008	16	5	25	1	4
2009	15	5	15	2	4
2010	15	10	50	1	18
2011/6/30	5	2	31	0	6

Table 30: Controls of foreign exchange entities by the NBM

The total no. of foreign exchange entities is 1,214 as of 30 June 2011) (Note: it is not known whether the sanctions were applied for violations of AML/CFT legislation)				
Year	**No. of inspections**	**No. of written warnings**	**No. of decisions regarding the suspension of the activity**	**No. of withdrawals of licence**
2008	648	53	60	1
2009	497			
2010	670			
To 2011/6/30	229			

Table 31: Inspections of securities transactions by NCFM

Year	Total no. of securities transactions	No. of complex controls	No. of inspections focus on AML/CFT	No. of sanctions in total	No. of sanctions for violation of AML/CFT legislation
2009	1173	9	0	4 sanctions (8,000 MDL ~ €540) 9 warnings for responsible persons 6 prescriptions for law violations	4
2010	920	9	0	2 sanctions (2,000 MDL) 7 warnings for responsible	1

[72] The NBM performs annual complex inspections to each bank. Thus, the total number of complex inspections/year corresponds to the number of banks operating within Moldova (without Transnistria).

				persons 5 prescriptions for law violations	
2011	289	8	0	7 sanctions (18,000 MDL) 14 warnings for responsible persons 7 prescriptions for law violations	0

Table 32: Inspections of insurances by NCFM

Year	Total no. of securities issuers	No. of complex controls	No. of thematic inspections with a focus on AML/CFT	No. of sanctions in total	No. of sanctions for violation of AML/CFT legislation
2009		6	0	0	3 prescriptions for law violations
2010		12	0	6 sanctions (163,400 MDL)	9 prescriptions for law violations
2011		12	0	8 sanctions (212,700 MDL)	2 prescriptions for law violations

1053. Regarding the inspections of savings and loan associations in accordance with Art. 4 of the AML/CFT Law, it is noted that they were no reporting entities –until 22 April 2011, and therefore the NCFM did not supervise those institutions. Starting with 23 April 2011, as result of amendments to the AML/CFT Law (Law nr.67 from 7 April 2011) the NCFM is authorised to perform inspections and controls in the field of AML/CFT for the savings and loan associations.

Table 33: Inspections of savings and loan associations by NCFM

Year	No. of complex controls	No. of thematic inspections with a focus on AML/CFT	No. of sanctions in total	No. of sanctions for violation of AML/CFT legislation
2011	33	0	12 sanctions (153,400 MDL)	0

Table 34: Notifications received by supervisory authorities from the OPFML

Year	Total no.	Banks	Insurances	Brokers	Leasing companies	Insurance brokers	Notaries	Casinos	Exchanges
2009	43	5	22	3	1		12		
2010	39	4	5	5	3		22		
2011	30	3	1	1	3	1	10	1	10

1054. In cases where the OPFML identifies violations of AML/CFT requirements during the analysis of STRs, CTRs and threshold transactions this material is sent to the supervisory bodies for examination according to the competences. This process is defined by the term *"notifications"*.

Table 35: Inspections performed by OPFML on non-banking financial institutions

Year	Reporting entities	Number of inspections	Number of contraventions identified	Applied sanctions, lei
2009	Securities brokers	3	1	6,000
	Insurance companies	22	6	30,000
2010	No inspections performed due to the lack of legislation.			
2011	Bureaus of exchanges	19	9	31,500
	Insurance companies and brokers	5	3	27,000

1055. The adequacy of on-site inspections appears to meet the requirements for a sufficient oversight over the AML/CFT compliance measures implemented in the banks. It must, however, be noted that the majority of on-site inspections covers AML/CFT among many other examination issues and the extent of scrutiny applied cannot be assessed. While there is a considerable on-site activity by the NCFM, the number of thematic AML/CFT inspections by the NCFM is not satisfactorily.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

1056. Due to a lack of statistics the effectiveness of this criterion cannot be assessed positively.

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])

1057. The evaluation team welcomes the improvements made by the Moldovan authorities in the regulation of the supervision are but concerns remain in terms of effectiveness.

1058. In the 3rd round report it was remarked that there are no checks on the origin of funds and professional qualifications in the insurance sector. According to the information provided in the 4th round the NCFM fundamentally relies on the institutions' programmes concerning the prevention and combating of money laundering and terrorism financing. Whereas the application of a risk-based approach may prove an efficient method, in consequence a huge task relies on the supervisory authority to supervise effectively the risk-based approach. If the risk-based approach adopted by the reporting entities is not properly supervised, this may result in a lacuna of supervision and consequential risks.

1059. The fraudulent takeover attempt on Moldovan banks which took place in summer 2011, raises issues concerning the adequacy and effectiveness of the legal and regulatory framework to prevent criminals from holding or being the beneficial owner of a significant or controlling interest in a bank.

1060. Given the current staff level, there are serious concerns as to the feasibility of an effective supervision over the institutions' programmes. Consequently, the factors underlying the rating of the 3rd round report are sustained.

1061. The sanctioning regime lacks clearly defined penalties and reference to the relevant legislation is unsatisfactorily. Not all AML/CFT breaches are covered by Art. 291^1 of the Contravention Code. The level of possible fines is low and cannot qualify as effective and dissuasive. The limits are too close to provide the authorities the possibility to impose proportionate sanctions.

Guidelines

Recommendation 25 (c. 25.1 – guidance for financial institutions other than feedback on STR-s)

1062. Pursuant to Article 10 (2) of the AML/CFT Law, the bodies empowered to supervise the reporting entities, within their powers should provide Guidance for the identification of transactions suspected of financing of terrorism.

1063. In order to fulfil the requirement of the AML/CFT Law, the CCECC has issued Order No 118 of 20 November 2007 on approval of the Guide to Suspect Activities or Transactions under the incidence of the Law on Prevention and Combating of Money Laundering and Terrorism Financing for the reporting entities.

1064. This guidance establishes criteria and signs of suspicious transactions and activities for every specific financial institution, in particular describes ML and TF methods and techniques to which FIs have to pay attention when carrying out the transactions.

1065. The guidance issued by the supervisory authorities is limited. Although the NBM and NCFM are empowered to do so, they have not made extensive use of this power so far. Instead they rely to a high degree on regulations exemplifying the provisions of the AML/CFT Law. The NCFM and the NBM refer in this respect to its extensive regulations (e.g. AML/CFT Banks' Regulation, AML/CFT NCFM Regulation). The two documents contain guidance on the structure of the AML/CFT programmes, know your customer and CDD measures, reporting procedures, data storage and internal controls but they do not contain red flags, indicators or ML trends.

1066. The supervisory authorities place their reliance on the OPFML guidance, on specific topics:

- Guidance on Suspect Activities or Transactions under the incidence of the Law on Prevention and Combating of Money Laundering and Terrorism Financing (Order no 118);
- Guidance on the manner to reporting activities or transactions under the incidence of the Law on Prevention and Combating of Money Laundering and Terrorism Financing (Order no 117);
- Guidance for the identification of transactions suspected of financing of terrorism (Order no. 40).
- Guide regarding the identification of politically exposed persons (Order no. 178).

Effectiveness and efficiency (R. 25)

1067. The existing guidance provides valuable explanations to the legal framework and the obligations of the financial sector that is aware of their content. However, in many occasions the existing guidance is not tailor made to their sector-specific risks, but is general guidance issued by the OPFML. Sector specific red flags, indicators or ML trends, techniques and methods are missing.

3.10.2 Recommendations and comments

Recommendation 23

1068. Although the AML/CFT Law now lists the supervisory authorities, the recommendation of previous reports remains unaffected and is repeated. Provision should be made for a clear and comprehensive allocation of supervisory powers in the area of AML/CFT over reporting entities to a specific supervisory authority either in the AML/CFT Law or in the sector specific laws.

1069. The evaluation team noted that the leasing companies were left outside of the supervision of any of the financial supervisors and they are the least regulated financial institution. The OPFML carries out supervisory function in respect of AML/CFT issues. The evaluation team strongly

encourage the Moldovan authorities to seek uniformity in the supervision area and place the leasing companies under appropriate financial supervision.[73]

1070. Supervisory authorities should demonstrate their role and competences in the area of AML/CFT themselves. Close cooperation with the OPFML is certainly of advantage but should not result in a de facto delegation of competences.

1071. Authorities are recommended to review the legal and regulatory framework to ensure that it adequately and effectively prevents criminals from holding or being the beneficial owner of a significant or controlling interest in a bank.

1072. A system of assessing fit and proper qualification of member of the executive or supervisory board and for senior management should be established for insurance companies.

1073. *"Fit and proper"* requirements for management and administrators should be provided in law or Regulation for leasing companies and *"Posta Moldovei".*

1074. The value transfer services provided by the Posta Moldovei should be effectively supervised for AML/CFT purposes. The draft "Regulation on the activity of banks within the international money transfer system" should be put into force and effect.

1075. Requirements should be established to prevent criminals from holding or being the beneficial owner of a significant or controlling interest over a leasing company should be detailed in subsidiary legislation/regulation as in the case of the rest of the financial sector.

1076. The Moldovan authorities should consider a continued effort to inform reporting entities that financial activity undertaken in Transnistria is not subject to supervision or monitoring by the Moldovan authorities.

Recommendation 17

1077. The situation has marginally changed compared with the 3rd round MER. The AML/CFT Law contains a general provision on sanctioning and Article 291^1 of the Contravention Code contains sanctions for certain breaches of AML/CFT obligations, which is an improvement.

1078. However, the Contravention Code does not comprehensively cover all the possible breaches of AML/CFT provisions and the AML/CFT Law is not sufficient in itself. The necessary bylaws (provisions in bylaws) still do not exist. Thus, the recommendation of the 3rd round report is upheld: The AML/CFT Law should include a clear list of administrative penalties applicable to the different breaches of the AML/CFT Law, possibly with reference to the sanctions available in the Code of Administrative Penalties or other legal acts.

1079. The Moldovan authorities should ensure that the penalties available for AML/CFT breaches are dissuasive and can be applied in a proportionate manner.

1080. The Moldovan authorities should provide for a clear allocation of sanctioning powers in the area of AML/CFT to a specific supervisory authority either in the AML/CFT Law or in the sector specific bylaws.

1081. The legal situation regarding the ability to sanction directors of securities intermediaries should be clarified. Powers to sanction directors and senior management of Post Office and leasing companies should be established.

[73] The Moldovan authorities informed the assessment team at the pre-meeting that there is a draft Law on leasing companies which will bring leasing companies under the supervision of the NCFM.

Recommendation 25 (c. 25.1 [Financial institutions])

1082. Sector specific guidance for different types of financial institutions, including description on new ML/FT trends and typologies is recommended to facilitate a more effective performance of obligations by financial institutions.

Recommendation 29

1083. The Moldovan authorities are strongly encouraged to provide for a clear and comprehensive allocation of supervisory powers in the area of AML/CFT over all financial institutions in the sense of the FATF Methodology to a specific supervisory authority either in the AML/CFT Law or in the sector specific laws.

1084. Supervisory powers are mentioned in the AML/CFT Law, but not in laws conferring supervisory powers (with the exception of the NBM). The supervisory powers' legitimacy is thus disputable. A clear legal basis for supervisory powers should be introduced into the sector specific supervisory laws for the issuance of normative acts, so as not to raise doubts on their legitimacy.

1085. The supervisory authorities, except for the NBM, should place greater emphasis on the supervision of AML/CFT controls. This area should be monitored separately and not only in the general course of supervision. The OPFML's role in on-site visits is clearly acknowledged but cannot substitute for the supervisory authority's own role in this respect.

1086. A legal basis for supervisory authorities powers in respect of professional participants, Post Office and leasing companies to enable them to conduct inspections, including on-site inspections, to ensure compliance, which also should include the review of policies, procedures, books and records, and should extend to sample testing.

1087. Legal basis should be adopted for the supervisory authorities to compel production of records, documents and alike in respect of Post Office and leasing companies.

1088. Necessary powers should be adopted to apply sanctions against entities' directors and senior management.

Recommendation 30 (all supervisory authorities)

1089. Staffing of supervisory authorities should be enhanced; this applies especially to the NCFM, and even more once the NCFM will be in charge of supervising the leasing companies. If the Republic of Moldova should decide to follow the path of all-encompassing supervisory powers for AML/CFT with the OPFML – as it was presented by some state authorities – this will have serious staff implications for the OPFML and will demand considerable increase in staff at the OPFML.

1090. Once the supervisory function of some authorities is established and internalised, staffing will be required as well as training. In the beginning this training may be provided by knowledgeable institutions such as the OPFML or the NBM, and in a later and advanced stage, training may be provided in-house.

Recommendation 32

1091. While the situation has improved compared to the situation at the 3rd MER the recommendation of the 3rd round report is upheld: better statistical data should be kept by all supervisory bodies, detailing the nature of AML/CFT violations detected and penalties imposed.

Statistics of on-site visits and use of sanctions need reviewing collectively and on a coordinated basis, in order to have a clear picture of the level of AML/CFT compliance across the financial sector.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**PC**	• No clear designation of authorities to impose sanctions; • Penalties for non-compliance with the AML/CFT Law are incomplete and not clearly specified; • Fines are not enough dissuasive and cannot be applied in a proportionate manner; • No possibility to sanction directors and senior management of Post Office and leasing companies; • Effectiveness issues.
R.23	**PC**	• The allocation of supervisory responsibilities are not clear; • Exclusion of „A“ Savings and Credit Association from the supervision in AML/CFT matters; • No requirements to carry out fit and proper tests of senior managers and executive/supervisory board members in insurances; • No procedures to prevent criminals from holding or being the beneficial owner of a significant or controlling interest or holding a management functions in case of leasing companies. **Effectiveness:** • In the absence of a risk assessment, the implementation of adequate risk based supervision was not demonstrated; • Low number of on-site examinations for AML/CFT compliance in the non-banking financial sector; • Effectiveness of supervision over some reporting entities by the designated supervisory authority was not demonstrated; • No evidence of supervision for the value transfer system provided by the Posta Moldovei.
R.25	**PC**	• No sector-specific guidelines; • Insufficient feed-back from FIU to FI.
R.29	**PC**	• The supervisory powers' legitimacy (except for the NBM) is disputable; • Supervisory authorities are not authorised in respect of Post Office and leasing companies to conduct AML/CFT inspections; • No explicit competence of the NCFM to conduct on-site inspections;

		• No legal basis meeting the formal requirements for the supervisory authorities to compel production of records, documents and alike in respect of Post Office and leasing companies; • No supervisory powers to apply sanctions against entities' directors and senior management. **Effectiveness:** • A lack of supervision over the non-banking financial market participants.

3.11 Money or value transfer services (SR. VI)

3.11.1 Description and analysis

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

Summary of 2007 factors underlying the rating

1092. In the third round MER of the Republic of Moldova Special Recommendation VI was rated PC, based on the following factor:

- Requirements identified under R.5-11, 13-15, 21 are not implemented by the Post Office and those under R.17, 24, 25 do not apply to the Post Office, which is part of this sector.

1093. The Moldovan authorities explained the evaluation team that subagents of money transfer providers are just banks and the Post Office. Banks carry this activity based on the license issued by NBM and provisions of article 26 of the Law on Financial Institutions.

1094. Banks' activity as subagents of money transfer providers are supervised within the general supervision carried out by the NBM based on the requirements of *Regulation on the activity of banks within the international money transfer systems* which contains provisions related to prevention of money laundering and combating the financing of terrorism by means of international money transfers systems (identification of the payer/beneficiary, information from message accompanying the international money transfer, internal procedures related to money laundering prevention and combat terrorism financing, etc.).

1095. Money remitters (apart from the Post Office) are not expressly mentioned in the AML/CFT Law.

Designation of registration or licensing authority (c. VI.1), adequacy of resources – MVT registration, licensing and supervisory authority (R. 30)

1096. There is no registration or licensing system in Republic of Moldova for the MVT services except for the Post Office.

1097. However, the Moldovan authorities maintained even if there is no direct licensing system, the activities carried out by MVT are *"indirectly"* licensed. According to Art. 26 of the Law on Financial Institutions, amongst the activities allowed to be performed by banks *"providing payment and collection services"* is listed. Also, according to Art. 12 paragraph 1 of the same Law, no one shall engage into financial activities, without a license issued by the National Bank of the Republic of Moldova.

1098. The evaluation team is of the opinion that the provisions described above do not fully cover the requirements of the FATF standard as the Law on Financial Institution does not provide a definition for *"financial activities"* and the definition of *"financial institutions"* is too restrictive and does not cover the MVT services. That leaves open the possibility for a MVT to operate in the Republic of Moldova without any license or registration.

1099. According to the *Regulation on the activity of banks within the international money transfer system*, an *"organiser of the international money transfer system"* is a legal entity that organises and ensures the functioning of the international money transfer. This is a different definition that the one provided for *"banks"* and therefore, not only banks might be such *"organisers".*

1100. According to the same Regulation, the banks, acting as MVT providers, have the obligation, before establishing business relations with an *"organizer"* of the international money transfer system, to identify and apply precautionary measures according to the risk associated with the *"organizer"*.

1101. Furthermore, according Art. 4 and 5 of *Regulation on the activity of banks within the international money transfer systems*, in order to start the activity in the international money transfer system, the bank shall present to the NBM a notification in writing, at least 30 days before starting such activity.

1102. The notification shall contain the name of the international money transfer system; name, and identification data of the administrators and beneficial owners of the organizer of the international money transfer system; description of the status, type of the activity of the bank within the international money transfer system; operating scheme of the international money transfer system (the flow of information and money), stakeholders and their responsibilities in the operating scheme.

1103. The NBM checks the documents provided by banks in relation to the MVT services and if the case may be, the bank is made aware of any violations detected by the supervisor. The banks must remediate any such shortcomings before starting the activity as money remitter.

1104. According to art. 10 of the afore-mentioned Regulation, participating bank shall approve written internal procedures which have to be in compliance with the legislative base in force in the AML/CFT area.

1105. In addition, the banks which are acting as MVT providers, based on factors that influence the level of risks, shall evaluate the risk management mechanisms, as well as the financial risk and operational risk established by the *"organizer"* of the international money transfer system.

1106. NBM is the supervisory authority that executes control on implementation and enforcement of AML/CFT measures in the banks, including on the activities carries out by them as MVT agents. The controls are performed as part of the general verification of the banks.

1107. The Ministry of Information Technology and Communications is the supervisory authority of the Moldovan Post Office (according the Law on the Post Office). The evaluation team established during the on-site visit that there are only 3 (three) employees who are designated to monitor and supervise the Post Office, including for AML/CFT purposes. During the on-site interviews the evaluators were told that the Ministry encounters serious difficulties to execute their AML/CFT obligations due of lack of resources and expertise.

Application of the FATF 40+9 Recommendations (applying R. 4 – 11, 13 – 15 & 21 – 23 and SR IX (c. VI.2))

1108. During the on-site interviews the evaluators were told that according to AML/CFT Law, the banks which provide money transfer services shall execute all the CDD measures that are included in the Law. The evaluators were also told that MVT service operators have internal programs and rules for AML/CFT.

1109. In addition, the provisions of the *Regulation on the activity of banks within the international money transfer systems* applies. According to art. 32, when providing MVT services, the banks shall develop and implement effective mechanisms for establishing the identity of the payer/beneficiary before providing the international money transfer service. The identity of the payer/beneficiary shall be established at least based on the identification documents, and if an empowered person makes the transfer, based on the identification documents and power of attorney which shall be presented. The ordering participating bank shall ensure that the message accompanying the international money transfer shall include at least the following information on the payer:

- First and last name;
- Unique reference number of the money transfer;
- Address or national identity number, or date and place of birth.

1110. Upon receipt of an international money transfer, the beneficiary participating bank verifies if the accompanying message contains full information on the identity of the person who initiated the respective transfer:

a) First and last name;
b) Unique reference number of the money transfer;
c) Address or national identity number, or date and place of birth.

1111. According to Policy of prevention and fight against money laundering and financing of terrorism, adopted by the Post Office, an identification based on ID documents with photograph should be made before conducting any operations for sending international money transfers and before payment of any transfers with no exceptions, notwithstanding the amounts of such transfers.

1112. In case of the Post Office, the following information shall be included when sending an international money transfer: name, surname, patronymic and address of the sender; sender's telephone number (if the sender has a telephone number); beneficiary's full name (name, surname, patronymic), address and telephone number (if the beneficiary has a telephone number); detailed information (series, number, where and when issued) on the sender's ID document (with the sender's photograph); purpose of money transfer and sender's signature.

1113. In case of lack of complete information about the person who initiated the international money transfer, shall be considered by the beneficiary participating bank as a factor in assessing whether the respective international money transfer is suspicious. The suspicious character of the international money transfer should be assessed and if determined, the beneficiary participating bank shall take the necessary steps according to AML/CFT Law.

1114. According to the *Quality Policy of prevention and fight against money laundering and financing of terrorism,* adopted by the Post Office, for the money transfers via third parties, the client shall present the documentation necessary to prove the legal representation (a power of attorney). The ID documents and data both for the third party and for the effective owner of funds shall be verified by the Post Office. Any transfers sent or received via third parties shall be executed only if the third party may be properly identified. No transfers shall be accepted or paid-out unless the third party is properly identified. The owner of each and every transfer must be identified**.**

1115. According to the *Quality Policy*, for large amounts the following are valid:

a) Upon sending any money transfers in large amounts the necessary documents must be received in strict compliance with the indications of Moldovan regulatory authorities, all documents must be confirmed /signed by the clients and filled-in together with the application.
b) Should any client request to send abroad an amount of 500 to 1,000 USD in one or several transfers, he/she shall provide the documents justifying the need to transfer such an amount.
c) The client may send abroad a money transfer exceeding 1,000 USD only upon presentation of the authorization received from the National Bank of the Republic of Moldova.
d) The division of transfers into smaller amounts in order to avoid presentation of justification documents is a violation of law and Post Office's policies. In no case may an amount be divided into two or more transfers in order to avoid the restriction and the minimum limit of 1,000 US dollars.
e) The informational system used for the sending and payment of money transfers generates reports on the monitored transfers and upon necessity generates reports for the competent authorities.

1116. All subdivisions of the Post Office shall keep records of all transactions conducted within a specified period in accordance with the requirements of the country's competent authorities.

1117. During the on-site interviews the MVT operating within banks explained to the evaluation team participate to the training programs organised by their own headquarters but FIU also provided training on legal aspects and STRs identification.

1118. No proper training on AML/CFT typologies was provided to the Post Offices.

Monitoring MVT services operators (c. VI.3)

1119. There is no direct system for monitoring MVT service operators as such. As explained by the Moldovan authorities, the MVT are regarded as banks' clients and all compliance responsibility is borne with the bank.

1120. Within the NBM there is a special Payment System Department that is in charge with money transfer general supervision. During the on-site visits, this department checks also AML/CFT issues.

1121. The off-site supervision shall be carried out by examining the information submitted by the banks in accordance with *Regulation on the activity of banks within the international money transfer systems*, information from the official web-pages of the banks and other relevant information.

1122. On-site inspections are based on NBM's internal procedures and include verification of bank's internal procedures to combat AML/CFT based on the requirements of the *Regulation*, verification of a sample of the payments orders ant if they were reported to FIU, the level of training of the personnel involved in money transfer services etc.

1123. The Moldovan authorities provided limited statistics on the violations identified in respect of MVT services only for the period June-December 2001 when out of 11 complex on-site inspections, 5 violations were found on relevant Regulations (*Regulation on credit transfer, Regulation on the activity of banks within the international money transfer systems*, *Regulation on bank cards*).

Lists of agents (c. VI.4)

1124. NBM does not keep a list of MVT service providers and the evaluation team was explained that they are regarded by the authorities as clients of banks[74]. As described above, no direct licensing, authorisation or any other relation is established between the authorities and the MVT services. The correct application of the AML/CFT requirements falls entirely under banks' responsibility.

Sanctions (applying c.17 – 1 – 17.4 & R. 17 (c. VI.5))

1125. As no separate sanction regime is available for MVT, all the findings of Recommendation 17 fully apply both in case of services provided by banks and Post Office.

Additional elements – applying Best Practices paper for SR. VI (c. VI.6)

1126. The Best Practices paper for SR. VI is not implemented within the Moldovan AML/CFT system.

1127. There are risks in the Republic of Moldova related to MVT service operators acting outside the formally regulated financial system (e.g. hawala, fei chen) especially since there is no formal prohibition to perform MVT services outside the banking system, without any licence[75] (as described above). However, the evaluators were advised that no such operators had been identified yet. At the same time, no information on comprehensive measures taken by the designated authorities to detect such facts was provided.

Effectiveness and efficiency

1128. The MVT are not mentioned as such in the AML/CFT Law (except for the Post Office) therefore they do not have direct obligation in respect of SR VI requirements.

1129. In practice, the MVT services are provided by the banks and Post Office and all AML/CFT measures available for the FI apply in case of MVT services. The banks demonstrated a relatively high level of awareness in respect of CDD and reporting obligations and since the MVT services are considered as part of the banking services, the AML/CFT obligations are applied equally.

1130. The evaluators were told that in practice, the identification of the client is done (based on AML/CFT Banking Regulations) for each and every client and transfer. When receiving money, a personal document for identification (ID or passport) is needed. There is also an obligation for verification of the code that is used for the transfer. In case of out-going payments, copies of the ID documents are sent together with the order. The additional element of identification in ordering money is the information gathered for the address of the client.

1131. The supervision on the MVT service operators is ensured by NBM in case of banks and by the Ministry of Transport and Communication in case of the Post Offices, in the framework of the general supervision. Therefore, all the findings of Recommendation 23, 29 and 17 apply. The effective supervision of the MVT was not demonstrated.

[74] Moldovan authorities explained that after the entrance into force of the Law on payment services and e-money (one year after the publication in the Official Journal), other non-bank institutions will be allowed to perform the activity of subagents of money transfer providers just after being licensed by NBM. Meanwhile, NBM is obliged to develop and approve regulations related to above mentioned law, including regulation that establishes requirements related to AML/CFT for non-bank institutions. Additionally, based on the above mentioned law, NBM will maintain a current list of the names and addresses of licensed money transfer operators and will be responsible for ensuring compliance with licensing requirements. At the moment, NBM maintain an up to date list of financial institutions.

[75] Law on payment services and e-money will prohibit the provision of payment services, including money transfer operation, without license

3.11.2 Recommendations and comments

1132. The Moldovan authorities are recommended to adopt legislation prohibiting the provision of payment services without a licence.

1133. The Moldovan authorities should include the MVT amongst the reporting entities listed in the AML/CFT Law as having reporting, CDD and other obligations in AML/CFT area.

1134. The Moldovan authorities are strongly encouraged to enhance AML/CFT supervision for MVT service operators.

1135. A list of licensed or registered MVT service operators should be maintained by a designated competent authority.

1136. The Republic of Moldova should take measures to prevent MVT related activities carried outside the formal financial system. It is also necessary to correct all flaws and deficiencies in the AML/CFT measures in the banking and postal system, which are also applicable in the context of bank and postal money transfers.

1137. It should be ensured that sanctions are effectively applied to MVT in case of AML/CFT obligations breaches.

3.11.3 Compliance with Special Recommendations VI

	Rating	Summary of factors underlying rating
SR. VI	**PC**	• No formal prohibition to provide MVT services without a license; • No list of MVT providers; • The effectiveness of the supervision and sanctioning regime was not demonstrated.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

1138. The only legislation that establishes requirements on AML/CFT issues in respect of DNFBP is the AML/CFT Law. In this regard, deficiencies identified in Section 3.1 of this report are also applicable to DNFBP.

Generally

1139. According to Article 4 of the AML/CFT Law the following DNFBP are subject to this law and are regarded as *"reporting entities"*:

- institutions that legitimate or register the ownership right;
- casinos (inclusively internet-casinos);
- places of rest, equipped with gambling devices, institutions organizing and carrying out lotteries or gambling;
- real estate agents;
- dealers in precious metals or precious stones
- lawyers, notaries, independent accounts and other legal independent professionals, during the preparation, the carrying out or the realisation of the transactions, on behalf of the natural or the legal person, related to the:
  - purchasing and selling of real estate;
  - natural or legal persons business management;
  - creation, functioning or management of a legal persons, excepting the cases of evaluation of the legal situation of a client, or carrying out a task of protection or representing the client in a juridical proceed or about it;
- auditors, independent accountants and financial banking or non-banking consultants;
- persons who provide investment or fiduciary assistance;
- natural or legal persons that practice entrepreneurial activity and submit in the conditions of the leasing agreement, to the borrower based on its request for a certain period the right of possession and use of a good the power of whom is with or without the submitting of the property or use right on the good at the expiration of the term of the contract.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

1140. In the Republic of Moldova all the designated non-financial businesses and professions specified by the FATF Recommendation 12 are covered by the AML/CFT Law. According to the AML/CFT Law all DNFBP have obligations to report, perform client identification, increased diligence, record keeping, internal programmes and procedures, appointment of anti-laundering officials etc.

Recommendation 12 (rated NC in the 3rd round report)

Summary of 2007 MER factors

1141. In the Third Round MER, Recommendation 12 has been rated as 'NC' for a number of factors, mainly similar to the deficiencies identified for the individual component Recommendations making up the composite Recommendation 12. Some of these deficiencies, as already noted for the

financial sector under the relevant Recommendations for Recommendation 12 as assessed by the evaluators for the Fourth Round, have been addressed. The paragraphs that follow aim to apply the relevant assessment for the financial sector to the non-financial or DNFBP sector.

Applying Recommendation 5 (c. 12.1)

1142. According to the FATF Methodology, DNFBP should be required to comply with the requirements set out in Recommendation 5 (Criteria 5.1 – 5.18) for circumstances specific to casinos, real estate agents, dealers, lawyers, and trust and company service providers (TCSPs). DNFBP should especially comply with the CDD measures set out in Criteria 5.3 to 5.7 but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction.

1143. Under Art. 4 of the AML/CFT Law, all DNFBP listed under FATF Methodology are included as obliged entities.

1144. All DNFBP in the Republic of Moldova relay on the AML/CFT Law for compliance purposes as there are no sector-specific additional regulations or guidance. Independent accountants were included as reporting entities in the AML/CFT Law in April 2011.

Casinos (Internet casinos/Land based casinos)

1145. According to the AML/CFT Law the casinos (including internet casinos) are subject to the AML/CFT requirements and in this respect are required to comply with the same requirements set out in criteria 5.1-5.18 as the financial institutions.

1146. In practice, casinos identify clients by identification documents (only identity card and passport accepted) and by additional measures related mostly to internal security reasons (photographing at the entrance of the casino and registering into an internal database). During the evaluation mission the evaluators were told that this identification is made mainly to comply with the provisions stipulated in the Law on gambling.

1147. According to the information received during the on-site interviews casinos maintain business relations with natural persons from Transnistria. The evaluators were told that these clients should be reported to the FIU but in practice they are not.

1148. Deficiencies specified in Section 3.1 in respect of Recommendation 5 also apply to casinos.

Real estate agents

1149. The AML/CFT Law covers real estate agents with all the obligations mentioned before.

1150. In practice, according to the information received during the evaluation mission there are no internal rules and guidelines connected to the AML/CFT, no training was provided to the industry by the Moldovan authorities in this respect and no compliance officer is appointed in the real estate companies.

1151. The evaluation team noted that the real estate agents have a low awareness of the AML/CFT requirements in general. Appropriate CDD measures are taken only for natural persons. Beneficial owners of legal entities are not identified on a regular basis.

Dealers in precious metals and dealers in precious stones

1152. The AML/CFT Law covers dealers in precious metals and dealers in precious stones with all the obligations connected with reporting, identification, increased diligence, record keeping, internal programmes and procedures and appointment of AML/CFT compliance officers.

Lawyers, notaries and other independent legal professionals, auditors and accountants

1153. According to the AML/CFT Law the scope of the reporting entities includes lawyers, notaries, independent accountants and other independent legal professionals, during the preparation, the carrying out or the realisation of the transactions, on behalf of the natural or the legal person, related to the purchasing and selling of real estate; natural or legal persons business management and creation, functioning or management of a legal persons.

1154. During the on-site interviews, the Tax Revenue Authorities stated that the notion of "*independent accountants*" it is not regulated by law in the Republic of Moldova, therefore, in practice, the accountants are not covered by the AML/CFT Law. In the same time, it was maintained that there is no law to prevent professionals to provide independent accounting type of services. Other Moldovan authorities stated that in practice independent accountants do not exist as they all act within audit firms. It seems it is not clear even for the Moldovan authorities whether the accountants are or not within the scope of the AML/CFT Law in practice.

Lawyers and notaries

1155. According to the professionals met on-site, all the lawyers in the Republic of Moldova are members of the Lawyer's Association.

1156. The legal professions perform CDD when entering into a business relationship with their clients in accordance to their own professional laws and were less aware of the AML/CFT requirements. For natural persons an ID document is required but no copies of such documents are kept. For legal persons the only data collected for CDD purposes is the certificate for registration and the power of attorney for the natural person acting on behalf of the legal entity and contact details such as telephone number, address and e-mail for correspondence purposes. No attempt is made to identify the beneficial owner.

1157. The identity of the customers is not verified using reliable, independent source documents, data or information.

1158. Documents issued in Transnistria are not accepted for documents and transactions neither for legal persons nor for natural persons.

1159. The concept of risk-based approach is limited to the lists of high risk jurisdictions listed in FIUs Order 118. The concepts of ECDD or simplified CDD are not applied.

Accountants and auditors

1160. The accountants and the auditors were vaguely aware of the notion of CDD and CDD related AML/CFT requirements (including the risk-based approach). It appeared that in practice they rely on other professional laws such as the accountancy law or the archiving law for identification or record keeping reasons.

1161. In addition to the AML/CFT Law, the Ministry of Finance issued Order 63/2009 on *Methodological recommendations on implementation of measures to prevent and combat money laundering and terrorist financing by audit firms and individual entrepreneur auditors*. The Order contain index of suspicious money laundering and terrorist financing transactions, guidance on detection and reporting cases of money laundering and terrorist financing, internal control procedures, risk assessment procedures, customer identification procedures and procedures of recording and preserving information related to preventing and combating money laundering and terrorist financing.

1162. During the on-site interviews the evaluators were informed that auditors carry out the identification of their clients at the beginning of their relation but without gathering copies of documents. No verifications of the identity of the clients using reliable, independent source documents, data or information is performed.

1163. The notion of the beneficial owner is almost unknown to all these professions and the even the beneficial owners of the legal entities are not always identified.

Applying Recommendations 6, 8, 9, and 11 (c. 12.2)

1164. All deficiencies identified in Section 3.1 in respect of Recommendations 6, 8, 9 and 11 also apply to DNFBP.

1165. On the occasion of the on-site meetings the general impression of the evaluation team was that DNFBP are not aware of their obligations about PEPs. The Casinos have no rules or procedures in respect of PEPs. The lawyers challenge the definition of PEPs in the AML/CFT Law. The notaries and real estate agents do not perform any checks on the quality of PEPs of their customers.

1166. During the on-site interviews the auditors and the accountants appeared to be aware that there are some recommendations issued by the FIU in relation to PEPs, but they do not know how to implement them in practice.

1167. The DNFBP representatives do not verify the quality of foreign PEPs and with regard to the national (internal) PEPs, the evaluation team was informed that identification (if any) replies on people's presence in the media.

1168. None of the supervisory authorities provided assistance or guidelines for identification of PEPs for any category of DNFBP.

1169. The analysis and technical deficiencies identified in respect of the FI apply for the DNFBP. During the on-site interviews, the representatives of the sector demonstrated a low awareness on unusually large transactions matters.

Applying Recommendation 10

1170. According to the AML/CFT Law, the DNFBP are obliged to fulfil the same requirements on record keeping as the financial institutions. However, during the on-site interviews it appeared that not all DNFBP are aware of these requirements or if they do keep records of the identification documents and transactions, they rely on their professional laws and not on the AML/CFT requirements.

1171. The evaluators determined a level of misunderstandings on the obligation for record keeping in respect of the period that the documents should be kept in the case of the dealers in precious metals and stones, accountants and auditors (only 3 years) and real estate agents.

1172. The deficiency specified in Section 3.1 on record keeping also applies to DNFBP.

Effectiveness and efficiency

1173. Although the legal system described for the financial institutions is largely in place and the AML/CFT provisions apply equally to the DNFBP, the evaluators have serious concerns about the effectiveness of the system.

1174. A legal gap was identified in respect of the accountants who are not formally covered by Art. 4 of the AML/CFT Law due to the lack of definition and/or norms/regulation for the concept of *"independent accountant"*. However, it appears that accountancy services are provided by professionals in practice.

1175. Identification of the clients is generally performed by various categories of DNFBP but it is based on sectoral laws and not on AML/CFT requirements.

1176. The concept of risk-based approach in respect of CDD is generally absent.

1177. No verification of the identity documents is performed from independent and reliable sources.

1178. No measures are in place in respect of the beneficial owners.

1179. There are no measures taken by DNFBP to identify PEPs.

1180. The record keeping requirements are applied in an uneven manner by different DNFBP and vary from 3 to 7 years.

4.1.2 Recommendations and comments

1181. The evaluators welcome the measures taken by the Moldovan authorities in order to cover all DNFBP in all aspects of the AML/CFT requirements (including the risk-based approach, the obligations connected with identification, increased diligence, record keeping, internal programmes and procedures, identification of PEPs etc.).

1182. The Moldovan authorities are recommended to take legal measures to cover the accountants as reporting entities under the AML/CFT Law.

1183. At a practical level, the Republic of Moldova needs to address the effectiveness of the system and establish procedures that will guarantee that the legislation is implemented and enforced fully and properly.

1184. Awareness should be raise on the CDD obligations of the DNFBP in the AML/CFT Law in respect of: CDD measures, risk-based approach, beneficial owner, record keeping and PEPs.

1185. The evaluation team strongly recommends the Moldovan authorities to enhance training and supervision in order to overcome the effectiveness issues.

Applying Recommendation 5

1186. The Moldovan authorities are encouraged to adopt legal provisions in order to cover verification of the documents for all customers, based on reliable and independent sources.

1187. The AML/CFT Law should contain a provision obliging DNFBP to check whether the customer is acting on his own behalf or on behalf of somebody else. Further guidance should be provided on the steps to be taken in respect of the identification of the beneficial owners.

1188. Guidance should be adopted for the process of understanding the ownership and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements, including cases when somebody exercises ultimate effective control.

Applying Recommendation 6

1189. The Moldovan authorities should consider requiring reporting entities to establishing the appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP.

1190. More emphasis on awareness raising in relation the PEPs amongst the DNFBP sector is highly recommended to increase effectiveness.

Applying Recommendation 8

1191. The Moldovan authorities should consider having policies in place or take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

Applying Recommendation 10

1192. An express requirement should be included in AML/CFT Law for the transaction records to be sufficient to permit reconstruction of individual transaction so as to provide, if necessary, evidence for prosecution of criminal activity should be clearly stated in Law or Regulations.

1193. Law enforcement authorities should be amongst the "competent authorities" empowered by Law to request DNFBP to prolong the record-keeping period.

Applying Recommendation 11

1194. There is no definition/explanation for complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, to assist DNFBP in effective implementation. Therefore, the evaluation team strongly advise the Moldovan authorities to adopt such guidance.

1195. The Moldovan authorities should consider adopting requirements for all DNFBP to examine as far as possible the background and purpose of unusual transactions and to set forth their findings in writing.

1196. DNFBP should be required to keep the findings of the examinations of the unusually large transactions 5 years and make them available for competent authorities.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	• Accountants not covered by the AML/CFT Law in practice; • No clear requirements to determine whether the customer is acting on his own behalf or on behalf of somebody else.

		Applying Recommendation 5 **Effectiveness:** • No procedure on identification measures and verification source (with the exception of auditors); • The concept of risk-based approach in respect of CDD is generally absent; • No verification of the identity documents is routinely performed from independent and reliable sources. • No measures are in place in respect of the beneficial owners. ***Applying Recommendation 6*** **Effectiveness:** • Low awareness on PEP matters all across the DNFBP. ***Applying Recommendation 8 and 9*** • N/A ***Applying Recommendation 10*** • No express legal provision that the transaction records should be sufficient to permit reconstruction of individual transaction so as to provide, if necessary, evidence for prosecution of criminal activity. ***Applying Recommendation 11*** • There are no definition or further guidance for the DNFBP to identify complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose; • No requirements for DNFBP to examine as far as possible the background and purpose of such transactions; • No requirement to set forth the findings (of the examinations) in writing; • No requirement to keep records on the findings of examinations of unusual large transactions; • Low awareness on unusually large transaction matter across the sector.

4.2 Suspicious transaction reporting (R. 16)
(Applying R.13 to 15 and 21)

4.2.1 Description and analysis

Recommendation 16 (rated NC in the 3rd round report)

R.16 – applying R.13 & SR.IV

Summary of 2007 factors underlying the rating

Recommendation 16 in the third round MER of the Republic of Moldova was rated 'NC'. The evaluators' conclusion was based on the following factors:

- No DNFBP specific obligations on special attention and other actions related to business relationship with persons from countries with insufficient level of implementation of the FATF recommendations;
- No evidence of effectiveness of DNFBP compliance with general obligations on special attention and other actions related to business relationship with persons from countries with insufficient level of implementation of the FATF recommendations;
- No DNFBP' specific obligations on STR reporting in the AML/CFT Law;
- No evidence of effectiveness of DNFBP compliance with general obligations on STR reporting in the AML/CFT Law;
- No DNFBP specific obligations on internal controls, compliance, maintaining on-going employee training programmes and an audit function in the AML/CFT Law;
- No evidence of effectiveness of DNFBP compliance with general obligations on internal controls, compliance, maintaining on-going employee training programmes and an audit function in the AML/CFT Law.

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 DNFBP) R.16 – applying R.13 & SR.IV

1197. Pursuant to Article 8(1) of the AML/CFT Law all reporting entities including DNFBP have the duty to report suspicious transactions or activities. Reporting entities are obliged to immediately inform the OPFML of any suspect transaction which is being prepared, carried out or finalised.

Table 36: STRs (ML) submitted by DNFBP

Reporting Entities	2006	2007	2008	2009	2010	2011	Total
Notaries	0	0	0	0	2	0	**2**
Lawyers	0	0	0	1	1	0	**2**
Accountants/auditors	0	0	1	2	3	0	**6**
Company service providers	0	0	0	0	0	0	**0**
Casino	0	0	0	3	0	0	**3**
Real estate agents	0	0	0	0	0	0	**0**
Dealers in precious metals and stones	0	0	0	0	0	0	**0**
Total	**0**	**0**	**1**	**6**	**5**	**0**	**13**

1198. As evident from Table 36 notwithstanding the fact that all DNFBP are now subject to the reporting requirements the level of reporting is extremely low. A number of DNFBP, including company services providers, real estate agents and dealers in precious metals and stones, have never submitted any STRs. No STRs on TF have ever been submitted by DNFBP in the Republic of Moldova.

1199. It has to be noted that not all reporting entities are aware of (or acknowledge) the legal obligation to provide information to the FIU. In particular, during the on-site interviews certain representatives of the legal profession stated that the right of the FIU to ask information is subject to

professional secrecy provisions without making reference to the exceptions provided by the AML/CFT Law.

Casinos

1200. During the on-site interviews, the evaluators were told by the representatives of casinos, that the ML/FT risks posed by the gambling industry in Moldova are low due to the high level of taxation imposed on winnings. As a result, very few STRs were submitted by casinos to the OPFML. The representatives of the industry seemed familiar with the obligation of reporting suspicious transactions and threshold transactions above threshold. Three STRs were submitted to the FIU OPFML by the entire casino industry since 2009.

1201. During the on-site interviews, the evaluators were told by the representatives of casinos, that the low number of STRs submitted to the FIU is explained by the low risk of ML using gambling facilities, due to high level of taxation on winnings. The representatives of the industry seemed familiar with the obligation of reporting suspicious transactions and transactions above threshold. Three STRs were submitted to the FIU by the entire casino industry since 2009.

1202. The effective application by the casinos of the STR reporting obligations was not fully demonstrated as the low risk generally accepted by the industry was not confirmed by a formal national risk assessment.

Lawyers, notaries and other independent legal professionals and accountants

1203. Order 63 of 10 August 2009 issued by the Ministry of Finance (registered in accordance with Law 61 -XVI of March 16, 2007 on audit activity) requires individual entrepreneur auditors who perform audit activities, to elaborate proper internal policies and procedures to identify suspicious transactions and to apply the provision of the Order 118 (the Guidance on suspicious transactions and activity).

1204. As described under recommendation 12 above, it is unclear whether independent accountants are subject to AML/CFT requirements, including the reporting obligations.

1205. During the on-site interviews, the evaluators got the impression that although the notaries and lawyers are familiar with their obligation to report (for instance they were aware that STRs can be filed and reported on manually and electronically) they do not fully comply with this obligation..

1206. According to general statistics provided by the OPFML for the first nine months of 2011, no STRs were reported by DNFBP. The number of reports on threshold transactions for the same period is 611 (all of them reported by notaries).

Real estate companies and dealers in precious metals and stones

1207. During the interview with a representative from each of these two sectors, the evaluators were informed that no STRs and CTRs were reported to the OPFML. Low level of awareness and little concern for complying with reporting duties was noted.

Legal Privilege R.16 – applying R.13 & SR.IV

1208. Article 4 paragraph (i) exempts lawyers, notaries, independent accountants and other independent legal professionals from the reporting obligations in those cases where they are evaluating the legal position of a client, or defending or representing a client in judicial proceedings.

No Reporting Threshold for STRs (c. 16.1; applying c. 13.3 to DNFBP)

1209. There is no threshold which is applicable to the reporting obligations.

Making of ML/FT STRs Regardless of Possible Involvement of Tax Matters (c. 16.1; applying c. 13.4 to DNFBP)

1210. As in the case of FI, the DNFBP are obliged to report STRs regardless of involvement in tax matters.

1211. According to the representatives of the Ministry of Finance and law enforcement agencies, in the Republic of Moldova there are a lot of cases connected to ML with predicate offences related to different type of tax crimes, committed mainly by shell companies. The evaluators concluded that the interviewed DNFBP are aware of such risk, however it was unclear if this risk is considered in relation to ML/FT compliance obligations.

Reporting through Self-Regulatory Organisations (c.16.2)

1212. The DNFBP are required to report directly to the OPFML. None of the business or professions subject to AML/CFT have set up an intermediate body to report STRs to the OPFML on their behalf.

Legal Protection and No Tipping-Off (c. 16.3; applying c. 14.1 to DNFBP) Prohibition against Tipping-Off (c. 16.3; applying c. 14.2 to DNFBP)

1213. According to art. 15 paragraph 3 and art. 8 paragraph 7 of the AML/CFT Law, all the reporting entities and their employees are exempted from disciplinary, administrative, civil and penal liability for submitting the information to the competent authorities for the purpose of executing the provisions of this law, even if this caused material or moral damages. Also the reporting entities are obliged to ensure the protection of their employees against any threats or hostile action regarding the reporting of suspect activities and other transactions.

1214. According to art.8 paragraph 6 of the AML/CFT Law, the reporting entities and their employees are obliged to refrain themselves from communicating to natural and legal persons who carry out the activity or transaction, or to third parties about the transmission of the information to the FIU.

1215. During the on-site mission the evaluators found no evidence that the above-mentioned obligations are not fulfilled in practice. Nevertheless there is common practice for exchanging information between the reporting entities (including all the categories of DFNBPs) and the FIU by phone. This is connected mainly to the reporting issues. Although the evaluators were told that this way for communication is used mainly for solving problems with validation of the reports, it appears in practice that any kind of information was exchanged, including specific details for the suspicious transactions, operations or clients. Theoretically if no special security measures are in place this method for exchanging information might be vulnerable to leaks.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

1216. The auditors are reporting entity according to the AML/C FT Law.

Additional Elements – Reporting of All Criminal Acts (c. 16.6)

1217. It is not clear whether this additional element is implemented in practice since the offence of ML does not clearly refer to the offences which are considered to be predicate offences but merely to *"illegal earnings"* and *"illegal income"*. The low number of STRs reported from DNFBP is an obstacle for making justified assumption about the level of reporting of all criminal acts.

Establish and Maintain Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.1, 15.1.1 & 15.1.2 to DNFBP), Independent Audit of Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.2 to DNFBP), Ongoing Employee Training on AML/CFT Matters (c. 16.3; applying c. 15.3 to DNFBP), Employee Screening Procedures (c. 16.3; applying c. 15.4 to DNFBP), Additional Element—Independence of Compliance Officer (c. 16.3; applying c. 15.5 to DNFBP)

1218. As mentioned above all DNFBP are subject to the obligations of the AML/CFT law. In this respect all information related to financial institutions stated under Section 3.8 of this report is also applicable to DNFBP, as well as deficiencies identified under Section 3.8.

1219. During the on-site mission the evaluators received no information about independent auditing of the internal controls of the DNFBP according to prevention of ML/FT requirements. Many of the categories of the reporting entities are members of different types of professional associations. These associations provide training and monitoring on implementation of various policies, but mostly connected to the main activity of the reporting entities.

1220. The evaluators were informed that some recent trainings and seminars were organised by the FIU for a part of DNFBP sector but it appeared that they were not conducted on a regular bases and that they did not cover all the AML/CFT requirements. The training should focus on the specific problems of the DNFBP sector and cover all the compliance aspects.

1221. Other DNFBP sectors were not provided with AML/CFT training such as the real estate sector and lawyers. It appears also that these categories do not follow the obligation of Art.9 paragraph 3 letter d) of the AML/CFT Law.

1222. In practice it appears that most of the DNFBP select the employees according to their required professional skills. In some cases entities apply the principles of psychometric and personal testing when hiring highly qualified employees.

1223. The casinos have a designated compliance officer, but the rest of the DNFBP do not have such a position, mostly explained as being a result of the small size of each individual business.

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 DNFBP), 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 DNFBP), Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBP)

1224. The analysis of Recommendation 21 under Section 3.6 of this report in respect of financial institutions also applies to DNFBP, as well as deficiencies noted under this section.

1225. None of the representatives of the DNFBP met by the evaluation team during the on-site interviews was aware of the jurisdictions that do not or insufficiently apply FATF Recommendations.

Effectiveness and efficiency

Recommendation 13

1226. Since the AML/CFT Law does not distinguish between FI and DNFBP, the legal obligations in respect of reporting are equally applicable to both FI and DNFBP. However, the low level of reports received by the FIU shows that the DNFBP reporting regime is rather ineffective notwithstanding the fact that all the necessary legislation is now broadly in place.

1227. The level of awareness on AML/CFT reporting matters appears to be rather low amongst DNFBP.

1228. Effectiveness is undermined by the very low number of reports received from DNFBP.

1229. Most DNFBP maintain telephonic communication with the OPFML on reporting issues, even before filing an STR. Therefore, in practice, the OPFML can control both the quality but also the quantity of the information provided in the STR.

1230. The low number of STRs reported by the DNFBP does not enable the evaluators to well-grounded conclusion on the quality of the reporting. Some reporting entities, such as the casinos, consider the AML/CFT issues as minor. This presumption might impede the proper allocation of resources dedicated to the AML/CFT matters.

Applying Recommendation 14

1231. Effectiveness issues relating to Recommendation 14 apply to Recommendation 16.

1232. There is insufficient awareness and understanding of the legal protection offered by the Law against legal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision if reports are made in good faith to the FIU, in case of the lawyers.

Applying Recommendation 15

1233. In practice it appears that most of the DNFBP are not much aware of their obligations of the AML/CFT Law in respect of internal control, compliance and audit. It also should be mentioned that the staff screening mechanism is not establish in all DNFBP.

Applying Recommendation 21

1234. There is a low level of awareness across DNFBP sector concerning the jurisdictions the do not or insufficiently apply FATF Recommendations.

4.2.2 Recommendations and comments

Applying Recommendation 13

1235. The recommendations and comments applicable to Recommendation 13 apply to Recommendation 16.

1236. The authorities should intensify their efforts to increase DNFBP awareness of the reporting obligations and to provide regular trainings on industry specific guidance and STR red flags and indicators.

Applying Recommendation 14

1237. Additional training on the legal protection offered by the Law against legal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision if reports are made in good faith to the FIU is needed.

Applying Recommendation 15

1238. The Moldovan authorities are strongly encouraged to take appropriate measures for the implementation by the DNFBP of programmes against ML and FT including development of internal policies, procedures and controls and appropriate compliance managements arrangements.

1239. The FIU and the other supervisory authorities should provide guidance and control mechanisms for selection and recruitment of employees and their training for AML/CFT (where necessary).

1240. Audit functions to test the AML/CFT systems should be developed in co-operation with SROs.

1241. DNFBP should receive annual training, which should contain new typologies and measures for AML/CFT consistent with the particularities of the different groups of reporting entities. Such trainings and seminars might also include experts from the relevant supervisory authority to make trainings more effective and the presented information more complete.

1242. The recommendations and comments applicable to Recommendation 15 apply to Recommendation 16.

Applying Recommendation 21

1243. The recommendations and comments applicable to FI are valid for the DNFBP.

1244. Substantial efforts should be made by the Moldovan authorities in awareness raising on higher risk jurisdictions issues in respect of the DNFBP.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	***Applying Recommendation 13 and SR.IV*** • Unclear statute for the independent accountants in respect of the scope of the reporting requirements; • The scope of the reporting requirement does not to extend to the reporting of "*funds"* suspected to be the proceeds deriving *from "criminal activity"*; • The reporting obligation provided for FT is limited to *"transactions"* and does not extend to *"funds"*;

		• Reporting is limited to a "*request*" for a transaction or activity; • Issues regarding the wording used for the reporting requirement and the definition of *"suspicious transactions and activities"*. **Effectiveness:** • Low level of STRs submitted by DNFBP; • Low-level of awareness on the reporting obligation by DNFBP. ***Applying Recommendation 14*** • Protection of non-employee natural persons (directors, officers etc.) who take part in directing, managing or representing a reporting entity is unclear; • No specific sanctions applicable to natural persons for the violation of the prohibition of "tipping-off"; • Lack of awareness on the legal protection on AML/CFT matters for some sectors (lawyers). ***Applying Recommendation 15*** • No requirements for all reporting entities to establish and maintain internal procedures, policies and controls to detect unusual and suspicious transactions and report to the FIU. • No requirements for the AML/CFT compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, transaction records, and other relevant information; • No proper trainings for all of the DNFBP; • No independent audit applied in practice; • No special screening procedures recruitment of employees. ***Applying Recommendation 21*** • The requirement to pay special attention refers only to transactions performed in relation to the countries that do not apply or insufficiently apply FATF Recommendation and do not extend to business relationships with clients from those countries; • No requirements for DNFBP to examine the transactions with no apparent economic or lawful purpose related to countries which do not or insufficiently apply FATF Recommendations; • Counter-measures limited to ECDD; • Low level of awareness on weaknesses in the AML/CFT systems of other countries.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

Recommendation 24 (rated NC in the 3rd round report)

Summary of 2007 factors underlying the rating

1245. In the 3rd round MER of the Republic of Moldova, Recommendation 24 was rated 'NC' based on the following statement: casinos appear to be closely supervised by the Ministry of Finance and the finance police, but there is no proper control on the implementation of the AML/CFT Law.

1246. At the time of the 4th round evaluation Art. 10 of the AML/CFT Law established the list of authorities with supervisory functions for AML/CFT purposes. The allocation of supervisory powers for the area of AML/CFT over a specific type of reporting entity to a specific authority is not, however, contained in the AML/CFT Law (there is a list of supervisors next to a list of reporting entities without any correspondence as to whom is supervising whom). The Moldovan authorities maintain that this allocation of responsibility derives from the sector specific laws. The evaluators are of the opinion that this approach impedes effectiveness. Furthermore, not all the supervisory authorities are to be found in sectoral laws or it is unclear if they apply also for AML/CFT matters.

1247. According to the information received during on-site meetings with the representatives of the DNFBP and supervisory authorities, it appeared that some of them have implemented internal AML/CFT rules and programmes which are subject to supervision. However, some of these programmes have not been updated since the adoption of the AML/CFT Law in 2007, which is an indication that they do not correspond to the new amendments of the Law. No measures have been applied by any supervisory authority on DNFBP for lack of compliance in AML/CFT area.

Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

1248. According to Article 4 of the AML/CFT Law, casinos and internet casinos are subject to the AML/CFT Law. The supervisory authorities for the casinos are the - Licensing Chamber (hereof LiC) and Ministry of Finance.

1249. During the on-site interviews it was indicated that the LiC is the supervisory authority for casinos including for the AML/CFT purposes.

1250. The main LiC activity is related to licensing. According to Article 46 para.(1) of Gambling Law no. 285-XIV as of 18 February 1999, the conditions for receiving a licence are provided in the Law regarding licensing of entrepreneurial activity no. 451-XV as of 30 July 2001. In order to obtain a licence it is necessary to submit forms of declarations, which consist in identification details such as name, contact details, description of the gambling operations, the description of the dedicated premises etc.... Furthermore, a number of other documents (e.g. financial documents of the company for 3 years, amount and categories of games, numbers of employees) are attached to the forms of application. The evaluators were informed on-site that these requirements are established in order to identify potential legal persons who had previous tax-related issues and are intending to continue to perform illegal activities using gambling as cover.

1251. During the on-site interviews, it was explained to the evaluators that the LiC performs verifications of the legal requirements for the supervised entities for licensing purposes, including capital and cash-flow requirements. However, the LiC does not check the source of money or funds that constitute the initial capital used to incorporate a casino.

1252. Apart from licensing, the LiC's activity is mainly related to the analysis of the accounting documents with a view to on-going accounting verifications (accounting balance sheets) for some categories of legal entities (e.g. dealers in precious metals and stones, gambling houses (including casinos), auditors).

1253. According to the LiC representatives, the beneficial owner is considered to be the share-holder of the casino or the person which has a power of attorney to represent the casino in relation to the authorities or other entities. No measures are in place to identify the beneficial owner as defined by FATF standards. No legal or regulatory measures are in place to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function. No checks are performed by LiC on the share-holders, founders or managers of the casinos and their background.

1254. The LiC has no specific AML/CFT regulatory or monitoring procedures. In practice, some AML/CFT verifications are done in the process of licensing. No secondary legislation, guidance or regulation has been issued by LiC on AML/CFT matters.

1255. The Moldovan authorities indicated that in 2011 one sanction has been imposed by the FIU on one casino but is unclear for the evaluation team if there are legal grounds empowering LiC to impose sanctions for AML/CFT matters. In this context it is unclear what the meaning of listing the LiC as supervisory authority under Art. 10, letter g) of the AML/CFT Law is.

1256. The confusion on the supervisory authority on AML/CFT issues for the casinos was also confirmed by the industry as during the on-site mission, the representatives from the casino industry explained that the only supervisory authority in the AML/CFT area is the FIU. It was also indicated that the FIU in its capacity of supervisory authority provided training on reporting duties and executed on-site inspections. Limited information on the scope and outcome of these inspections was available to the evaluation team.

1257. According to the Moldovan authorities, there is general sanctioning regime in art. 291^1 of the Contravention Code for violation of laws on the prevention and fight against money laundering and financing of terrorism, however this article covers partially potential AML/CFT breaches and it is limited to failure of the reporting entities to present in due time the necessary information or by presentation of incomplete or erroneous information on the suspicious activities or transactions implemented or under implementation in the amount exceeding 500,000 lei.

Monitoring and Enforcement Systems for Other DNFBP-s (c. 24.2 & 24.2.1)

Auditors and accountants

1258. According to the Moldovan authorities, the Ministry of Finance licenses and supervises auditing activities and is empowered to conduct inspections to verify compliance with the licensing requirements and conditions set out in licensing agreements, including for AML/CFT matters. It is unclear for the evaluation team which legal provision stipulates the supervisory powers of the MF over the auditors for AML/CFT purposes.

1259. During the on-site interviews, the Council of Auditors' Supervision (set up in 2009) was mentioned as having specific duties in prevention of ML/TF area, however, the interviewed experts were not certain of its precise responsibilities and powers. The Ministry of Finance has made no on-site inspection to auditing companies during the last three years (the auditors were included in the AML/CFT Law as reporting entity with the changes made in 2007).

1260. The independent accountants are not covered by any supervision due to a series of factors: the lack of definition of *"independent accountant"* in the Moldovan legislation; the recent inclusion of such a profession in the AML/CFT Law, and lack of any form of licensing or registering of these professionals.

Lawyers and notaries

1261. The Ministry of Justice (Division for notaries and lawyers) licenses and regulates the activity of lawyers and notaries. The powers of the Ministry of Justice (MoJ) boil down to controlling compliance of persons subject to supervision with the legal practice laws, license requirements and conditions; obtaining information on the observance of the legislation and submitting proposals on disciplining lawyers to the bar associations. The Division for notaries and lawyers employ 6 persons.

1262. The Ministry of Justice has general powers to issue compliance orders, suspend licenses and annul licenses for violations of sector-specific licensing legislation or requirements and conditions in place for the licensed activity. However, the legislation does not contain requirements to apply sanctions for AML/CFT violations.

1263. It was explained to the evaluation team that the Ministry of Justice issued methodological recommendations for the two professions but these have no relevance for AML/CFT matters.

1264. Furthermore, the representatives of the MoJ stated that they are supervisory body only for the notaries based on the general provision on notary activity supervision. It was unclear who the AML/CFT supervisory authority is for the lawyers. The representatives of the lawyers confirmed the confusion during the on-site interviews, as some stated that the supervisory body is the MoJ others that is the FIU.

1265. No further provisions/guidance on AML/CFT area has been issued by the MoJ, but it was indicated that some AML/CFT checks are performed during the general supervision inspections, mainly related to the reporting duties and CDD measures. However, during the on-site interviews it was stated that the MoJ has no information on other compliance aspects, such as whether or not the notaries properly identify their PEP clients. The evaluators were told that this is outside of the scope of MoJ competence.

1266. No cases of reporting obligation breaches were identified but it was mentioned that if such cases would occur, the MoJ inspectors would inform the FIU as the ministry does not have powers to impose sanctions. In the same time, the MoJ experts met on-site mentioned to the evaluation team that the FIU has no powers to inspect or verify in any manner the notaries. In this context the entire supervision system on the designated legal professions is highly questionable.

1267. The number of inspections performed and sanctions imposed by the FIU to the notaries is presented in the aggregated table at the end of this sub-section. No sanctions have been imposed to lawyers.

Real estate agents

1268. It appears that the supervisory function for controlling compliance of real estate agents with the AML/CFT legislation, including inspections and imposition of sanctions for violations, is assigned to the FIU. However it is unclear which legal provisions describe such duties of the FIU in respect of real estate agents. Moreover, the evaluation team has serious doubts that the FIU has proper resources to perform these functions.

1269. There are no internal rules and guidelines on AML/CFT dedicated to the real estate sector, no training has been provided in this respect and no compliance officer has been appointed in the real estate companies.

1270. During the on-site mission the evaluators were told by the representative from the real estate company that there is no trainings provided to the employees neither internally nor from the FIU. The evaluators were also told that no on-site inspections for ALM/CFT compliance were made to these

companies which are reflected in the fact that no STRs had been submitted to the FIU. It was also said that they have no difficulties in applying all the AML/CFT provisions.

1271. It appears that this group of DNFBP is not supervised at all.

Dealers in precious metals and precious stones

1272. The State Chamber of labelling monitoring is the institution obliged to perform AML/CFT supervision on dealers in precious metals and precious stones. It is unclear which legal provisions describe these duties of the SCLM. During the on-site were told that SCLM is performing only quality control on the precious metals and stones. The assessors were also told that while performing this kind of control, mainly related to the brand of the metal and if some discrepancies are found the SCLM is forwarding the information to CCECC.

1273. No inspections on AML/CFT matter have been carried out and no sanctions imposed. It is not clear which authority has the power to impose sanctions for violations of AML/CFT legislation.

1274. There are no internal rules and guidelines connected to the AML/CFT dedicated to this sector and no trainings are provided in this respect, which reflected to no STRs submitted to the FIU.

1275. It appears that this group of DNFBP is not supervised at all in practice.

Table 37: Number of inspections/sanctions imposed by the FIU to the DNFBP:

Recommendation 25 (rated NC in the 3rd round report)

Guidance for DNFBP other than feedback on STRs (c. 25.1)

1276. The only guidance provided to the DNFBP sectors is issued by the FIU on reporting obligations and on ML/TF methods and techniques. However, there are no specific guidelines provided by the supervisory authorities to the DNFBP sectors on ML/TF trends.

1277. The evaluators were also told that the connection with the FIU is made mainly by phone and if any issue on AML/CFT arise this is a way how it is solved.

Feedback (applying c. 25.2)

1278. The supervisory authorities and the FIU do not provide any feedback to the DNFBP sector.

Adequacy of resources supervisory authorities for DNFBP (R. 30)

Licensing Chamber

1279. The role of the Licensing Chamber in the AML/CFT system of is to check the balances of companies which apply for a licence against the AML/CFT Law. The Licensing Chamber has 38

Year	Reporting entities	Number of inspections	Number of contraventions identified	Applied sanctions, lei
2009	Notaries	2	1	5,000
2010	No inspections performed due to the lack of legislation.			
2011	Casinos	5	1	13,000
	Notaries	11	5	15,000

employees, whereof 15 are involved in the process of scrutinising documents. There are no employees of the Licensing Chamber trained in AML/CFT matters.

Ministry of Finance

1280. The Ministry of Finance issues licences via a number of departments and agencies and is responsible for various sectors of activity:

- The State Chamber for Labelling is responsible for state marking of precious metals. The assessors were told by the representative of the State Chamber that eventual irregularities would be reported to the CCECC. However it was explained that compliance controls are related only to the regularity of the state marks.
- The Division for Audit Regulation sees its task to develop legal and normative acts in the field of audit. It does not have a direct focus on AML/CFT supervision.
- The Tax Authority sees its role in the fight against ML/FT primarily in the fight against shell companies and phantom companies. It reports significant improvements in that area resulting in fundamental reduction of phantom companies. In the course of their controls they also cover AML/CFT and will inform the CCECC whenever they find a violation of the AML/CFT Law. However, it would appear that they perceive themselves as a reporting entity, instead of a supervisory authority which they regard to be the Supervisory Council of Audit Activity.

1281. The resources of the supervisory authorities for DNFBP appear to be inadequate. Some of the categories of DNFBP are not supervised at all because of the misreading of the art. 10 of the AML/CFT Law, but although for others there is a supervisory authority, the resources allocated to for AML/CFT supervision purposes in inadequate.

Effectiveness and efficiency (R. 24-25)

1282. The evaluation team has serious concerns related to on the regulation and effectiveness of the supervisory system of the DNFBP in the Republic of Moldova.

1283. Independent accountants and real estate agents are not subject to any supervision for AML/CFT purposes. For the rest of the sectors serious shortcomings have been identified which undetermined the entire supervisory and sanctioning regime. For example, the lawyers were not clear if their supervisory authority on AML/CFT matters is the FIU or the MoJ.

1284. No AML/CFT inspections have been performed and therefore no breaches have been identified and no sanctions have been imposed.

1285. The FIU's capacity to conduct supervision and monitoring over the reporting entities (human and financial resources) is limited. The other supervisory authorities do not seem to pay special attention to the AML/CFT issues during their on-site inspections. No form of off-site supervision on AML/CFT matters has been identified. The FIU and the other supervisory authorities have no specific tools and systems for analysing of the results from their supervisory activity as such. Consequently, no proper risk analysis of the supervisory activity can be made.

1286. The low level of reporting in the case of DNFBP seems to be caused by the ineffectiveness of the supervisory system and the lack of sector-specific guidelines and training.

4.3.2 Recommendations and comments

Recommendation 24

1287. The recommendations expressed in the 3rd round report remain generally valid.

1288. Although Art. 10 of the AML/CFT Law provides a list of all the supervisory authorities, the allocation of supervisory powers in the area of AML/CFT to a specific supervisory authority for a specific supervised category is still missing. The Moldovan authorities should provide for clear allocation of sanctioning powers in the area of AML/CFT to the specific supervisory authority for AML/CFT purposes in respect of each category of DNFBP.

1289. The independent accounting profession should be clearly defined by law or regulation to become subject to AML/CFT Law and thus to be subject to appropriate regulation and supervision.

1290. The Moldovan authorities are strongly encouraged to adopt proper legal provisions to ensure verification of the source of money or funds that constitute the initial capital used to incorporate a casino.

1291. The evaluation team recommend the Moldovan authorities to adopt legal measures to ensure identification of the beneficial owner, as defined by FATF standards, by the DNFBP.

1292. Legal or regulatory measures should be in place to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in casinos. Checks should be performed by the supervisory authorities on the share-holders, founders or managers of the casinos and their background.

1293. Some of the state authorities interviewed as supervisory authorities initially confirmed the existence of a role of their own in the AML/CFT area, but could not elaborate further on that. It turned out that these state authorities see themselves rather as reporting entities and not as authorities with a supervisory function in the area of AML/CFT. Private sector stakeholder representatives confirmed the primary role of the OPFML in the area of AML/CFT. In this context, the examiners strongly advise the Moldovan authorities to ensure implementation of AML/CFT regulatory or monitoring procedures by the supervisory authorities of the DNFBP.

Recommendation 25 (c.25.1 [DNFBP])

1294. The impression of the evaluators is that there is no feedback from the FIU to the DNFBP. This situation is partially evidenced by the low level of reporting. Feed-back systems should be put in place for the future.

1295. Issuing of sector-specific guidance for different types of DNFBP is recommended.

4.3.3 Compliance with Recommendations 24 and 25 (Criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	• No supervisory authority and no supervision on, independent accountants and real estate agents; • Unclear supervisory powers and allocation of supervisory responsibilities for lawyers. • Incomplete sanctions regime for the DNFBP sector; • No requirements to carry out fit and proper tests of senior managers and executive/supervisory board members for casinos;

		• No requirements to prevent criminals from holding or being the beneficial owner of a significant or controlling interest or holding a management function of a casino. **Effectiveness** • Effectiveness was not demonstrated; • Little applicability of the sanctioning regime for the DNFBP.
R.25	**PC**	• No sector-specific guidelines provided by the supervisory authorities to the DNFBP sectors on ML/TF trends; • The supervisory authorities and the FIU do not provide any feedback to the DNFBP sector.

4.4 Other Non-Financial Businesses and Professions Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

Recommendation 20 (rated PC in the 3rd round report)

Summary of 2007 MER factors underlying the rating

1296. Recommendation 20 was rated 'PC' in the 3rd round of the Republic of Moldova based on the following factors: ineffectiveness of the preventive machinery for virtually all non-designated non-financial businesses and professions, reduction of cash payments for individual desirable.

Countries should consider applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing. (c 20.1)

1297. Article 4 of the AML/FCT Law determines reporting entities that are subject to the provisions of this law. According to this article reporting entities also include other DNFBP, in particular places equipped with gambling devices, institutions organising and carrying out lotteries or gambling and persons, who provide investment or fiduciary assistance.

1298. Those DNFBP that are considered as reporting entities are obliged to follow the requirements of the AML/CFT Law. In this respect they are obliged to apply requirements related to Recommendations 5, 6, 8-11, 13-15, 17 and 21.

1299. However, dealers in high value and luxury goods, pawnshops and auction houses are not covered by the scope of application of the AML/CFT Law. The Moldovan authorities argued that such activities do not exist in the Republic of Moldova therefore no risk arises in practice from that sector. However, no legal act prohibiting their incorporation was provided.

Countries should take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. (c. 20.2)

1300. The Moldovan authorities informed the evaluation team that the only measure taken is the NBM currency policy according to which withdrawals from ATMs are limited to 3000 lei per day (c. €180).

1301. Although no evidence of requirements to encourage the development and use of modern and secure techniques for conducting financial transactions, that are less vulnerable to money laundering was provided, the Moldovan authorities mentioned that there is an increase in the usage of bank cards and cashless payments in practice.

Table 38: Number of cards used

	2009	2010	2011
Bank cards number	745,615	817,520	911,682
Annual growth rate, number of cashless payments by bank cards	+48%	+47%	+45%
Annual growth rate, value of cashless payments by bank cards	+9%	+46%	+37%

4.4.2 Recommendations and comments

1302. The Moldovan authorities should consider taking measures requirements to encourage the development and use of modern and secure techniques for conducting financial transactions, that are less vulnerable to money laundering

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors relevant to s.4.4 underlying overall rating
R.20	**LC**	• Dealers in high value and luxury goods, pawnshops and auction houses are not subject to the AML/CFT Law; • No measures are in place to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

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 report)

Summary of 2007 factors underlying the rating

1303. In the third round mutual evaluation report of the Republic of Moldova Recommendation 33 was rated as 'PC', based on the following factor:

- Lack of general controls on origin of funds and, more generally, of auditing policy.

5.1.1 Description and analysis

Legal framework

1304. As at the time of the previous round of evaluation, the basic rules for the establishment of a legal person are set out by Art. 55 of the Civil Code (Law Nr. 1107-XV of 6 June 2002) which defines the concept of legal person (the definition as was quoted in the third round MER has not since been amended). Legal persons are further categorised by the said Code as commercial entities (companies, co-operatives, State and municipal enterprises and non-commercial organisations (associations, foundations and institutions).

1305. The activity of companies and other profit-seeking legal persons is primarily regulated by the Law on enterprises and entrepreneurship (Law No. 845-XII of 3 January 1992 as amended) which encloses provisions on entrepreneurial activities in the Republic of Moldova and determines the legal, organisational and economic principles of this activity.

1306. As it was set out in the third round MER, the main legal structures of entrepreneurial activities are enumerated by Art. 13 of this Law including legal entities such as joint stock companies, limited liability companies, production or entrepreneurial cooperatives and state and municipal enterprise. The same Law provides for the conditions for forming a company, the content of the incorporation documents, the procedures for registration and re-registration of commercial companies, and the modalities for the termination of a company's activity through liquidation and restructuring. Further, special pieces of legislation provide for detailed rules governing the activity of commercial legal persons such as Law Nr. 1134-XIII of 2 April 1997 on joint stock companies, Law no. 135-XVI of 14 June 2007 on limited liability companies and so on.

1307. Joint stock and limited liability companies remained as the most widespread forms of commercial legal entities. According to the State Register, as of 1 July 2011, 130,622 companies were registered (but this number also includes individual entrepreneurs who are not legal persons) out of which they are:

e) 66,992 limited liability companies (the respective figure was only 53,565 at the time of the previous evaluation)
f) 4,826 joint stock companies (5,092)
g) 4,051 cooperatives (production cooperatives, consumer cooperatives, enterprise cooperatives 4,374)
h) 1,453 state and municipal enterprises (1,557)

1308. The number of companies with legal personality continued to increase, which mainly refers to the number of limited liability companies (+25% since 2006) while the number of joint stock companies and cooperatives slightly decreased.

1309. The registration procedure for legal persons is provided by the Law on state registration of legal persons and individual entrepreneurs (Law Nr. 220-XVI of 19 October 2007) that regulates the state registration procedure of enterprises as legal persons, agencies and their branch offices, and individual entrepreneurs. In addition, the law provides for the organisational structure of the state registration system, the status of State Registration Chamber (SRC) and its cooperation with other institutions.

1310. At the time of the previous round of evaluation, the State Registration Chamber was located within the structure of the Ministry of Information Technology and Communications, under the control of the Information Technologies Department. In 2009, as a result of restructuring of the public central administration, the SRC was relocated within the Ministry of Justice (where it had previously been located until 2001) by virtue of Government Decision Nr. 597 of 21 October 2009. The SRC now has the status of a state enterprise, composed of the Chişinău Territorial Office and 9 other territorial offices serving the entire territory of the Republic of Moldova including the Transnistrian territory.

1311. Role and responsibilities of the SRC remained the same, its main function is to provide the state registration of legal persons and individual entrepreneurs, to maintain the State Register and to issue extracts thereof as a focal point for all relevant information and files.

1312. As it was already discussed in the previous report, the registration process has been subject to modernization, centralization and acceleration since 2002 when the so called *"single window"* (one-stop-shop) mechanism was introduced in unique centres for lodging of applications and issuance of documents for entrepreneurs. While then it took about ten days to complete all the formalities, now this timeframe was reported to be maximum 5 working days however, at request, the registration may last one day or even four hours.

Measures to prevent unlawful use of legal persons (c. 33.1)

1313. In the Republic of Moldova, the State Registration Chamber (hereinafter SRC) is the authority that performs the registration of legal persons and individual entrepreneurs with its territorial offices. According to Art. 2 of the Law on state registration of legal persons and individual entrepreneurs (Law Nr. 220-XVI of 19 October 2007) the concept of state registration of legal entities is defined as the act of the registration authority based on the authentication of the fact of incorporation/readjustment/dissolution etc. of legal persons, their branch offices or agencies, the fact of amending the statutes of legal persons, the registration of data in the State Register that leads to the acquirement or ceasing of the legal competence of the legal person.

1314. The SRC is thus responsible for the maintenance of the State Register and for issuing information registered therein. This maintenance is based on the registration of data on legal persons (branch offices, agencies) that are either registered, readjusted or liquidated; on the amendments of the statute and other information on the legal person. Any data may only be registered upon the base of the documents lodged for registration.

1315. During the procedure of registration, the identity of the natural persons subject to registration as officials etc. of the legal entity is verified in the State Register of Population to prevent registering a citizen with a false identity or a foreign person without a permit of residence on the territory of the Republic of Moldova. There is another verification performed in the State Fiscal Register of the Main State Fiscal Inspectorate as regards the existence of debts towards the national

public budget, in order to avoid the registration of new firms the members/founders of which already have enterprises with debt towards the state. It was also mentioned in the third round MER that the SRC checks applicants' criminal records (using Interpol records if necessary) but the current Law only requires this for the state registration of the legal entities with foreign investment (Art. 7 paragraph 4).

1316. In addition, the SRC also verifies whether such natural persons can be found on the lists of persons and entities involved in terrorist activities as issued by the SIS under Order Nr. 68 of 15 November 2011 as discussed above.

1317. As it was explained by the Moldovan authorities, the legal basis for this verification is an internal order issued by the President of the Chamber to apply the SIS Order in the Chamber's activity. Verification is performed both in course of the initial registration and subsequently, if any changes take place regarding the registered members or founders of the respective entity.

1318. Although it was already criticised by the previous evaluation team, there is still no statutory provision for checking on the origin of funds. Both, the minimum statutory capital (that is necessary for the registration) and the subsequent increases in the capital must be deposited in a bank account, so the verification of the source of these funds as well as the identification of the respective client remained the responsibility of the commercial banks and not the state registration authority.

Timely access to adequate, accurate and current information on beneficial owners of legal persons (c. 33.2)

1319. The Law on state registration of legal persons and individual entrepreneurs provides that the registered data is publicly available (apart from limitations required by state or commercial secrecy or personal data protection). The SRC provides all relevant data from the State Register and the statute of legal persons free of charge to the law enforcement and public administration authorities on request, either in paper or electronic form as well as copies of the statute. In addition, the Ministry of Information Technology and Communication maintains the State Register of Legal Entities (SRLE) as approved by Government Decision Nr. 272 of 6 March 2002 which is an automatic evidence system that collects, processes and updates, stores and analyses data on legal entities with the consent of the main registrars (such as the Ministry of Justice as above).

1320. All data registered with the SRLE is available to central and local public administration authorities, law enforcement and control agencies, providing round-the-clock access to information on the ownership and control of legal persons.

1321. Despite all these efforts put into the modernization and acceleration of the registration procedure and availability of registered data, the evaluators still do not have a clear picture as to exactly what sort of information is registered concerning the beneficial ownership and control of legal persons (as this concept is defined by Art. 3 of the AML/CFT Law) and hence whether the otherwise favourable public availability of all registered data could provide adequate, if any, transparency in this field. Without the beneficial owners of legal entities being registered either by the State Register or elsewhere, neither Criteria 33.1 and 33.2 nor the additional element in 33.4 can be considered as met.

Prevention of misuse of bearer shares (c. 33.3)

1322. The Law on the Securities Market (Law Nr. 199-XIV of 18 November 1998) was amended by Law Nr. 249 of 22 November 2007 (in force as of 1 January 2008) by which the concept of bearer shares was formally abandoned in the Republic of Moldova. Provisions that had previously defined bearer shares (Art. 4[1b]) or regulated the transfer of ownership rights in such securities (Art. 25) were thus systematically deleted. Now Art. 4(1) of the said Law explicitly prescribes that securities shall be issued either as materialised nominative securities (subpara a) and dematerialised nominative

securities (subpara c) while Art. 4(2) reiterates, in accordance with the Law on Joint Stock Companies (Law Nr. 1134-XII of 2 April 1997) that the securities of joint stock companies and their derivatives may be only nominative. The evaluators welcome this development in legislation considering that the exclusive use of nominative securities permits the identification of holders and thus facilitates to determine the source of assets invested in securities.

1323. The evaluation team was informed subsequent to the on-site visit that the pre-existent bearer shares, that had been issued under the previous legislation, were converted to nominative securities in the independent registers of the joint stock companies, by virtue of the Law on the securities market, as amended.

Additional element - Access to information on beneficial owners of legal persons by financial institutions (c. 33.4)

1324. Though Art. 5(2) of the AML/CFT Law requires the reporting entities to identify and to verify the identity "of natural or legal person, of the beneficiary owner" (sic) on the basis of the identity documents and data or information obtained from a *"reliable and independent source"* including presentation of the identity document, there are no specific measures in place to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data. The Moldovan authorities also referred to the data contained by the State Register that are directly available (as a paid service) to financial institutions too, nevertheless this cannot serve as an actual source for beneficial ownership information as such data, as discussed above, are not registered.

5.1.2 Recommendations and comments

1325. The steps taken before and since the third round evaluation to simplify and to speed up the registration process, to increase the transparency of the legal persons and to provide full availability of registered data are to be appreciated. Notwithstanding that, the concept of beneficial ownership, which has otherwise been established in the Moldovan legislation by the AML/CFT Law, is entirely absent from the legislation governing corporate entities and their registration and therefore the examiners have serious doubts that any registers of legal entities contain any relevant information on beneficial owners of legal persons as this term is defined by the AML/CFT Law.

1326. Certainly, the financial institutions the respective legal persons are clients of are obliged by the said Law to identify the beneficial owners and therefore they can provide such information to law enforcement or other authorities, but this cannot be considered a direct and timely access to this information as required by Criterion 33.2.

1327. Apart from that, the verification mechanism performed by the SRC remained rather formal, mainly relying upon the information and documentation provided by the applicants. Some aspects of this process are unclear, others appear incomplete (e.g. criminal records of the domestic persons) and there is still insufficient attention paid to the origin of funds. As a summary, the registration of business entities still does not ensure an adequate level of reliability of information registered and the transparency of ownership structure does not provide more information on beneficial ownership.

1328. As it was noted under R.1 the use of shell or *"ghost"* companies for committing ML through fictitious banking transactions remained a typical laundering method in the Republic of Moldova. During the on-site visit, however, the authorities responsible for company registration appeared unaware of or uninterested in this phenomenon (even the term and notion of "shell company" was apparently unknown to them) which may explain its persistence despite the current company registration rules and the introduction of corporate criminal liability.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• The procedure for registration of corporate entities does not provide for an effective, if any, verification of the data submitted by the applicants and hence it does not ensure an adequate level of reliability of information registered; • Transparency of ownership structure does not provide information on beneficial ownership.

5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)

Recommendation 34 (rated N/A in the 3rd round report)

Summary of 2007 factors underlying the rating

In the third round mutual evaluation report Recommendation 34 was rated as non-applicable.

5.2.1 Description and analysis

1329. Evaluators of the previous round rated R.34 as "not applicable" for the Republic of Moldova as the formation, registration and functioning of legal arrangements is not allowed by the existing legislation.

1330. Although the previous team had found some specific forms of corporate entities such as trust companies and fiduciary companies that had appeared subsumable under the notion of legal arrangements, their final conclusion was that both of these were ordinary legal entities registered as such according to the legislation of the Republic of Moldova thus were not legal arrangements in the sense of Recommendation 34. Examiners of the present round are not aware of any different information in this respect. Domestic interlocutors which the evaluation team met with on-site had no information on whether foreign trusts had ever operated in the Republic of Moldova. There is no provision in domestic law which allows for the formation of trusts in the Republic of Moldova and they cannot be registered as such according to the legislation in force and therefore cannot be recognised in law.

5.2.2 Recommendations and comments

1331. Recommendations are not applicable.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and analysis

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

Summary of 2007 MER factors underlying the rating

1332. Special Recommendation VIII was rated 'PC' in the third round mutual evaluation report of the Republic of Moldova, based on the following factors:

- No review of laws and regulations was undertaken by the authorities to establish their adequacy regarding prevention of misuse of NPO of financing of terrorism;
- No measures are in place to ensure that funds of other assets, collected by or transferred through non-profit organisations are not diverted to support the activities of terrorists or terrorist organisations.

Legal framework

1333. The general legal framework that regulates the legal status, registration, functioning as well as the rights, obligations and accountability of non-profit organisations in the Republic of Moldova is largely the same as it was at the time of the previous evaluation.

1334. The Civil Code generally regulates the legal status of legal persons, the registration, readjustment, liquidation and deregistration procedures etc.. Chapter II Section 5 provides general provisions with regard to the NPOs (non-commercial organisations) their typology (NPOs can operate in three legal forms: associations, foundations and institutions) the compulsory clauses to be enclosed in their statutes and provisions that regulate the economic activity and the interest conflicts within the NPOs.

1335. The Law Nr. 837-XIII of 17 May 1996 on public associations sets out the principles of creation, registration and cessation of the activities of public associations, of property and administration of public associations assets, the liability for the infringement of law, the international relations of public associations, as well as the rights, obligations and conditions of operating activities by public associations.

1336. Likewise, the Law Nr. 581-XIV of 30 July 1999 on foundations regulates the procedure of incorporation, registration and cease of activities, the executive bodies, the accounting conditions, the control and transparency of the activity of foundation, as well as the rights, obligations and conditions of its activities.

1337. Public associations and foundations may apply for a more favourable legal status, that is, the *"status of public utility"* which is now granted under preconditions that are aimed at ensuring a better control of their activity and preventing their misuse for illicit purposes.

1338. This part of the above-mentioned Law on public associations was amended by Law Nr. 111 of 4 June 2010 (Art. 30^1(4) and 32). As a result, the public association that requires this special status must perform its activities with enhanced transparency; that is, it is not only obliged to present its annual reports to the registration authority but also to publish them in the mass media and on its own website. These reports must contain a financial declaration which will include (a) the financial report on the previous year of activity, according to the accounting standards (b) the information on the sources of financing of the association, including the received grants for the previous period and (c) the information on the way that these resources have been used, including the general and the

administrative expenditures. The documentation to be submitted also requires a very detailed analysis of the statute purposes, programmes and activities.

1339. The main authority responsible for registering NPOs is the Ministry of Justice (in its *"State register of non-commercial organisations"*) nonetheless, by way of exception the State Registration Chamber is entitled to register the associations and the unions of legal entities (in its *"Register of legal entities"*) pursuant to the Law on legal entities and individual entrepreneurs. By the time of the on-site visit, there were 6,185 NPOs registered at the Ministry of Justice while 657 NPOs (all these being associations and unions of legal entities) are registered at the SRC.

Review of adequacy of laws and regulations (c.VIII.1)

1340. Criterion VIII.1(i) prescribes that countries should review the adequacy of domestic laws and regulations that relate to NPOs. In this context, the Moldovan authorities made reference to the fundamental revision of the domestic anti-terrorist legislation that had taken place in 2008 in order to achieve a better implementation of the international instruments aiming at combating the terrorism ratified by the Republic of Moldova. The result of this was the adoption of the Law Nr. 136-XVI of 8 August 2008 which amended, among others, the Criminal Code (by introducing corporate criminal liability for a number of terrorist-related offences including FT) the Code of Criminal Procedure or the Law on Combating the Terrorism. As to the latter, its Art. 24 was amended so as to clearly prohibit the creation and functioning of any legal entities the purposes or actions of which are directed for promoting, justifying, financing or supporting the terrorism or for committing offences with terrorist character, including NPOs.

1341. A legal entity shall be considered *"terrorist"* and thus liquidated/prohibited upon the base of an irrevocable court decision. The court will so decide if it finds that the organisation, preparation, financing or commission of an offence with terrorist character (including FT) was committed on behalf or in the interest of the legal entity or if this act was accepted or approved by the administration body or person with such competences of the legal entity.

1342. Court decision on the liquidation of the legal entity (or the prohibition of its activity) must be extended to its branches and representatives. When a legal entity is declared "terrorist" its assets must be confiscated according to the CC (and supposedly there must be a formal criminal procedure initiated against the legal entity). These provisions apply to foreign legal entities and international organisations as well as to their offices, branches and representatives situated in the Republic of Moldova, including NPOs.

1343. The domestic review of the NPO sector, as required by Criterion VIII.1(ii) was carried out in the framework of the United Nations Development Programme (UNDP) project called *"Increasing financial sustainability of Civil Society Organisation in the Republic of Moldova"* that had been launched in 2006 was finalised by the end of 2009. The main objective of this project was to create a favourable legal and fiscal environment for civil society development through a comprehensive analysis of the existing legislation, with a view to draft a new legal framework for NGO development and to change public opinion in this respect.

1344. Experts involved in the project analysed the relevant legislation and produced two comprehensive studies in 2007 namely a "*Study on the analysis of the legal framework regarding the non-commercial organisations in the Republic of Moldova"* and "*Study on the development of the non-governmental organisations in the Republic of Moldova".*

1345. The examiners were ensured by the Moldovan authorities in the MEQ that neither of these expert analyses had revealed any risk for the NPOs being misused for terrorist financing purposes. On the other hand, it was also mentioned in the MEQ that, according to information disclosed by the SIS

Anti-terrorist Centre, certain charity associations with foreign origin registered in the territory of the Republic of Moldova had been highly exposed to risk of misuse and therefore some of them had actually been closely monitored by the SIS.

1346. While the evaluators appreciate the carrying out of ad hoc surveys in this field, they need to point out that Criterion VIII.1(ii) refers to undertaking domestic reviews of or to having the capacity to obtain timely information on the activities, size and other relevant features of the NPO sector which obviously implies a regularly repeated activity so as to obtain relevant and timely information. This approach is further enhanced by Criterion VIII.1(iii) which requires periodic reassessments by reviewing new information on the sector's potential vulnerabilities. The above mentioned UNDP project does not seem to meet the latter requirements and thus Criterion VIII.1 cannot be considered as fully met.

1347. In this respect, the Moldovan authorities claimed that the SIS Anti-Terrorist Centre does perform systematic assessments, as part of its competences. According to its Regulation (approved by the Governmental Decision 1295 of 13 November 2006) this Centre is authorised to assess the risk factors and the terrorist threats against national security, to collect and analyse information on the state, dynamic and tendencies of the extension of the terrorism phenomenon and other manifestations of extremism etc. One of the four Bureaux of the Anti-terrorist Centre deals particularly with monitoring and analysis (Bureau for monitoring and analysis) while another bureau assesses the legal framework in the area so as to intervene whenever necessary. Nonetheless, the evaluators were not informed of any periodic/systematic reassessment of the sector even in this respect.

1348. The Moldovan authorities introduced, as an additional preventive measure for the misuse of the NPOs, a mechanism to check mandatorily whether the NPOs' founders were included in the lists approved by the Order Nr.68 of the SIS similarly to the procedure applied by the SRC regarding commercial legal persons. The evaluators learnt that this verification, which is based on a specific Resolution issued by the Minister of Justice, is compulsory and is carried out routinely in the course of the initial registration and when changes take place on the founders/members of the respective NPO. This process also involves a constant exchange of information between the Ministry and the SIS.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1349. In order to raise awareness in the NPO sector about the risks of terrorist abuse, a national round table was organised on 30 October 2008 in the framework of the above mentioned UNDP project, with the participation of the Ministry of Justice and the representatives of the civil society The objective was to discuss and to explain the criteria of SR.VIII and the related International Best Practices together with the respective MONEYVAL recommendations.

1350. As a result, it was agreed to develop a National Account Standard for the non-profit sector and to amend the Code of Ethic of the Non-commercial organisations in order to cover the specific criteria for reducing the risk of misuse of the NPOs. The necessary legislative steps were taken in 2010 by issuing the Order of the Ministry of Finance Nr. 158 of 6 December 2010 which approved the Methodological indications on the particularities of the accounting in the non-commercial organisations and the adoption of the amended Code of Ethic that ensures the financial transparency of the NPOs.

1351. The Code of Ethics (the first version approved in 2008) states important principles such as the prohibition of use of funds in an abusive manner or for personal interests and the requirement that the organisations should be open and periodically inform the public about their activities and direction of funds. Also, an annual report should be presented to the public, and the requirement to undergo an external audit in case the organisation has registered a substantial income was introduced. However,

this Code does not have a binding power, as the Council itself is of a voluntary and informal character.

1352. The examiners were also advised that a body named the Council of the NGOs is responsible for the interpretation and monitoring of implementation of the said Code. As it was explained, this is an informal body aiming to ensure the development and the strengthening of the sector, as well as to discuss and to solve problems arising in this area.

1353. These outreach activities were reportedly continued in 2011 as the representatives of the Ministry of Justice raised the question of FT risks during the September Congress of the NGOs and within the framework of a round table with local public authorities in October 2011. In addition to that, the SIS also undertakes permanent activities for informing the population on the risks of being used for terrorist financing purposes. Taking all these measures into account, the requirements of Criterion VIII.2 (i) and (ii) can be considered as being met.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

1354. Accessible information comprises all the identification data of the organisation in accordance with its statute, including its name and seat, the names of the founders and the director, the supreme, executive and control bodies and their mandate, the scope and purpose of its activities etc.

1355. In course of the registration procedure, the NPO must also present documents such as its statute or the protocol of its General Assembly (where the executive and control bodies were elected) which documents are also available to the public. Furthermore, the State Register of Non-commercial Organisations (SRNC) is part of the State Register of Legal Entities maintained by the Ministry of Information Technology, to which public authorities, law enforcement authorities and control agencies have a general access free of charge. As a result, Criterion VIII.3.1 can be considered as being met.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

1356. As it was already noted by the third round evaluation team, the monitoring of NPOs is carried out by several governmental bodies. These include the Ministry of Justice which is not only in charge of registering the NPOs but also responsible for exercising control over the compliance of the association's activities with both the legislation in force and, more specifically, the scope and purpose of activities in its statutes.

1357. The Ministry may use its control powers either by request of any person or ex officio, acting in response to the information received. On the other hand, the evaluators cannot see any systematic or programmatic approach to provide for an ongoing control over the legality of the NPOs' activities and the same goes for the monitoring of extremist activities provided by the same ministry or the General Prosecutor's Office.

1358. As for the latter, the Ministry and the General Prosecutor are authorised by Law Nr. 54 of 21 February 2003 on the countering extremist activities, to monitor whether the activities of NPOs comply with the Constitution and legislation in force so as to avoid the appearance of extremist or other illegal activities in the sector.

1359. The legal consequences are provided by Art. 6 of this Law. The entity is forewarned about the inadmissibility of performing such activities, indicating identified breaches as the reasons for such a warning and a one-month deadline for removing the violations. If the violations are not removed, the court, at the request of the Prosecutors Office or Ministry of Justice can decide on the liquidation of the entity or the suspension of its activity. Nonetheless, this power does not seem to be applied on a regular basis either.

1360. In addition, the State Tax Service exercises control over the economic activity of NPOs including, among others, the sources of income as well as whether and how the funds are spent for the purposes provided in the statute. The measures the tax authority may apply in case the NPO's expenditures are not fully related to the scope and purpose of activities as provided in the statute depend on the seriousness of the violations. The range of measures include the withdrawal of the exemption from the tax obligations and hence the recalculation of the taxes to be paid, the initiation of further proceedings by other authorities (e.g. Ministry of Internal Affairs or Prosecutor's Office) to establish the administrative contravention prescribed by Art. 295 of Contravention Code (violation of the accounting rules, rules on preparing and presenting the financial reports) or a criminal offence, as applicable.

1361. As it was mentioned above, the Ministry of Justice is authorised to perform control over the NPOs. In cases where the Ministry finds the functioning of an NPO violates the articles of association, it gives notice to the NPO upon the necessity to remove the infringements of the law. After a repeated notification is sent out without any positive result, the Ministry can bring an action before the court for the suspension or cessation of the activities of the respective NPO. In addition, the violation of the legal conditions of taxation or licensing may lead to further sanctions applicable by the tax or licensing authorities such as freezing the bank account of the entity, imposing fines or revoking its license.

1362. Any violation can be subject to the Ministry's notification or action before the Court. It is up to the Court to establish the seriousness of the violations and if it is sufficient for the liquidation or suspension of the NPO activity.

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

1363. All NPOs must be registered by the Ministry of Justice in order to obtain legal capacity, in line with the requirements of Criterion VIII.3.3. Data submitted during the registration procedure are thus registered with the SRNC established pursuant to Government Decision Nr. 345 of 30 April 2009. The SRNC is kept not only in paper but also in electronic form and all registered information is public and also available through the Internet as the SRNC is publicly accessible on the website of the Ministry of Justice (with the exception of confidential data e.g. identity number or other data with personal character – but these are confidential only for the public, while the law enforcement authorities have access to any sort of information).

1364. The said Government Decision introduced the state identification number (IDNO) as a further means of identification and control of NPOs. The IDNO is a unique numeric code issued by the state registration authority to legal persons at the moment of their registration which helps identifying them in the information systems of the Republic of Moldova.

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

1365. Art. 43 of the Law on accounting (Law Nr. 113-XVI of 27 April 2007) provides that all legal entities, including NPOs, are obliged to maintain the accounting documents (the primary documents, the accounting registers, the financial report and other related documents) for a period specified by the Indicator.

1366. This Indicator is a bylaw issued according to the Law on accounting and as such, it is mandatory for all authorities and legal entities. The violation of its obligations constitutes an administrative contravention (Art. 295 as mentioned above). However, this Indicator was not published in the Official Monitor.

1367. According to the Indicator, the primary documents and their annexes, the transactions records on which the accounting records had been based, the inventory fiche, the register of immovable property, the primary documents on the transactions with immovable property, the accounting registers, the auditing reports, etc. must be maintained for a period of 5 years as required by Criterion VIII.3.4.

Measures to ensure effective investigation and gathering of information (c.VIII.4)

1368. As explained above, the national authorities, including law enforcement authorities have access to the data held by the SRNC. In addition to the registered data, there are the annual reports the NPOs must submit, pursuant to the Law on public associations, to the Ministry of Justice about their yearly activities, as well as the financial reports they have to produce pursuant to the Law on accounting, which also serve as sources of information for the competent authorities. As for the accounting documents, these must be maintained by the NPOs for a period of 5 years which further facilitates access to relevant information. As a result, Criterion VIII.4 can be considered as met.

Domestic co-operation, coordination and information sharing on NPO-s (c.VIII.4.1); Access to information on administration and management of NPO-s during investigations (c.VIII.4.2); Sharing of information, preventative actions and investigative expertise and capability, with respect to NPO-s suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

1369. As for the domestic cooperation and information sharing, the Moldovan authorities claimed that all relevant information the respective domestic bodies may require will necessarily be found in the SRNC nevertheless there is the possibility for exchanging any further information among the authorities involved such as the Ministry of Justice, the CCECC (including the FIU) the SIS, the State Tax Service as well as the National Bureau of Statistics or the Ministry of Information Technology. Although this forum of information sharing appeared to be, on the face of it, free of obstacles, the evaluators have some doubts about its actual frequency and the volume of information exchanged. In lack of concrete information about the actual functioning of the system, its effectiveness could not be assessed.

1370. The same goes for the situation where preventative or investigative actions may be required against a particular NPO that is suspected of being exploited for terrorist financing purposes or being a front organisation for terrorist fundraising (Criterion VIII.4.3). Although there are intelligence, law enforcement and prosecuting authorities in place with adequate competence to examine such suspicious NPOs, to share any related information and to carry out investigative or preventative actions against them, in the absence of concrete cases there is no factual ground to draw conclusions about the investigative expertise and capability of those authorities in cases involving suspicious NPOs.

1371. The evaluators of the previous round noted the lack of measures undertaken by the Ministry of Justice or any other competent authority, at the registration stage or thereafter to ensure that known terrorists and terrorist organisations would not be allowed to establish a legitimate NPO or to become a part of it at a later stage. Now, the Moldovan authorities claimed that whenever the Ministry of Justice finds during the registration procedure that there are false documents submitted or the founders or members of the NPO are included in the lists of designated persons and entities, they shall

immediately inform the Ministry of Internal Affairs and/or the SIS which would then act according to their respective procedural rules.

1372. As it was mentioned above, all information regarding the administration and management of an NPO is kept in the SRNC to which full access is provided for competent law enforcement and other authorities, in line with Criterion VIII.4.2. In addition to that, financial information can also be obtained from the State Tax Service (since all NPOs are obliged to present a declaration on the income tax) and from the above mentioned accounting records that must be kept by all NPOs for five years.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

1373. As regards responding to international requests for information about an NPO of concern both the SIS and the FIU were mentioned as responsible authorities. Specifically, the SIS has concluded a series of cooperation agreements with similar foreign intelligence services to carry out systematic joint activities and to share information regarding entities, including NPOs, suspected of terrorist financing or transnational organised crime from the perspective of the illicit income used for the financing or terrorism.

1374. The FIU, on the other hand, is designated in general terms as a point of contact for international cooperation and information exchange in the area of combating money laundering and financing terrorism by Art. 13 and 13¹(2)h of the AML/CFT Law but only as regards "foreign services having similar functions" and on the basis of cooperation agreements. Information sharing can therefore be carried out through general channels of cooperation between intelligence services and FIUs respectively but neither of these authorities seem to be specifically designated as a point of contact according to Criterion VIII.5 and, in absence of information regarding practical issues, the evaluators cannot assess the appropriateness of these procedures.

Effectiveness and efficiency

1375. The examination team noted a remarkable progress in implementing the requirements of SR.VIII since the last evaluation visit in terms of establishing the central register of the NPOs, the revision of the domestic legislation in 2008, the establishment of the duty of the tax authority to perform the checking of the way the funds are used, the amendment of the (voluntary) Code of Ethic and so on. As a consequence, there are actual means available by which the goals of SR.VIII can be achieved. Notwithstanding that, the evaluators were not informed of any concrete practice and experience in this field, because of which the effective performance of the various regimes could not have been assessed.

5.3.2 Recommendations and comments

1376. The evaluators note and appreciate the development that took place in the Republic of Moldova in the areas relevant to SR.VIII. One of the main achievements was the establishment of the central register of NPOs (SNCR) which, considering the volume of relevant information and documents it contains as well as the public accessibility of all registered data through the Internet, not only increases the transparency of the NPO sector but it will doubtlessly facilitate the examination of any specific NPO and accelerate any related procedures or investigations.

1377. The review of the adequacy of domestic laws and regulations that took place in 2008 as well as the consequential amendments in legislation is also welcomed and so is the domestic review of the NPO sector carried out in the framework of a related UNDP project between 2006 and 2009. While it is a positive sign that this ad hoc review did not reveal any risk for the NPOs to be misused for FT purposes, the evaluators need to note that SR.VIII requires regular, periodic reassessment of the sector

so as to obtain updated information on the potential vulnerabilities which systemic approach is still missing in the Republic of Moldova.

1378. The roles and responsibilities regarding the monitoring of the NPO sector remained largely the same. While the data gathered by SRNC on the one hand and the financial documentation the NPOs are obliged to keep on the other seem to provide an adequate factual basis for monitoring and there are adequate sanctions to impose in cased an NPO performs illegal activities, the evaluation team noted the lack of a systematic or programmatic approach to provide for an ongoing control over the legal functioning of the NPOs. Indeed, the examiners have doubts whether the existing procedural framework has ever been used for detecting potentially FT-related illicit activities within the NPO sector in general or that any sanctions have been applied against any concrete NPO for such breaches.

1379. The evaluators conclude that considering the total absence of actual practice and experience in this field, it is doubtful whether the general control and monitoring mechanisms being in place are appropriate and/or effectively applicable to ensure that funds of other assets, collected by or transferred through NPOs are not diverted to support terrorist activities, terrorists or terrorist organisations.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**LC**	• No mechanism introduced for the periodic/systemic reassessment of the FT vulnerabilities of the NPO sector; • No systemic/programmatic monitoring of the sector with a view to detecting potentially FT-related illicit activities. **Effectiveness:** • In lack of any actual practice and experience, it is doubtful whether the general control mechanisms being in place are appropriate and/or effectively applicable to ensure that funds of other assets, collected by or transferred through NPOs are not diverted to support terrorist activities, terrorists or terrorist organisations.

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)

Description and analysis

Recommendation 31 (rated LC in the 3rd round report)

Summary of 2007 factors underlying the rating

1380. Recommendation 31 was rated 'LC' on the basis that there was insufficient interaction with all supervisory authorities which impacted on efficiency.

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

Policy mechanisms

1381. Since the third round evaluation, a number of changes have been made to the legal framework which covers various aspects of cooperation and coordination at national level. Under Article 13¹(2)(l) and (3) of the AML/CFT Law, the OPFML is responsible for elaborating the national strategy for the prevention and combating of money laundering and terrorism financing and for the coordination of the activity of the national authorities responsible for the implementation of such strategy.

1382. The National Strategy (2010-2012) for the prevention and combating of ML/FT (Decision No. 790, dated 3 September 2010) sets out the basis for the coordination between all authorities involved in the AML/CFT sphere. It is to be noted that the National Strategy refers to the CCECC, rather than the OPFML, as the authority which is responsible for the monitoring of the strategy for 2010-2012.

1383. The authorities which are required to contribute towards the implementation of the strategy are the National Bank of Moldova, the National Commission for Financial Markets, the Ministry of Justice, the Ministry of Information Technology and Communications, the Ministry of Finance, the Customs Service the General Prosecutor Office, Ministry of Interior, Ministry of Finance, Chamber of Licence, Ministry of Economy and National Bureaux of Statistics. However, the State Chamber of labelling monitoring responsible for dealers in precious metals and stones is not included under the National Strategy.

1384. The National Strategy sets out a number of objectives which are required to be achieved by the various authorities, which are the following:

(a) protecting the domestic financial system through measures to combat ML / FT (indicators, quantity);
(b) strengthening institutional capacity in AML / CFT;
(c) consistent and effective implementation of preventive AML/CFT measures;
(d) improving the existing legal framework in accordance with the current phenomenon of money laundering and terrorist financing, including international standards;
(e) ensuring an effective cooperation both domestically as well as international in AML / CFT;

(f) implementing the recommendations of international organizations, including FATF and MONEYVAL etc.;
(g) ensuring transparency and public information on AML / CFT.

1385. In order to achieve such objectives the National Strategy requires the following measures to be undertaken:

a. channelling resources to the prevention and combating ML / FT;
b. accessing international assistance to implement this strategy;
c. accurate and timely accumulation and storage of statistical data to exclude possible data errors;
d. intensifying collaboration with international institutions (MONEYVAL, EAG, FATF, Egmont Group, CARIN etc.) for international experience sampling and presentation of national progress achieved in the field
e. regular and detailed information of population and international community on its achievements and future projects in AML / CFT.

1386. The National Strategy also requires each authority concerned to maintain statistics on the measures undertaken in furtherance of the strategy to enable authorities to monitor the extent to which the objectives of the strategy are being achieved.

1387. The National Strategy is also intended to create a forum for consultation between the various authorities involved in the prevention of ML/FT. However, the evaluators were not informed as to whether the authorities concerned meet on a regular basis to discuss issues and best practices in the AML/CFT field.

1388. In theory the National Strategy could add significant value to the coordination of activities in the AML/CFT sphere in Moldova and ensure that a concerted approach to prevent ML/FT is undertaken by all authorities concerned. However, the evaluators have doubts about its effective implementation in practice. It is unclear whether the authorities meet on a regular basis to monitor the progress achieved in furtherance of the strategy and whether one specific authority is in practice collecting and collating all the statistics required to be maintained by the National Strategy. Indeed, the evaluators noted that consolidated statistics on all AML/CFT matters are not being maintained.

Operational co-operation

1389. On a practical level, the OPFML cooperates with law enforcement authorities, especially the CID, on a daily basis. In the course of an ML/FT investigation the CID and the Anticorruption Prosecutor Office co-operate closely with the OPFML. In fact, the OPFML is commonly relied upon by the CID to obtain additional information, whether such information is to be obtained from a reporting entity or from a foreign authority. Reliance is also placed on the OPFML for the purpose of identifying and tracing proceeds of crime. Such close cooperation does not appear to exist between the OPFML and other law enforcement authorities which receive disseminations from the OPFML.

1390. Cooperation between law enforcement authorities involved in the investigation of ML/FT does not appear to be formalised. It is not clear what channels of communication are used between such authorities and whether any forum exists for such authorities to discuss issues related to the prevention of ML/FT. There does not appear to be an overlying strategy by the different law enforcement authorities to deal with ML/FT and no single authority appears to have oversight to ensure that the activities of such authorities are coordinated. This emerged clearly during an interview conducted with representatives from the Ministry of Interior as mentioned elsewhere in the report.

1391. As to cooperation between the OPFML and supervisory authorities, according to Article 10 of the AML/CFT Law in case of non-observance by the reporting entities of the obligations stipulated in the AML/CFT Law, the authorities empowered to supervise the reporting entities inform and submit immediately the respective materials to the OPFML.

1392. In terms of Article 13¹(2)(j) of the AML/CFT Law and Clause 7(j) of Chapter II of Order No. 96, the OPFML is required to participate in on-site inspections to ensure that the provisions of the AML/CFT Law are being complied with by reporting entities at the request of other supervisory authorities listed in Article 10(1) of the law. This function is supplemented by the power to identify infringements of AML/CFT legislation and impose sanctions in relation thereto. The authorities informed the evaluators that the OPFML and other supervisory authorities cooperate closely together in the fulfilment of such responsibilities, in particular conducting joint on-site inspections.

1393. The NBM is empowered by Art 6(1) of the Law no.548-XII to cooperate with the Government in pursuing its objectives and may take such actions as it deems necessary to promote such cooperation. In order to fulfil its functions on banking supervision and regulation the NBM signed bilateral agreements with the CCECC (2005) and the NCFM (2010). Since Art 6(1) of the Law no.548-XII does however not mention other government bodies, the legal basis for such agreements and their legal status is unclear.

1394. According to Art 7 of the NCMF Law, the NCFM – within the process of executing its attributions – cooperates with public authorities in order to fulfil its objectives and to protect the rights of investors and the public. The Government, the NBM, ministries and departments, other bodies of public administration shall coordinate with the NCMF the drafts of the normative acts, related to the object and subject of the NCFM Law.

1395. Cooperation between DNFBP supervisory authorities and the FIU is impeded by the serious shortcomings identified in the regulation of supervisory bodies as described under Recommendation 24.

1396. The lack of cooperation between the institutions on national level might be the reason why some categories of the reporting entities are not supervised at all (independent accountants, lawyers).

1397. In other cases, in some aspects cooperation between DNFBP supervisory authorities and the FIU is well placed and balanced. The Ministry of Finance for example, at least in theory, would provide the relevant information for violations of the AML Law to the FIU for further sanctions.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBP)(c. 31.2)

1398. Apart from involvement in the National Strategy, the evaluation team is not aware of any co-operation mechanisms between competent authorities and the financial sector and other sectors (including DNFBP) in AML/CFT matters.

Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)

1399. Although the OPFML is responsible (according to Article 13(k) of the AML/CFT Law) for reviewing the effectiveness of the AML/CFT system on a regular basis, this has never been carried out in practice.

Resources – Policy makers (Recommendation 30)

1400. Considering the information provided, the evaluation team is not in a position to draw valid conclusions as regards the sufficiency of resources of the policy makers.

Effectiveness and efficiency

1401. Although in practice the various authorities involved in the fight against ML/FT do cooperate between each other bilaterally, there is no overall coordination between all the authorities involved and no individual authority seems to have taken the lead to ensure that the national AML/CFT strategy is being implemented in practice.

Recommendations and Comments

Recommendation 31

1402. While the National Strategy is definitely a step in the right direction, more efforts should be focussed on taking practical measures to achieving the objectives set out in the strategy.

1403. Cooperation mechanisms between law enforcement authorities involved in investigation ML/FT should be created.

1404. The OPFML co-operation and coordination with the supervisory authorities including of the DNFBP should be enhanced.

1405. Law No 192-XVI on National Commission of Financial Markets should be amended in order to give the NCFM the right to exchange relevant AML/CFT information with other government authorities. In particular Article 5 of this Law should be revised.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

1406. The effectiveness of the AML/CFT system should be reviewed on a regular basis.

Recommendation 30

1407. Moldovan authorities should review the adequacy of the resources of the policy makers and take appropriate measures as necessary.

Compliance with Recommendations 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**PC**	• The existing policy level mechanism for co-operation and co-ordination between domestic authorities point in the right direction but appear not to be effective at present in ensuring that all necessary co-operation and co-ordination happens in practice. • Apart from a good level of cooperation between the OPFML and the CID, there seem to be no proper cooperation with other law enforcement authorities. • Absence of cooperation mechanisms between law enforcement authorities involved in investigation ML/FT • Effective cooperation not demonstrated.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Recommendation 35 (rated PC in the 3rd round report) & Special Recommendation I (rated PC in the 3rd round report)

Summary of 2007 factors underlying the rating

1408. In the third round MER of the Republic of Moldova Recommendation 35 and Special Recommendation I were rated PC/PC, based on the following deficiencies:

- Insufficiencies in effective implementation of the Conventions;
- Deficient implementation of UNSCR 1267 and 1373;
- Efforts to identify terrorist assets in the Republic of Moldova almost exclusively on banks.

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1409. All the three international legal instruments listed in Criterion 35.1 had already been signed and ratified by the Republic of Moldova by the time of the previous round of MONEYVAL evaluations. Namely, the Republic of Moldova ratified the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) in 1995, signed the United Nations Convention against Transnational Organised Crime (Palermo Convention) and its two protocols in 2000 and ratified it on 16 September 2005 while the 1999 International Convention for the Suppression of the Financing of Terrorism (FT Convention) was signed in 2001 and ratified in 2002.

1410. While the ratification of the Vienna and Palermo Conventions took place without reservations, the FT Convention was ratified with two limiting declarations one of which had a direct impact on its actual scope of implementation. According to this declaration, the Republic of Moldova did not consider treaties, to which it had not been party, as being included in the Annex of the FT Convention. On the one hand, this limitation was undoubtedly in line with the derogation provided by Art. 2(2) of the FT Convention but, on the other, it was not sufficient to meet SR.II which required the FT offence to extend to all treaty offences listed in the Annex (regardless of whether the country is a party to those treaties or not) and therefore it was recommended that the FT offence should expressly cover all these offences. In line with this recommendation, the Republic of Moldova has since made remarkable legislative steps for the appropriate criminalisation of all these treaty offences, including the formal repeal of the above-mentioned declaration in 2008.

1411. As for the transposition of the Vienna and Palermo Conventions, as discussed above, the Republic of Moldova has made significant progress in bringing its anti-money laundering criminal legislation in line with these conventions. Specifically, it is Art. 243 CC as amended in 2007 and 2008 that follows more closely the standards set by these international legal instruments.

1412. The trafficking in narcotics and other drug related offences are properly criminalised by the CC which, on the other hand, also provides for the confiscation of proceeds derived from drug related offences and narcotics and instrumentalities in drug related cases and associated money laundering. Extradition is provided for all related offences and mutual legal assistance (MLA) is available too. Controlled delivery is available as an operative investigative technique by the law enforcement authorities under the Law on Operative Investigation (Law Nr. 45-XIII of 12 April 1994 as amended).

1413. Creating or leading a criminal organisation is an offence (Art. 284 CC) while committing crimes in an organised criminal group or a criminal organisation (association) is an aggravating circumstance (Art. 46-47 CC) under the Criminal Code, in line with the Palermo Convention. Mutual legal assistance to foreign countries is available also for the purposes of confiscation and extradition is possible too. By virtue of the CCP, the prosecuting authorities have a range of investigative techniques at their disposal (see above for more details).

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1414. As discussed above, the current domestic legislation provides for a structure and wording by which the main conducts of collection and provision of funds that may establish the FT offence closely follow Art. 2 of the FT Convention and, beyond that, also the standards set by SR.II as a result of which the FT offence now encompasses the financing of terrorists and terrorist organisations and, as noted above, expressly covers all treaty offences. Corporate criminal liability applies both to the FT offence and to other related criminal offences and, furthermore, the FT offence extends to the full notion of "funds" as defined by the FT Convention.

1415. However, the following matters still need to be addressed with respect to the full implementation of the said Convention. The generic offence of terrorist act (Art. 278 CC) should explicitly be applicable to the population or government of "any country" and, in addition, the FT offence should be more precise in not requiring that the funds be linked to a specific terrorist act. These inconsistencies in implementation might have a consequential impact on the rendering of MLA particularly as dual criminality is checked in all cases (see below).

1416. The Republic of Moldova can extradite a person to a foreign country, the legal framework for which is set out in Chapter IX CCP and the AML/CFT Law (see below). Extradition applies to terrorist financing offences too. A person may be extradited for conducting criminal proceedings or for enforcing a sentence of imprisonment (Art. 541(1) CCP). Dual criminality is required.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1417. The UNSCRs 1267 and 1373 relating to the prevention and suppression of the financing of terrorism are implemented to a very limited extent by the Republic of Moldova. The national mechanism for giving effect to the said UNSCRs is seriously deficient and, in many aspects, incomplete. There is now authority to convert designations under UNSCRs 1267 and successor resolutions into Moldovan law by the SIS which was, at the same time, appointed as the designating authority for UNSCR 1373 too. Indeed, the lists of designated persons and entities are regularly updated and published via Internet. On the other hand, the legal framework is fragmented and deficient. The freezing mechanism only covers the postponement of transactions and even in such cases, the freezing can only be prolonged up to a month long period beyond which a criminal procedure must be initiated (the legal base for which seeming rather uncertain) or the assets must be released. A number of further areas relevant to the said UNSCRs have not yet been addressed by the domestic legislation.

Additional element – Ratification or Implementation of other relevant international conventions

1418. As an additional element (35.2) the Republic of Moldova had already ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141) before the third round evaluation. Since then, it also ratified (2007) the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) which entered in force as of May 2008. Both these conventions were ratified with declarations concerning the Transnistrian region such as the one attached to CETS 198 according

to which the provisions of the said convention would only be applied *"on the territory effectively controlled by the authorities of the Republic of Moldova"*.

6.2.2 Recommendations and comments

1419. The Republic of Moldova has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. Since the last round of MONEYVAL evaluations, the domestic legislation has been amended in order to implement these Conventions however, the existing legislation does not cover the full scope of the FT Convention as stated above and in the individual discussion on SR II. Therefore, it is recommended that the Republic of Moldova further amend its Criminal Code so as to bring its TF offence fully in line with the FT Convention.

1420. On the other hand, the effectiveness of the implementing the standards in relation to ML may give rise to doubts, particularly as regards the apparent requirement of a prior conviction for the predicate offence by the judiciary and further issues of terminology and definitions (goods, illicit earnings etc.) as discussed above under R.1.

1421. Serious efforts are required in order to properly implement UNSCRs 1267 and 1373. The Moldovan authorities should urgently establish an effective freezing mechanism which no longer requires criminal procedural rules for the long-term freezing of assets related to designated persons and entities. Equally, a series of publicly known and effective procedures must be introduced that allow for, among others, the authorised access to frozen funds. From the aspect of effectiveness, the efforts to identify terrorist assets in the Republic of Moldova should also focus on sectors other than banks.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• Reservations about certain aspects of the implementation of the FT Convention; • Insufficiencies in effective implementation of the standards in relation to ML.
SR.I	**PC**	• Reservations about certain aspects of the implementation of the FT Convention; • Deficient and incomplete implementation of UNSCRs 1267 and 1373 and successors resolutions; • Efforts to identify terrorist assets remained focused on the banking sector only (effectiveness issue).

6.3 Mutual legal assistance (R. 36, SR. V)

6.3.1 Description and analysis

Recommendation 36 (rated LC in the 3rd round report)

Summary of 2007 factors underlying the rating

1422. In the third round MER of the Republic of Moldova Recommendation 36 was rated LC, under the consideration that:

- co-operation could potentially be inhabited by legal uncertainties (self-laundering, corporate criminal liability).

Legal framework

1423. International judicial assistance is still regulated by Chapter IX of the Code of Criminal Procedure as it was at the time of the third round evaluation. However, the general CCP rules have since been complemented by a specific Law on International Legal Assistance in Criminal Matters (Law Nr. 371 of 1 December 2006 hereinafter: MLA Law) adopted subsequent to the third round. The MLA Law, as a *lex specialis*, establishes a detailed mechanism for the practical and efficient implementation of the provisions of Chapter IX CCP as well as the international conventions relevant in the field.

1424. As set out in the 3rd round report, the Republic of Moldova is a party to international agreements, such as the 1959 European Convention on Mutual Legal Assistance in Criminal Matters and its additional protocol, the 1957 Council of Europe Convention on Extradition and its two protocols and the 1990 Strasbourg Convention. Furthermore, as noted above, the Republic of Moldova signed and ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) as well.

1425. Legal provisions for providing mutual legal assistance are thus laid down in domestic law, bilateral and multilateral treaties and apply both to ML and FT. According to Art. 3 of the AML/CFT Law, the Moldovan judicial authorities are able to co-operate without concluding a treaty, since the national legislation allows co-operation on the basis of reciprocity and, to some extent, even in absence of it.

Widest possible range of mutual assistance (c.36.1), Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1426. The possible forms of international cooperation cover a wide range including:

- procedural legal assistance in criminal matters in general (Chapter IX Section 1 CCP) including sending out or receiving a rogatory commission (Section 11 idem)
- extradition (Section 2 idem)
- transfer of convicts (Section 3 idem)
- and the acknowledgement of criminal judgments of foreign courts (Section 4 idem).

1427. Turning to the procedural legal assistance in criminal matters, the central authorities in this field remained the same. Pursuant to Art. 532 CCP the requests for international legal assistance shall be filed via the Ministry of Justice or the General Prosecutor's Office directly and/or via the Ministry of Foreign Affairs of the Republic of Moldova, unless a different manner of filing requests is provided based on reciprocity. In the course of judicial proceedings as well as during the execution of punishment the requests are transmitted through the Ministry of Justice while those formulated during the prosecution stage are sent through the Prosecutor General's Office. The requests can be forwarded either directly to/from the respective judicial authorities of the foreign state (this being the usual way in case of requests based on bi- or multilateral treaties) or through diplomatic channels (typical in the absence of treaty based cooperation, when assistance can only be provided on the basis of reciprocity).

1428. International legal assistance may be requested for, or provided by, the performance of certain procedural activities, in particular:

1) notifying individuals or legal entities abroad about procedural acts or court judgments;

2) hearing persons as witnesses, suspects, accused, defendants, civilly liable parties;
3) on-site investigations, searches, seizures of objects and documents and their transmission abroad, sequestration, confrontations, presenting for identification, identification of telephone subscribers, wiretapping, expert reports, confiscation of goods obtained from the commission of crimes and other criminal investigative actions provided by this Code;
4) summoning witnesses, experts or persons pursued by criminal investigative bodies or by the court;
5) taking over the criminal investigation upon the request of a foreign state;
6) searching for and extraditing persons who committed crimes or to serve a punishment depriving them of liberty;
7) acknowledging and executing foreign sentences;
8) transferring convicts;
8.1) submitting information on criminal records;
9) other actions not contradicting this Code (Art. 533 CCP).

Provision of assistance not prohibited or made subject to unreasonable conditions (c.36.2)

1429. The legal grounds for refusal, as they are listed in Art. 534 CCP do not appear to have changed since the previous round of evaluation and all these remained founded and universally accepted. Assistance may be refused, based on a justified response to the requesting state, if:

1) the request refers to crimes considered in the Republic of Moldova political crimes or crimes related to such crimes (except if related to certain acts provided in the Rome Statute of the International Criminal Court)
2) the request refers to an act exclusively constituting a violation of military discipline;
3) the criminal investigative body or the court to which the request for legal assistance was addressed considers that its execution is of a nature to affect the sovereignty, security or public order of the state;
4) there are grounds for believing that the suspect is being criminally pursued or punished due to his/her race, religion, citizenship, association with a certain group or certain political beliefs, or if his/her situation will be exacerbated for the aforementioned reasons;
5) it is proven that the person will not have access to a fair trial in the requesting state;
6) the respective act is punished by death as per the legislation of the requesting state and the requesting state provides no guarantee in view of not applying or not executing capital punishment;
7) in line with the Criminal Code of the Republic of Moldova the act or acts invoked in the request do not constitute a crime;
8) in line with national legislation the person may not be subject to criminal liability.

1430. In addition to the list above, the MLA Law provides for further reasons for refusal. One of them is the case of double jeopardy (Art. 5 - The right not to be prosecuted or convicted twice for the same action) but Art. 4(1) contains a list of other reasons as follows:

a) the criminal proceedings of the requesting state do not comply with or do not respect the conditions the European Convention on the Protection of the Human Rights and Fundamental Freedoms (Rome 1950) or any other international treaty ratified by the Republic of Moldova;
b) the request on legal assistance is made in a case pending before an *"extraordinary"* court i.e. a judicial forum other than those created on the basis of international treaties, or in order to execute a punishment imposed by such court[76]

[76] According to Art. 115 (1) to (3) of the Constitution of the Republic of Moldova, justice is administered by the Supreme Court, the Courts of Appeal and the Courts or further specialized courts that may be set by law for certain categories of cases. Nonetheless the establishment of other *"extraordinary courts"* is prohibited.

c) the action grounding the request on legal assistance is the object of an ongoing proceeding, or the given action has to or can also become the object of a criminal investigation which falls under the jurisdiction of the criminal authorities of the Republic of Moldova;
d) the acceptance of the request on legal assistance may entail severe consequences for the person because of his age, health state or any other reason bearing a personal character.

1431. Contrary to those listed in the CCP above, these additional reasons may raise some issues. The most problematic is subparagraph d) with its vague wording ("*any other reason bearing a personal character*") making it so versatile that it might be generally applicable for any circumstances. Such personal circumstances should have their consequences in the process of meting out punishment (as mitigating factors) instead of posing obstacles to effective mutual legal assistance. Subparagraph c) is likewise restrictive, extending the principle of double jeopardy to such an extent that excludes assistance in respect of any criminal offence which could, even theoretically, be subject to Moldovan criminal jurisdiction ("can become" thus not only those actually being prosecuted by Moldovan authorities).

1432. In addition, the MLA Law does not require motivating the refusal of judicial assistance which necessarily refers to these 4 (or 5) specific reasons. Considering, that both Chapter IX CCP and the MLA Law are applicable if otherwise is not provided in an international treaty or other obligation to which the Republic of Moldova is party (see Art. 531 CCP) these vague and indecisive grounds for refusal are likely to impede effective international cooperation with those states that are not part of any international treaty or agreement with the Republic of Moldova.

1433. Mutual legal assistance is based on the principle of dual criminality by virtue of Art. 534(1) subparagraph 7 CCP according to which international legal assistance may be rejected if, in line with the Criminal Code of the Republic of Moldova, the act or acts invoked in the request do not constitute a crime. The dual criminality requirement is applicable to all (thus not only coercive) procedural actions, which is a substantial restriction to the effective cooperation with other states. The remaining (though not too serious) shortcomings of the CC with regards to the TF offence (esp. its inapplicability to the population or government of "any country") may also negatively impact MLA based on dual criminality.

1434. The evaluators note that the Republic of Moldova, being a party to the 1959 European Convention on mutual legal assistance in criminal matters, has made declarations to Article 2 of the Convention where it declared that it would refuse assistance where the committed act is not incriminated as an offence according to the legislation of the Republic of Moldova. Equally, it has also reserved the right to execute the rogatory letters aimed at search and seizure of property (Article 5 of the Convention) only in case dual criminality is met, the offence is an extraditable offence in the Republic of Moldova and the letter rogatory is consistent with Moldovan law. On the other hand, the examiners were assured that the principle of dual criminality is interpreted broadly, even if the legal definition of the respective offence is not completely the same in both countries (provided the substance of the criminal behaviour is punishable in both jurisdictions).

Clear and efficient processes (c. 36.3)

1435. As regards clear and efficient processes for the execution of MLA requests in a timely way and without undue delays, neither the CCP nor the MLA Law provides procedural deadlines and the Moldovan authorities indicated that in general, the time limits are dependent on the content of the respective requests.

1436. The average time the execution of a letter rogatory requires was said to be 2 to 3 months, but fulfilling the most difficult requests may take six months or even one year (4-10 months according to

the official report[77]. The examiners were not informed by any other states on any negative experiences, including undue delays in executing MLA requests, in the cooperation with the Republic of Moldova.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1437. No ground for refusal for offences involving fiscal matters is regulated in the Republic of Moldova. As for the exemption of political crimes, Art. 4(2) of the MLA Law specifies which crimes are not considered offences of political nature. Among these, one can find the crimes foreseen by Art. 1 of the European Convention on Fight against Terrorism (1997) and *"in other similar international treaties"* as well as *"any other crime whose political character nature has been excluded by the international treaties, which the Republic of Moldova is a party to"* which undoubtedly covers all criminal offences provided by the FT Convention (considering Art. 14 of the said Convention which prescribes that none of such offences shall be regarded for the purposes of extradition or mutual legal assistance as a political offence).

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1438. Similarly, neither the CCP nor the MLA Law allow for the refusal of MLA requests on the grounds of secrecy or confidentiality requirements. In the Moldovan law, no financial institution secrecy law appears to inhibit the implementation of the FATF Recommendations (see above under R.4) and this general approach must also be followed when executing foreign letters rogatory. The examiners have no information on any restrictive practice in this field.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1439. Pursuant to Art. 533(1) CCP, the powers of competent authorities are available for use in response to requests for MLA. Within the limits of the letter rogatory to be executed, the prosecuting authorities possess the same procedural powers compared to a national criminal investigation.

Avoiding conflicts of jurisdiction (c. 36.7)

1440. There is no specific legislation in the Republic of Moldova to provide for mechanisms for determining the best venue for prosecution of defendants in cases that are subject to prosecution in more than one country in order to avoid conflicts of jurisdiction. Neither was it reported that introducing such a mechanism has ever been considered by the competent Moldovan authorities.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1441. Bearing in mind that, pursuant to the relevant legislation in force, all foreign MLA requests must be either submitted or received through the central authorities of the Republic of Moldova (the General Prosecutor's Office and the Ministry of Justice, respectively) there is no legal possibility for Moldovan judicial authorities to receive and execute direct requests from their foreign counterparts.

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

1442. The provisions described under R.36 equally apply to the fight against terrorism and the financing thereof. It needs to be reiterated, however, that the deficiencies described under SR.II may have a negative impact on the ability of the Republic of Moldova to provide MLA due to the generic precondition of dual criminality (in which respect, the commentaries above also apply to this section).

[77] http://www.procuratura.md/file/gener%20cooper%20internat%202009.pdf

1443. Surrender or acceptance of the execution of (special) confiscation or other measures of the same effect is among the forms of legal assistance that the Republic of Moldova provides (see Art. 533(1) subpara 3 CCP as well as the Strasbourg and Warsaw Conventions as discussed above). Enforceable sentences of foreign courts as to the execution of forfeiture of assets or confiscation are accepted pursuant to Chapter IX Section 4 CCP. The Republic of Moldova has no mechanism for sharing of confiscated assets with other states.

Additional element under SR V (applying c. 36.7 & 36.8 in R. 36, c.V.6)

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1444. As for the human and technical resources dedicated to MLA, the evaluators learnt that the Department of International Legal Assistance and European Integration of the General Prosecutor's Office, which deals with rogatory letters, extradition and transfer of criminal proceedings during criminal investigations, consists of 8 prosecutors (including the head and the deputy) and 2 assistants and the technical resources were said to be sufficient.

1445. No information on the Ministry of Justice human and technical resources dedicated to MLA was provided to the evaluation team.

Recommendation 32 (Statistics – c. 32.2)

1446. The Moldovan authorities provided the following statistical table related to MLA provided and requested in ML cases. The figures indicate letters rogatory sent out or received by the General Prosecutor's Office in this period thus the numbers in the table represent MLA provided in the investigatory stage of criminal proceedings.

Table 39: Rogatory letters sent out and received by the General Prosecutor's Office

Rogatory letters:	2008	2009	2010	2011
Sent to execution/executed	1/1	5/5	16/12	3/1
Received for execution/executed	0/0	1/1	4/4	2/2

1447. No statistics had been provided to the evaluation team related to MLA provided or requested through the Ministry of Justice in ML cases.

Effectiveness and efficiency

1448. As it can be seen above, the General Prosecutors' Office of the Republic of Moldova has sent out 25 letters rogatory related to the offence of ML to other states for execution (in relation to 12 domestic criminal cases underlying this figure) between 2008 and 2011 (no figures for the preceding years were made available to the examiners).

1449. The states involved were Cyprus, the Russian Federation, Latvia, Great Britain, USA, Ukraine, Estonia, Germany, the Netherlands, Austria, Greece, Poland, Turkey, Finland, the Czech Republic, Italy and Kazakhstan. On the other hand, 7 foreign letters rogatory in ML cases were executed by the Moldovan authorities at the request of Romania, Estonia, USA, Austria and Cyprus.

1450. It was emphasised that no ML-related MLA request has ever been refused by the Republic of Moldova. Furthermore, the Moldovan authorities took over one ML case from Austria for further proceedings while they sent another one to be taken over to Romania.

1451. The lack of detailed information provided by the Moldovan authorities that does not enable the evaluation team to draw any firm conclusions regarding the effectiveness of the MLA process and cooperation and assistance provided by Moldova, the timeframe under which MLA requests are being executed, etc. Furthermore, it has to be said that only part of the picture is available, given that there is no information from the MoJ on the matter.

6.3.2 Recommendations and comments

Recommendation 36 and Special Recommendation V

1452. The examiners share the opinion of the previous evaluation team that while there have so far been no concrete incidents recorded that would give indication of the existence of legal obstacles jeopardising an effective MLA provision, the identified domestic legal shortcomings should be remedied to ensure that full assistance can be given. This particularly refers to the shortcomings in FT criminalisation and the vagueness of certain reasons for refusal of cooperation in the MLA Law.

Recommendation 30

1453. The human and technical resources dedicated to MLA of the Department of International Legal Assistance and European Integration of the General Prosecutor's Office, were said to be sufficient.

1454. No information on the Ministry of Justice human and technical resources dedicated to MLA was provided to the evaluation team.

Recommendation 32

1455. Effectiveness could not be demonstrated due to the absence of comprehensive statistics on MLA requests relating to ML, predicate offences and TF.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36	**LC**	• Co-operation could potentially be inhibited by vague and indecisive reasons for refusal. **Effectiveness:** • Effectiveness cannot be demonstrated due to the absence of detailed and comprehensive statistics on MLA requests (see R.32).
SR.V	**PC**	• Application of dual criminality may negatively impact on the ability of the Republic of Moldova to provide MLA due to shortcomings in FT criminalisation. **Effectiveness:** • Effectiveness cannot be demonstrated due to the absence of detailed and comprehensive statistics on MLA requests (see R.32).

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1 Description and analysis

Recommendation 40 (rated PC in the 3rd round report)

Summary of 2007 factors underlying the rating

1456. In the third round MER the Republic of Moldova was rated 'PC' based on the following factors:

- The absence of autonomous status of the FIU restraints its capacity for direct international co-operation;
- Gaps in the framework enabling financial supervisory bodies to exchange information and cooperate with foreign counterparts

Legal framework

1457. Article 13(1) of Law 190 provides the legal framework for international cooperation in the AML/CFT area, based on the principles of mutual assistance according to the legislation of the Republic of Moldova and international treaties.

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

1458. Pursuant to Article 13(2) of AML/CFT Law 190 the OPFML, on its own initiative or on the basis of a request, can send, receive or exchange information and documents with foreign authorities having similar functions to the OPFML, on a mutual basis and subject to the observance of similar requirements regarding confidentiality. Such exchange of information shall only take place subject to the conclusion of a memorandum of understanding (*cooperation agreement*). As a result of this requirement, the OPFML has entered into a memorandum of understanding with thirty-nine foreign FIUs

Table 40: MoUs are signed with the following countries

	Jurisdiction	Institution
1.	**Albania**	Direction of Coordination of Fight Against Money Laundering
2.	**Belgium**	Financial Intelligence Unit
3.	**Bulgaria**	Financial Intelligence Agency
4.	**Belarus**	State Control Committee
5.	**Croatia**	Department Against Money Laundering
6.	**Estonia**	Money Laundering Information Office
7.	**Georgia**	Financial Monitoring Service
8.	**Germany**	Financial Intelligence Unit
9.	**Lebanon**	Special Investigations Commission
10.	**Lithuania**	Financial Crime Investigation Service
11.	**Macedonia**	Direction of Prevention of Money Laundering
12.	**South Korea**	Korean Financial Intelligence Unit
13.	**Romania**	National Office for Prevention and Fight Against Money Laundering
14.	**Russian**	Federal Financial Monitoring Service

	Federation	
15.	**Ukraine**	State Committee for Financial Monitoring
16.	**Slovenia**	Money Laundering Prevention Office
17.	**Indonesia**	Financial Transactions Reporting And Analysis Center
18.	**Holland**	Unusual Transactions Identification Office
19.	**USA**	State Treasury's Office Against Financial Crime
20.	**Cyprus**	Financial Intelligence Unit
21.	**Poland**	General Inspection Of Financial Information
22.	**Kyrgyzstan**	State Financial Intelligence Service
23.	**Latvia**	Office for the Prevention of Money Laundering
24.	**San Marino**	Financial Intelligence Agency
25.	**Israel**	Agency of fight against money laundering and financing of terrorism
26.	**Serbia**	Administrative Unit of prevention of money laundering of the Ministry of Finance
27.	**Bahamas**	Financial Intelligence Unit of Bahamas Community
28.	**France**	Unit for the processing of information and action against the illegal financial networks
29.	**Monaco**	Financial transactions information and monitoring service
30.	**Montenegro**	Unit of prevention of money laundering and financing of terrorism
31.	**South Africa**	Financial Intelligence Center
32.	**Kazakhstan**	Financial Monitoring Committed under the Ministry of Finance of Kazakhstan Republic
33.	**Nigeria**	Financial Information Unit of the Federal Republic of Nigeria
34.	**Finland**	National Investigations Office of the Republic of Finland
35.	**British Virgin Islands**	Financial investigations Agency of British Virgin Islands
36.	**Mongolia**	Financial Information Unit of Mongolia
37.	**Portugal**	Financial Intelligence Unit of Portuguese Republic
38.	**Armenia**	Financial Monitoring Center of the National Bank of Armenia
39.	**Aruba**	Aruba's Suspicious Transactions Reporting Center

1459. The power to exchange information is also set out under Clause 7(h) of Order No. 96 which goes beyond the exchange of information with another FIU but also include the exchange of information with an international organisation specialised in the prevention of ML/FT (e.g. MONEYVAL, EAG, CARIN).

1460. It is not clearly indicated in the AML/CFT Law whether the OPFML can exchange information in relation to the underlying predicate offences. However, the Moldovan authorities indicated that in practice they do exchange such information when the case relates to the ML.

1461. In terms of Article 13¹(4) of the AML/CFT Law and Clause 9(h) of Order No. 96, the OPFML is tasked with the responsibility of representing the Republic of Moldova in specialty forums and international organisations and can be a member of such entities. However, it was noted that it is the Director of the CCECC and not the Head of the OPFML who signs Memoranda of Understanding with other FIUs. Although the authorities pointed out that this is a mere formality (since in the Republic of Moldova it is only a member of government who has the power to enter into a memorandum with a foreign authority), in theory the OPFML may not enter into any arrangements with other FIUs without the formal consent of the Director of the CCECC.

1462. The OPFML became a member of the Egmont Group of FIUs on 27 May 2008. As a member of the Egmont Group, the OPFML exchanges information with other FIUs through the Egmont Secure Web.

1463. As noted under the analysis of Recommendation 26, Clause 9(c) of Order No. 96 grants a wide-ranging power to the OPFML to request and receive any information necessary for the proper exercise of its powers from public authorities, enterprises, institutions, organisations and reporting entities, including for the purpose of exchanging information with foreign FIUs. It was also noted that the OPFML has direct access to various databases which facilitates the timely, constructive and effective collection of information to be exchanged with other FIUs.

Supervisory authorities

1464. The NBM is empowered by Art. 7(1) of the Law no. 548-XII to represent the Republic of Moldova in all intergovernmental meetings, councils and organisations concerning monetary policy, bank licensing and supervision, and other matters that are within its fields of competence. The heading of this provision refers to *"Cooperation with international bodies"*.

1465. The NBM has signed a few bilateral cooperation agreements with other supervisory authorities[78]. The legal basis for concluding bilateral agreements is unclear[79] as this competence is not expressly mentioned in the NBM Law.

1466. The MoU with the National Bank of Romania may serve as an example for such bilateral agreements. The content of information to be exchanged relates to significant deficiencies and remedial measures. Such information shall be provided as soon as possible without requiring a written request. AML/CFT related information is neither expressly excluded from the information exchange nor explicitly mentioned. Since there were no statistics on information exchange on AML/CFT matters by the NBM, it was not possible to establish whether there indeed have been exchanges of AML/CFT related information, but the representatives of the NBM explained that the MoU provides for a sound legal basis for that.

1467. According to Art. 5 of the NCFM Law, the Commission is legally empowered to cooperate with the corresponding specialised international organisations and to be their member, as is the case of the IAIS. The NCFM also has the right to provide assistance and to exchange information with specialised international organisations and similar authorities from other states. There are no referrals in the Law to the provision of assistance in a rapid, effective and constructive manner. There are no mechanisms in place to facilitate the constructive exchange of information[80]. However, the assessment team was told that the NCFM actively sought information from foreign authorities in 3 cases.

1468. With respect to all other supervisory authorities (Ministry of Information Technology and Communications, Ministry of Justice and Licensing Chamber), there is a generally noted lack of legal basis for any sort of international cooperation on ML/CF matters.

Law enforcement authorities

[78] The NBM informed the assessors that at the end of 2011 cooperation agreements with supervisory authorities from: Ukraine, Russian Federation, Kazakhstan, Republic of Belorussia, Commonwealth of Independent States and Romania were signed.

[79] The NBM informed the assessors at the pre-meeting of a change of Art 36 of the NBM Law which extends the possibilities to exchange information in spite of professional secrecy. This new situation came into force on 25 May 2012, which was after the cut-off date for legislation to be taken into account for the report. Art. 7 of the NBM Law has, however, not changed.

[80] The NCFM refers to a draft amendment to the NCFM Law, which would bring the international cooperation section of the NCFM Law into accordance with international standards of cooperation between supervisory authorities.

1469. The law enforcement authorities provided a number of statistics to demonstrate the extent to which informal channels, such as Interpol and Europol, are used for the exchange of information in the course of criminal investigations.

Table 41: Requests handled in the exchange of information recorded by the Virtual Centre SECI / GUAM

№	Period of reference Evidence criteria	2008	2009	2010	2011
	Requests initiated by Moldovan authorities	332	474	2351	359
	Requests initiated by SECI/GUAM member-states	507	612	2339	533
	Total amount of examined information in the reference period: of which depending on the cooperation directions:	3,329	4,478	4,506	3,356
	Traffic of human beings and illegal migration	493	608	266	163
	Verification of transport means and units	474	702	512	440
	Person search	309	598	422	501
	Verification of legal entities (economic agents) activity	401	473	347	224
	Drug traffic	46	68	52	44
	Organised Crime	34	9	19	24
	Other crimes	477	692	1,032	662
	Verifications of persons and info referring to them	873	1,188	1,798	1,273
	According legal assistance	170	72	58	25
	Exchange of information regarding drugs	52	68	-	-

Table 42: Requests handled in the process of information exchange recorded by the National Central Bureau of Interpol

№	Period of reference Evidence criteria	2008	2009	2010	2011
1.	Requests initiated by Moldovan authorities	4,464	4,476	4,817	4,657
2.	Requests initiated by other states	4,873	4,915	5,404	30,912
3.	Total executed	100%	100%	100%	100%
4.	Percentage of money laundering crimes	24	22	13	21
5.	Persons search: of which depending on the search purpose:	429	492	662	753
	For arrest and extradition	227	315	252	250
	For identification of localization	18	64	136	134
	Aliens	9	15	18	24
	Missed persons	3	19	23	27
	Arrests abroad	35	26	48	67
	Extraditions	16	14	25	27
	Persons arrested in the Republic of Moldova	5	2	10	9
	Persons extradited from the Republic of Moldova	2	-	5	5
6.	Transport units that were declared as stolen in member states of OIPC Interpol, of which:	9	19	11	11
	Identified	97	11	123	192
	Returned	8	7	11	7

1470. Exchange of information is also conducted through the National Contact Point Europol which exchanges strategic information with the European Police Office regarding the prevention and combating of terrorism, human trafficking, drug trafficking, combating illegal migration, trafficking of nuclear and radioactive substances, euro counterfeiting and forgery of means of payment, money laundering, etc.

1471. In view of the fact that PNC Europol operates under a Strategic Cooperation Agreement, which only allows for the exchange of strategic information (not including personal data), cooperation

with Europol is limited to receiving reports and newsletters from the European Police Office regarding the criminal situation (information on drug trafficking, counterfeiting of euro, illegal migration, radiological and nuclear material detection) from member countries of Europol.

1472. Additionally, requests that are submitted by NCP Europol to the European Police Office only include information related to the technical expertise of the required object[81].

1473. For execution to the European Police Office in 2010: 1 request was sent from Intelligence Service of the Republic of Moldova regarding the technical examination of tobacco products, one request from the Forensics Department of the Ministry of Internal Affairs regarding criminal transmission of counterfeit euro banknotes samples and one request from the Department for Combating Drug Trafficking of the Ministry of Internal Affairs for technical verification of psycho-active substances.

1474. For the execution by the National Contact Point Europol the following were received.

Table 43: Number of requests received from Europol

Year	2008	2009	2010	2011
Drug trafficking	1 request	2 requests	5 requests	6 requests
Trafficking Tobacco			1 request	-
Trafficking of human beings	1 request	1 request	1 request	1 request
Trafficking of radioactive materials, nuclear and explosive	-	1 request	1 request	2 requests
Euro counterfeiting	1 request	1 request	2 requests	-
Organised crime	1 request	1 request	5 requests	4 requests
Arms trafficking	-	2 request	1 request	-
counterfeit goods	-		1 request	-
Fraud, money laundering	1 request	1 request	-	1 request
Payment card fraud	1 request	1 request	-	1 request
Combating illegal migration	1 request	2 requests	-	-
Combating terrorism	1 request	2 requests	-	-

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)

FIU

1475. The OPFML is empowered to request information from any reporting entity and other entities for the proper exercise of its powers, including for the purpose of conducting inquiries on behalf of foreign counterparts. The evaluators were informed that when a request for information is received from a foreign FIU, the OPFML may conduct searches in its own databases and all the other databases to which it has access.

[81] With the signing of the Operational Cooperation Agreement, which will take place in the near future, PNC Europol, will enhance opportunities for information exchange, including personal data.

Supervisory authorities

1476. The Moldovan authorities indicated to the evaluation team that the legal basis for making enquiries on behalf of foreign counterparts by the NBM is provided in Art. 36 of the NBM Law, but no such provisions were found in the said article.
1477. No specific powers are provided by the Law on NCFM in respect of the exchange of information at the request of foreign counter parts.

Law enforcement authorities

1478. In view of the limited information provided, the evaluators could not determine whether the law enforcement authorities are authorised to conduct investigations on behalf of foreign counterparts. According to information received by the evaluation team at a late stage, the provisions concerning the possibility for the law enforcement authorities to conduct inquiries at the request of a foreign counter-part are to be found in the Law on Prosecutor's Office.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

1479. As supported by the positive feedback received by the evaluators from MONEYVAL members, it appears that the exchange of information is not subject to any unreasonable or unduly restrictive conditions for the FIU. For those supervisory authorities that have the possibility to exchange information with foreign counterparts, it does not appear that such information exchange is unduly restricted.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

FIU

1480. There are no restrictions on the OPFML that would prevent them from exchanging information with their counterparts in a case which also involves fiscal matters.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

1481. The AML/CFT Law contains specific provisions dealing with secrecy and confidentiality issues. Article 12(2) states that the transmission of information to the OPFML, criminal investigation authorities, the prosecutor's office, courts and other authorities, as provided by the law shall not constitute a disclosure of a commercial, banking or professional secret.

1482. Additionally, Article 12(3) states that the legislative provisions on commercial, banking or professional secrets, shall not hinder the authorities mentioned in sub-article (2) from receiving or collecting any information (financial and economic) on any natural or legal person.

1483. Article 15(2) of Law No 190 specifically states that the OPFML shall not breach any commercial, banking or professional secrets when exchanging information with foreign FIUs.

Safeguards in use of exchanged information (c.40.9)

FIU

1484. The OPFML and its officers are bound by confidentiality obligations in the performance of their functions. Article 15 of the AML/CFT states that the OPFML, the supervisory authorities listed under Article 10(1) and any officials of the OPFML and such supervisory authorities have a duty to

maintain any commercial, banking or professional secret which they may have come in possession of in the course of the performance of their functions. Any disclosure of such secret shall be subject to the damages caused by the disclosure of such secret in accordance with the relevant legislation.

Additional elements – Exchange of information with non-counterparts (c.40.10 and c.40.40.1); Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

FIU

1485. It is not clear whether the OPFML can exchange information with non-counterparts since there is no express provision which enables the OPFML to do so. The law only refers to the exchange of information between the OPFML and foreign FIUs and international organisations involved in the prevention of ML/FT.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5) (rated LC in the 3rd round report)

1486. The provisions prescribed under R.40 apply equally to the fight against financing of terrorism. It should be noted, however, that the deficiencies described under SR.II and R.40 may have an impact on the Republic of Moldova ability to provide other forms of international co-operation.

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

1487. The analysis for Recommendation 40 also applies to cooperation in relation to the financing of terrorism.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

Table 44: Requests received and sent via Egmont Secure Web (ESW)

	Sent requests via ESW	**Received requests via ESW**
2008	93	49
2009	99	48
2010	122	54
2011	154	45

1488. Table 44 indicates the number of requests processed by the OPFML through the Egmont Secure Web. Statistics are kept by Moldovan authorities in this respect.

1489. There are no statistics maintained by the supervisory authorities on AML/CFT exchange of information.

Effectiveness and efficiency

FIU

1490. The problems identified in the Third Round regarding the exchange of information appear to have been broadly overcome both on a legislative and practical level.

1491. As noted under Recommendation 26, the absence in the AML/CFT Law of a period of time within which certain information required from a reporting entity and other entities is to be provided may have an impact on the timeliness of the provision of information to the OPFML. This could potentially have a negative bearing on the exchange of information with foreign FIUs, although this does not appear to be the case in practice as a result of the provisions of the Contravention Code.

Supervisory authorities

1492. Notwithstanding legal issues the NBM has signed MoUs with foreign counterparts in practice which allow for the exchange of information.

1493. Due to a lack of statistics the effectiveness of this criterion cannot be assessed positively.

Law enforcement authorities

1494. The effectiveness of the requirement to conduct investigations on behalf of foreign counterparts was not demonstrated.

6.4.2 Recommendation and comments

1495. Competent authorities should be able to provide the widest range of international cooperation in a rapid, constructive and effective manner to their counterparts.

1496. Clear and effective gateways to facilitate the prompt and constructive exchange of information between counterparts should be established.

Supervisory authorities

1497. NCFM Law should be amended to bring the legislative framework for international cooperation more in line with international standards and allowing for the exchange of information with foreign counterparts, both spontaneously and upon request. Authorities should be able to exchange information in a rapid and constructive manner.

1498. For all supervisory authorities a clear legal basis for the exchange of information in accordance with the criteria of R.40 should be established.

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**	• No legal basis for the NBM to sign bilateral agreements (e.g. MoU) which would facilitate and allow for prompt and constructive exchanges of information directly between counterparts; • No explicit legal basis for the NCFM to provide assistance in a rapid, constructive and effective manner to foreign counterparts, to exchange information directly with foreign counterparts;

		• No authorisation to national supervisory authorities to conduct inquiries on behalf of foreign counterparts; • With respect to supervisory authorities for leasing companies and Post Office there is a generally noted lack of legal basis for any sort of international cooperation. **Effectiveness:** • Effectiveness issues regarding law enforcement authorities; • Due to a lack of statistics, the effectiveness of supervisory authorities' international cooperation cannot be assessed positively.
SR.V	**LC**	• Deficiencies prescribed under R.40 apply equally to SR.V. **Effectiveness:** • Effectiveness issues regarding law enforcement international cooperation.

7 OTHER ISSUES

7.1 Resources and Statistics (R.30 and R.32)

1499. 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	**PC**	• Inadequate budget to enable the OPFML to function fully independently and autonomously of the CCECC; • No clear human resources assessment to ensure adequate allocation between departments in the OPFML; • Insufficient training to ensure use of OPFML's IT tools at full capacity; • Lack of adequate training for law enforcement authorities involved in the investigation of ML/FT offences; • Lack of specialised software to assist law enforcement authorities in the investigation of ML/FT offences; • Insufficient AML/CFT specialised staff in some supervisory authorities (NCFM, LiC); • Adequacy of the resourced of the policy makers not demonstrated; • Adequacy of the human and technical resources of the Ministry of Justice dedicated to MLA not demonstrated.
R.32	**PC**	• The effectiveness of the AML/CFT system is not reviewed on a regular basis;

		• Last quarter of 2008 is not/partly covered by statistics relevant to R.1 and SR.II; • No statistics maintained on the category of reports generating cases opened by the FIU; • No statistics maintained on the cases opened by LEA based on FIU disseminations (including predicate offence); • Limited and unreliable statistics on the number of ML/FT investigations; • Poor quality of statistics on on-site examinations and sanctions in the area of AML/CFT; • Statistics insufficiently detailed (nature of request, time required to respond, number of domestic cases vs. number of letters rogatory); • No statistics on information exchange between supervisory authorities; • No law enforcement and supervisory authorities' statistics in respect of international cooperation.

7.2 Other Relevant AML/CFT Measures or Issues

1500. N/A

7.3 General Framework for AML/CFT System (see also section 1.1)

1501. N/A

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to the Republic of Moldova. *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[82]
Legal systems		
1. Money laundering offence	**LC**	**Effectiveness:** • Low number of ML convictions achieved; • Uneven understanding by judiciary on the need for a prior conviction to achieve ML convictions.
2. Money laundering offence Mental element and corporate liability	*Largely Compliant*	• The scope of corporate criminal liability is limited to commercial legal entities
3. Confiscation and provisional measures	**PC**	• The explicit coverage of the body ("corpus") of the ML offence has not yet been provided for; • Inconsistency in criminal legislation as regards confiscation from third party legal persons; • Incapability to confiscate (at least the equivalent value) of proceeds the perpetrator or a mala fide third party transferred to a bona fide third party without compensation; • Overly high evidentiary standards for the application of provisional measures (sequestration) together with restrictions as regards the property that belongs to third parties and legal entities. **Effectiveness:** • Insufficient effective use of the current

[82] These factors are only required to be set out when the rating is less than Compliant.

		seizure/sequestration and confiscation provisions; • The volume of confiscated property is low in comparison with the number of convictions for predicate offences.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	
5. Customer due diligence	**PC**	• Exclusion of "A" license savings and credit associations from the application of the AML/CFT Law; • No legal prohibition on keeping anonymous accounts in the non-banking financial sector for all customers; • Exemptions from CDD requirement exist; • No requirements or instructions on identification of the legal persons in case of Post Office and leasing companies; • No clear procedure in respect of Post Office and leasing companies on identification measures and verification of the source of funds; • No clear requirements to determine whether the customer is acting on his own behalf or on behalf of somebody else (except for accounts opened for investments and fiduciary assets). **Effectiveness:** • Effectiveness and efficiency of implementation is not demonstrated in non-banking financial institutions; • No domestic ML/TF risk assessment to allow effective application of the risk based approach in performing CDD.
6. Politically exposed persons	**LC**	**Effectiveness:** • Lack of appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP; • Effectiveness and efficiency of implementation not demonstrated.
7. Correspondent banking	**LC**	• Insufficient safeguards against correspondent relationships with respondent institutions with insufficient anti-money laundering and terrorist

		financing controls.
8. New technologies and non face-to-face business	**PC**	• No direct requirement for the financial institutions to pay special attention to any money laundering threats that may arise from new or developing technologies. • No requirements for the Post Office and leasing companies in respect of having policies in place or taking measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes. **Effectiveness** • Effectiveness not fully demonstrated due to recent adoption of legal provisions.
9. Third parties and introducers	**NC**	• There are no general legal or regulatory provisions applicable to intermediaries and third parties in the case where financial institutions are relying on them for CDD purposes, despite evidence of it happening in practice.
10. Record keeping	**LC**	• No express legal provision that the transaction records should be sufficient to permit reconstruction of individual transaction so as to provide, if necessary, evidence for prosecution of criminal activity; • Law enforcement authorities are not empowered to request the prolongation of the record keeping period.
11. Unusual transactions	**PC**	• There is no definition or further guidance for the financial institutions to identify complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose; • No requirements for non-banking FI and Post Offices to examine as far as possible the background and purpose of such transactions; • No requirement to set forth the findings (of the examinations) in writing; • No requirement to keep records on the findings of examinations of unusual large transactions; • Effectiveness not demonstrated.
12. DNFBP – R.5, 6, 8-11	**PC**	• Accountants not covered by the AML/CFT Law in practice; • No clear requirements to determine whether the customer is acting on his own behalf or on behalf

		of somebody else. ***Applying Recommendation 5*** **Effectiveness:** • No procedure on identification measures and verification source (with the exception of auditors); • The concept of risk-based approach in respect of CDD is generally absent; • No verification of the identity documents is routinely performed from independent and reliable sources. • No measures are in place in respect of the beneficial owners. ***Applying Recommendation 6*** **Effectiveness:** • Low awareness on PEP matters all across the DNFBP. ***Applying Recommendation 8 and 9*** • N/A ***Applying Recommendation 10*** • No express legal provision that the transaction records should be sufficient to permit reconstruction of individual transaction so as to provide, if necessary, evidence for prosecution of criminal activity. ***Applying Recommendation 11*** • There are no definition or further guidance for the DNFBP to identify complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose; • No requirements for DNFBP to examine as far as possible the background and purpose of such transactions; • No requirement to set forth the findings (of the examinations) in writing; • No requirement to keep records on the findings of examinations of unusual large transactions; • Low awareness on unusually large transaction matter across the sector.
13. Suspicious transaction reporting	**PC**	• The scope of the reporting requirement does not to extend to the reporting of "funds" suspected to be the proceeds deriving from "criminal activity";;

		• The reporting obligation provided for FT is limited to "transactions" and does not extend to "funds"; • Reporting is limited to a "request" for a transaction or activity; • Issues regarding the definition of "suspicious transactions and activities"; • Certain exemptions applicable to the reporting regime. **Effectiveness*:*** • Low level of reporting by non-banking financial institutions; • Low level of awareness of the reporting requirement by non-banking financial institutions; • Concerns on the effectiveness of the systematic reporting mechanism (tick box approach).
14. Protection and no tipping-off	**PC**	• Protection of non-employee natural persons (directors, officers etc.) who take part in directing, managing or representing a reporting entity is unclear. **Effectiveness** • No specific sanctions applicable to natural persons for the violation of the prohibition of *"tipping-off*".
15. Internal controls, compliance and audit	**PC**	• No requirements for all reporting entities to establish and maintain internal procedures, policies and controls to detect unusual and suspicious transactions and report to the FIU; • No requirements for the non-banking financial sector, that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information; • No requirement for the non-banking financial system to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls. **Effectiveness:** • The question of effectiveness arises for financial sector participants other than banks.
16. DNFBP – R.13-15 & 21	**NC**	***Applying Recommendation 13 and SR.IV*** • Unclear statute for the independent accountants in

		respect of the scope of the reporting requirements; • The scope of the reporting requirement does not to extend to the reporting of "*funds"* suspected to be the proceeds deriving *from "criminal activity"*; • The reporting obligation provided for FT is limited to *"transactions"* and does not extend to *"funds"*; • Reporting is limited to a "*request*" for a transaction or activity; • Issues regarding the wording used for the reporting requirement and the definition of *"suspicious transactions and activities"*. **Effectiveness:** • Low level of STRs submitted by DNFBP; • Low-level of awareness on the reporting obligation by DNFBP. ***Applying Recommendation 14*** • Protection of non-employee natural persons (directors, officers etc.) who take part in directing, managing or representing a reporting entity is unclear; • No specific sanctions applicable to natural persons for the violation of the prohibition of *"tipping-off"*; • Lack of awareness on the legal protection on AML/CFT matters for some sectors (lawyers). ***Applying Recommendation 15*** • No requirements for all reporting entities to establish and maintain internal procedures, policies and controls to detect unusual and suspicious transactions and report to the FIU. • No requirements for the AML/CFT compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, transaction records, and other relevant information; • No proper trainings for all of the DNFBP; • No independent audit applied in practice; • No special screening procedures recruitment of employees. ***Applying Recommendation 21*** • The requirement to pay special attention refers only to transactions performed in relation to the countries that do not apply or insufficiently apply FATF Recommendation and do not extend to

		business relationships with clients from those countries; • No requirements for DNFBP to examine the transactions with no apparent economic or lawful purpose related to countries which do not or insufficiently apply FATF Recommendations; • Counter-measures limited to ECDD; • Low level of awareness on weaknesses in the AML/CFT systems of other countries.
17. Sanctions	**PC**	• No clear designation of authorities to impose sanctions; • Penalties for non-compliance with the AML/CFT Law are incomplete and not clearly specified; • Fines are not enough dissuasive and cannot be applied in a proportionate manner; • No possibility to sanction directors and senior management of Post Office and leasing companies; • Effectiveness issues.
18. Shell banks	**LC**	• No specific requirement for the banks to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks; **Effectiveness** • Insufficient understanding among market participants on how to verify that their correspondent banks are not servicing shell banks.
19. Other forms of reporting	*Compliant*	
20. Other DNFBP and secure transaction techniques	**LC**	• Dealers in high value and luxury goods, pawnshops and auction houses are not subject to the AML/CFT Law; • No evidence of measures taken to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.
21. Special attention for higher risk countries	**PC**	• The requirement to pay special attention refers only to transactions performed in relation to the countries that do not apply or insufficiently apply FATF Recommendation and do not extend to business relationships with clients from those countries; • No requirements for non-banking financial institutions to examine the transactions with no

		apparent economic or lawful purpose related to countries which do not or insufficiently apply FATF Recommendations; • Counter-measures limited to ECDD for the non-banking financial institutions.
22. Foreign branches and subsidiaries	**NC**	• No legal requirements for foreign branches and subsidiaries to observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit.
23. Regulation, supervision and monitoring	**PC**	• The allocation of supervisory responsibilities are not clear; • Exclusion of "A" Savings and Credit Association from the supervision in AML/CFT matters; • No requirements to carry out fit and proper tests of senior managers and executive/supervisory board members in insurances; • No procedures to prevent criminals from holding or being the beneficial owner of a significant or controlling interest or holding a management functions in case of leasing companies. **Effectiveness:** • In the absence of a risk assessment, the implementation of adequate risk based supervision was not demonstrated; • Low number of on-site examinations for AML/CFT compliance in the non-banking financial sector; • Effectiveness of supervision over some reporting entities by the designated supervisory authority was not demonstrated; • No evidence of supervision for the value transfer system provided by the Posta Moldovei.
24. DNFBP - Regulation, supervision and monitoring	**PC**	• No supervisory authority and no supervision on, independent accountants and real estate agents; • Unclear supervisory powers and allocation of supervisory responsibilities for lawyers. • Incomplete sanctions regime for the DNFBP sector; • No requirements to carry out fit and proper tests of senior managers and executive/supervisory board members for casinos; • No requirements to prevent criminals from holding

		or being the beneficial owner of a significant or controlling interest or holding a management function of a casino. **Effectiveness** • Effectiveness was not demonstrated; • Little applicability of the sanctioning regime for the DNFBP.
25. Guidelines and Feedback	**PC**	• No information on results of financial investigations conducted by the FIU is available to financial institutions. • Little information is provided to financial institutions on recent trends (typologies). • No sector-specific guidelines for FI and DNFBP. • The supervisory authorities and the FIU do not provide any feedback to the DNFBP sector.
Institutional and other measures		
26. The FIU	**LC**	**Effectiveness:** • Lack of proper allocation of duties between different departments of the OPFML which may have a negative bearing on the proper functioning of the Tactical Analysis Department; • No clear methodology on the beneficiaries recipients of the FIU disseminations of the OPFML; • Inability to comprehensively assess the effectiveness of the analytical function of the OPFML due to incomplete statistics.
27. Law enforcement authorities	**PC**	• LEAs are not in a position to properly investigate ML/FT offences since the required expertise for the identification and tracing of assets is missing and complete reliance is placed on the OPFML for such purposes. **Effectiveness:** • Emphasis on the investigation of predicate offences rather than ML offences.
28. Powers of competent authorities	*Compliant*	
29. Supervisors	**PC**	• The supervisory powers' legitimacy (except for the NBM) is disputable; • Supervisory authorities are not authorised in

		respect of Post Office and leasing companies to conduct AML/CFT inspections; • No explicit competence of the NCFM to conduct on-site inspections; • No legal basis meeting the formal requirements for the supervisory authorities to compel production of records, documents and alike in respect of Post Office and leasing companies; • No supervisory powers to apply sanctions against entities' directors and senior management. **Effectiveness:** • A lack of supervision over the non-banking financial market participants.
30. Resources, integrity and training[83]	**PC (composite rating)**	• Inadequate budget to enable the OPFML to function fully independently and autonomously of the CCECC; • No clear human resources assessment to ensure adequate allocation between departments in the OPFML; • Insufficient training to ensure use of OPFML's IT tools at full capacity; • Lack of adequate training for law enforcement authorities involved in the investigation of ML/FT offences; • Lack of specialised software to assist law enforcement authorities in the investigation of ML/FT offences; • Insufficient AML/CFT specialised staff in some supervisory authorities (NCFM, LiC); • Adequacy of the resourced of the policy makers not demonstrated; • Adequacy of the human and technical resources of the Ministry of Justice dedicated to MLA not demonstrated.
31. National co-operation	**PC**	• The existing policy level mechanism for co-operation and co-ordination between domestic authorities point in the right direction but appear not to be effective at present in ensuring that all necessary co-operation and co-ordination happens in practice. • Apart from a good level of cooperation between the

[83] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on resources integrity and training of law enforcement authorities and prosecution agencies.

		OPFML and the CID, there seem to be no proper cooperation with other law enforcement authorities. • Absence of cooperation mechanisms between law enforcement authorities involved in investigation ML/FT. • Effective cooperation not demonstrated.
32. Statistics[84]	**PC (composite rating)**	• The effectiveness of the AML/CFT system is not reviewed on a regular basis; • Last quarter of 2008 is not/partly covered by statistics relevant to R.1 and SR.II; • No statistics maintained on the category of reports generating cases opened by the FIU; • No statistics maintained on the cases opened by LEA based on FIU disseminations (including predicate offence); • Limited and unreliable statistics on the number of ML/FT investigations; • Poor quality of statistics on on-site examinations and sanctions in the area of AML/CFT; • Statistics insufficiently detailed (nature of request, time required to respond, number of domestic cases vs. number of letters rogatory); • No statistics on information exchange between supervisory authorities; • Insufficient accurate, detailed and up-to date information and statistics on extradition; • No law enforcement and supervisory authorities' statistics in respect of international cooperation.
33. Legal persons – beneficial owners	**PC**	• The procedure for registration of corporate entities does not provide for an effective, if any, verification of the data submitted by the applicants and hence it does not ensure an adequate level of reliability of information registered; • Transparency of ownership structure does not provide information on beneficial ownership.
34. Legal arrangements – beneficial owners	**N/A**	
International Co-operation		

[84] 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, 39 and SRIX.

35. Conventions	**LC**	• Reservations about certain aspects of the implementation of the FT Convention; • Insufficiencies in effective implementation of the standards in relation to ML.
36. Mutual legal assistance (MLA)[85]	**LC**	• Co-operation could potentially be inhibited by vague and indecisive reasons for refusal. **Effectiveness:** • Effectiveness cannot be demonstrated due to the absence of detailed and comprehensive statistics on MLA requests.
37. Dual criminality	*Compliant*	
38. MLA on confiscation and freezing	*Largely Compliant*	• No information on co-ordination arrangements for seizure and confiscation
39. Extradition	*Largely Compliant*	• Legal imperfections may negatively affect the extradition possibilities
40. Other forms of co-operation	**LC**	• No legal basis for the NBM to sign bilateral agreements (e.g. MoU) which would facilitate and allow for prompt and constructive exchanges of information directly between counterparts; • No explicit legal basis for the NCFM to provide assistance in a rapid, constructive and effective manner to foreign counterparts, to exchange information directly with foreign counterparts; • No authorisation to national supervisory authorities to conduct inquiries on behalf of foreign counterparts; • With respect to supervisory authorities for leasing companies and Post Office there is a generally noted lack of legal basis for any sort of international cooperation. **Effectiveness:** • Effectiveness issues regarding law enforcement authorities; • Due to a lack of statistics, the effectiveness of supervisory authorities' international cooperation cannot be assessed positively.

[85] 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.

Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Reservations about certain aspects of the implementation of the FT Convention; • Deficient and incomplete implementation of UNSCRs 1267 and 1373; • Efforts to identify terrorist assets remained focused on the banking sector only (effectiveness issue).
SR.II Criminalise terrorist financing	**LC**	• FT offence requires that the funds be linked to a specific terrorist act; • The financing for any purpose does not cover terrorist organisations and individual terrorists; • The generic offence of terrorist act is not explicitly applicable to the population of any country.
SR.III Freeze and confiscate terrorist assets	**NC**	• Major deficiencies in the freezing regime: limited applicability as regards assets not directly involved in transactions and a gap in the legal framework as regards the freezing of assets beyond the deadline of 30 working days; • No clear legal structure for the conversion of designations into Moldovan law under procedures initiated by third countries; • No effective and publicly known procedures in place for considering de-listing and unfreezing, authorising access to frozen funds for necessary expenses etc. **Effectiveness:** • Awareness appears to be limited and so does the monitoring of compliance; • Limited implementation of UNSCR requirements especially by the non-banking financial institutions and DNFBP.
SR.IV Suspicious transaction reporting	**PC**	• Reporting is limited to a *"request"* for a transaction or activity; • Issues regarding the wording used for the reporting requirement and the definition of *"suspicious transactions and activities"*; • The reporting obligation provided for FT is limited to *"transactions"* and does not extend to *"funds"*; • Deficiencies in FT offence might limit the

		reporting obligation. **Effectiveness:** • Low level of awareness among reporting entities on FT reporting and unclear distinction between reporting obligations under SRII and SR III; • Concerns on the effectiveness of the systematic reporting mechanism.
SR.V International co-operation	**LC (composite rating)**	• Deficiencies prescribed under R.40 apply equally to SR.V. **Effectiveness:** • Effectiveness issues regarding law enforcement international cooperation.
SR.VI AML requirements for money/value transfer services	**PC**	• No formal prohibition to provide MVT services without a license; • No list of MVT providers; • The effectiveness of the supervision and sanctioning regime was not demonstrated.
SR.VII Wire transfer rules	**LC**	• No regulation in respect of the SRVII requirements on domestic transfers for Posta Moldovei; • Insufficient supervision/monitoring for wire-transfers related matters impacts effectiveness.
SR.VIII Non-profit organisations	**LC**	• No mechanism introduced for the periodic/systemic reassessment of the FT vulnerabilities of the NPO sector; • No systemic/programmatic monitoring of the sector with a view to detecting potentially FT-related illicit activities. **Effectiveness:** • In lack of any actual practice and experience, it is doubtful whether the general control mechanisms being in place are appropriate and/or effectively applicable to ensure that funds of other assets, collected by or transferred through NPOs are not diverted to support terrorist activities, terrorists or terrorist organisations.
SR.IX Cross Border declaration and disclosure	*Largely Compliant*	• Not all bearer negotiable instruments covered by declaration regime; • Insufficient focus on recovery of criminal proceeds (efficiency).

9 TABLE 2. RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1)	The application of the term "*purchase*" instead of "*acquirement*" which appears more restrictive than the previous wording should be remedied by legislation or, at least, by guiding jurisprudence. Steps need to be taken, including legislative solutions, to overcome the judiciary's apparent insistence on a prior conviction for the predicate offence as a precondition of prosecuting autonomous (third-party) ML offences. Also, there is a need for a firm prosecution policy and creation of jurisprudence, particularly on the evidentiary requirements, in order to overcome the low performance of the criminalization regime in the judicial stage of criminal proceedings. The terms *"goods"* and *"illicit proceeds"* need to be clarified in the Criminal Code.
2.2 Criminalisation of Terrorist Financing (SR.II)	The generic offence of terrorist act (Art. 278 CC) should be amended to clarify that the offence applies to acts committed for the purpose of intimidating or compelling the population or government of any country. The FT offence should be clear in not requiring that the funds be linked to a specific terrorist act. The current legislation needs to be clarified to provide that the financing of terrorist organisations and individual terrorists for any purpose (including legitimate activities) is covered.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	Legislation should clearly provide for the confiscation of the property that has been laundered (the *"corpus"* of the ML offence). The confiscation mechanism (value confiscation as a minimum) should be extended to cover proceeds that the perpetrator or a *mala fide* third party has transferred to a *bona fide* third party without compensation. The current evidentiary standards (i.e. the requirement to reach a *"justified assumption"* that the defendant or other persons may conceal, damage or dispose of the property subject to sequestration) should be removed from the provisional measures regime. Legislation should be amended to extend the scope of

	applicability of sequestration so as to clearly cover the property belonging to legal entities and third persons (*mala* fides third parties as a minimum). Further efforts should be taken to familiarise the law enforcement and judiciary authorities with the provisional and confiscation measures so that they actually and regularly apply their powers to seize/sequester and confiscate proceeds and instrumentalities of crime. In particular, awareness raising and adequate training of the law enforcement and judiciary authorities should be conducted.
2.4 Freezing of funds used for terrorist financing (SR.III)	The CCP should be amended to cover the freezing of all terrorist funds or other assets without delay and without prior notice to the designated persons involved. All time limits on such actions should be removed. Procedures should be established for systematically checking whether designated persons have funds or other assets in the country, de-listing, challenging a listing decision and releasing part of the frozen assets for legitimate purposes. Procedures should be established to ensure that assets not directly involved in transactions (deposits etc.) can also be subject to the freezing mechanism and that the legislation prescribes carrying out systematic checks for their identification. Publicly known and effective procedures should be implemented for the freezing of terrorist funds and the handling of frozen assets. Effective laws and procedures to examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions should be adopted. All non-banking financial institutions and DNFBP should be made aware of their obligations in respect of the lists of designated persons and entities under UNSCR 1267 and UNSCR 1373. The supervisory authorities should also take steps to monitor compliance with these requirements.
2.5 The Financial Intelligence Unit and its functions (R.26)	An assessment of the internal organisation and structure of the OPFML should be undertaken. This assessment should determine whether the Tactical Analysis Department is in a position to perform its functions effectively and clearly define the functions of each department within the OPFML and of the delegated officers of the CCECC and determine whether human resources are being allocated efficiently. The secondment of staff from the CCECC to the OPFML should be more clearly regulated. A comprehensive internal procedure for the processing of

	STRs and other threshold reports should be drawn up, which should detail the procedure to be followed from the receipt of a STR/threshold report to the dissemination of an analytical report. This procedures should include: • the criteria on the basis of which a case is to be opened following the receipt of an STR, • the involvement of the Head of the OPFML in the opening of a case, • the manner in which cases are prioritised, • circumstances where analysts are to cooperate in the analysis of a case, • the manner in which CTRs and limited transaction reports are to be utilised for analytical purposes, • the manner in which the different departments of the OPFML are to cooperate between them, • a detailed methodology for the analysis of STRs/threshold transactions, • the length of time within which the analysis of an STR is to be conducted, • the manner in which a decision to disseminate a case is to be taken, • the criteria on the basis of which the law enforcement authority to receive the analytical report is decided on, and • the circumstances where an operative investigation is to be conducted by the Financial Investigation Department. Immediate measures should be taken to ensure that all the AML/CFT laws are brought in line with Law No. 190, especially where reference is still made to the CCECC rather than the OPFML. In particular, Order No. 117 should be amended to state that a reporting form is to be submitted to the OPFML rather than the CCECC. Order No. 117 should set out those situations where it is acceptable to file a reporting form manually and clearly indicate the postal and electronic address of the OPFML. Although the authorities remarked that it is highly unlikely in practice that a supervisory authority, other than the OPFML, would issue a reporting form, it is recommended that the necessary clarifications be carried out in the legislation to eliminate the possibility of such a situation from occurring. A requirement should be introduced to ensure that information which necessitates a request from the OPFML is provided on a timely basis.
2.6 Law enforcement, prosecution and other competent authorities (R.27)	The provision in article 274 of the CPC, which requires the existence of a reasonable suspicion for an investigation order to be issued, should be reviewed to ensure that such provision does not unduly hinder the CID or any other law enforcement

	authority investigating ML/FT offences from initiating an ML/FT investigation in the absence of a reasonable suspicion, especially in those cases where an investigation is not based on an analytical report disseminated by the OPFML. The relevant legal provisions should be reviewed to ensure that the CID is not unduly hindered from conducting investigations of ML/FT irrespective of the level of information which is available. The CID and other investigation authorities should take a more proactive approach towards the identification and tracing of the proceeds of crime to enable them to take such measures without having to rely heavily on the OPFML. For such purpose, a number of officers should be specifically trained to perform such functions. This should be complemented with adequate software to assist the investigation authorities in financial investigations. The legal framework regulating the application of special investigative techniques should be amended to remove any ambiguity in the legal position notwithstanding the fact that various recommendations were made in the Third Round evaluation. Law enforcement authorities should actively conduct ML investigations even in the absence of a conviction in relation to the underlying predicate offence. Further training on this aspect is necessary. Steps should be taken to enhance co-operation and co-ordination between all authorities involved in the ML/FT investigations.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	**Recommendation 5** A domestic ML/TF risk assessment should be conducted in order to have a national understanding of the risks the country is facing and which would allow for proper risk-based CDD programmes and policies to be adopted and implemented by the financial sector. "A" license Savings and Credit Association should be included within the scope of the AML/CFT Law. The AML/CFT Law should be amended to prohibit maintaining anonymous accounts in the non-banking financial sector in all cases.

	Blanket exemption for simplified CDD measures should be removed and replaced with a requirement to conduct minimum CDD (i.e. less detailed CDD), including in circumstances where the risk of money laundering and terrorist financing is low. Legal provisions should be adopted to cover verification of the documents for all customers, based on reliable and independent sources. A clear procedure on identification measures and verification source should be established for the Post Office. The AML/CFT Regulations should be amended to provide instructions for the Post Office and leasing companies for situations where transactions are performed on behalf of a legal entity or to the documents that should be required in such situation. The AML/CFT Law should be amended to contain a provision obliging financial institutions to check whether the customer is acting on his own behalf or on behalf of somebody else. Further guidance should be provided on the steps to be taken in respect of the identification of the beneficial owners. Guidance should be adopted for the process of understanding the ownership and control structure and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements, including cases when somebody exercises ultimate effective control. Guidance on the obligation to check the nature of a business relationship, including the manner of obtaining more accurate information on the actual nature of activity in order to complete the information contained in public registers should be issued to all sectors. A comprehensive preventive regime should be developed for the securities, pension funds and payment services sectors. **Recommendation 6** Reporting entities should be required to establish appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP. Increased awareness raising in relation to the PEPs should be undertaken amongst the non-banking financial sector in order to increase effectiveness. **Recommendation 7** Sufficient safeguards against correspondent relationships with

	respondent institutions with insufficient anti-money laundering and terrorist financing controls should be established. **Recommendation 8** The AML/CFT Law should be amended to include a requirement for reporting entities to have policies in place or take measures to prevent the misuse of new technologies for ML/TF purposes. The Moldovan authorities should provide guidance and awareness raising programs on the types of policies and procedures they should put in place to prevent the misuse of new technologies for ML/TF purposes.
3.3 Third Parties and Introduced Business (R.9)	The AML/CFT Law should be amended to implement all of the provisions of Recommendation 9 on third parties and introduced business.
3.4 Financial institution secrecy or confidentiality (R.4)	The provisions of paragraph 9 of Article 22 of the Law on Financial Institutions should be amended to make it clear that this does not constitute an exception to the general AML/CFT secrecy-lifting regime.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	**Recommendation 10** A requirement should be included in AML/CFT Law that transaction records should be sufficient to permit reconstruction of individual transaction so as to provide, if necessary, evidence for prosecution of criminal activity. Law enforcement authorities should be among the *"competent authorities"* empowered by the Law to request the financial institutions to prolong the record-keeping period. **Special Recommendation VII** The Moldovan authorities should adopt regulations in respect of the SRVII requirements on domestic transfers for *Posta Moldovei*. The Moldovan authorities are strongly encouraged to improve monitoring and supervision in this area, especially in respect of transfers performed by *Posta Moldovei*.
3.6 Monitoring of Transactions and Relationship Reporting (R. 11 and R. 21)	**Recommendation 11** Guidance on the definition and an explanation of complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, should be developed in order to assist financial institutions in effective implementation. The AML/CFT Law should be amended to include requirements for all financial institutions to examine as far as

	possible the background and purpose of unusual transactions and to set forth their findings in writing. Financial Institutions should also be required to keep the findings of the examinations of the unusually large transactions for 5 years and make them available for the competent authorities. **Recommendation 21** The requirement to pay special attention should be extended to transactions performed by customers from countries that do not apply or insufficiently apply FATF Recommendation not only to transactions with funds from/to those countries. A requirement should be established for all financial institutions (not only banks) to examine transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations. Mechanisms should be established for non-banking financial institutions to apply counter-measures in respect of those countries that insufficiently apply the FATF Recommendations. A programme should be undertaken to increase awareness of the private sector on weaknesses in the AML/CFT systems of other countries and especially on countries that do not or insufficiently apply FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13-14 & SR.IV)	**Recommendation 13 and Special Recommendation IV** Article 3 and Article 8(1) of Law No. 190 should be completely aligned to avoid any possible ambiguity in respect of the requirement to report both a *"suspect transaction"* and a *"suspect activity"*. The reporting obligations should extend to the requirement to report *"funds"* that are suspected to be the *proceeds of criminal activity* as opposed to suspicions of ML and FT. Reporting should not be restricted to a "request" for a transaction or activity. The authorities should further enhance their strategy to increase awareness among financial institutions on the reporting requirement. In particular, authorities should carefully assess the effectiveness of the systematic reporting mechanism. The reporting obligation provided for FT should extend to "*funds*" which are suspected to be linked or related to or are used for terrorism, terrorist acts of by terrorism organisations. Clause 5 of Order No. 117 should be revised to clarify that the requirement to report suspicions of ML/FT is not restricted to

	the qualitative indices set out under Article 6 of Law 190. The reporting obligations under other laws should be aligned with the reporting obligation under Article 8 of AML/CFT Law. This applies especially to Regulation 8.2 of the Regulations issued by the National Bank on the prevention of ML/FT which contains wording which is different than that used under Article 8 of Law 190. The AML/CFT Law should be amended to remove all exemptions from the reporting requirement. **Recommendation 14** The protection provided by Art. 15(3) and 8(7) of the AML/CFT Law should explicitly be extended to directors, officials and other natural persons contributing to the direction, management or representation of a reporting entity if these persons cannot be considered "employees" of the entity. The issue of sanctions in the AML/CFT Law in case of non-compliance with the prohibition of "tipping-off" should explicitly be threatened by law with proportionate and dissuasive sanctions applicable both to the reporting entity, its directors, officers and employees. **Recommendation 25 [Financial institutions and DNFBP]** The Moldovan authorities should provide information on results of financial investigations conducted by the FIU to financial institutions. The financial institutions should be informed on recent trends (including typologies).
3.8 Internal controls, compliance, audit and Foreign Branches (R.15 and 22)	***Recommendation 15*** A requirement should be introduced for all reporting entities (besides banks) to establish and maintain internal procedures, policies and controls to detect unusual and suspicious transactions and report them to the FIU. A requirement should be introduced for timely access to customer identification data and other CDD information, transaction records, and other relevant information for the AML/CFT compliance officer and other appropriate staff. The audit function's duty to test compliance with the internal procedures, policies and controls to prevent ML and FT should be clarified and integrated into the legal provisions on the audit function. The Moldovan authorities should ensure that the training

	program includes information concerning new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting. **Recommendation 22** The AML/CFT Law should be amended to include all of the elements of Recommendation 22.
3.9 Shell Banks (R.18)	The AML/CFT Law should be amended to expressly require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. The practical application of these requirements needs to be complemented by more guidance from the supervisory authorities to assist private sector to identify shell banks or correspondent banks which are servicing shell banks.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17)	**Recommendation 23** Either the AML/CFT Law or the sector specific laws should provide for a clear and comprehensive allocation of supervisory powers over reporting entities to specific supervisory authorities in the area of AML/CFT supervision. Leasing companies should be placed under appropriate financial supervision. Supervisory authorities should actively demonstrate their role and competences in the area of AML/CFT themselves. Close cooperation with the OPFML is certainly of advantage but should not result in a de facto delegation of competences. A system of assessing fit and proper qualification of member of the executive or supervisory board and for senior management should be provided in law or regulation for insurance companies. “Fit and proper” requirements for management and administrators should be provided in law or regulation for leasing companies and “Posta Moldovei” The value transfer services provided by the Posta Moldovei should be effectively supervised for AML/CFT purposes. The draft “Regulation on the Activity of Banks Within the International Money Transfer System” should be put into force and effect. Requirements should be established to prevent criminals from holding or being the beneficial owner of a significant or controlling interest over a leasing company in subsidiary

	legislation/regulation as in the case of the rest of the financial sector. Authorities are recommended to review the legal and regulatory framework to ensure that it adequately and effectively prevents criminals from holding or being the beneficial owner of a significant or controlling interest in a bank. **Recommendation 17** The AML/CFT Law should include a clear list of administrative penalties applicable to the different breaches of the AML/CFT Law, possibly with reference to the sanctions available in the Code of Administrative Penalties or other legal acts. The AML/CFT system should be complimented with clearly defined penalties and reference to the relevant legislation. Moldovan authorities should provide for a clear allocation of sanctioning powers in the area of AML/CFT to a specific supervisory authority either in the AML/CFT Law or in the sector specific bylaws. Powers to sanction directors and senior management of Post Office and leasing companies should be established. **Recommendation 25 [Financial institutions]** Sector specific guidance for different types of financial institutions, including descriptions of new ML/FT trends and typologies should be developed in order to facilitate a more effective performance of obligations by financial institutions. **Recommendation 29** A clear and comprehensive allocation of supervisory scope and powers in the area of AML/CFT over all financial institutions in the sense of the FATF Methodology to a specific supervisory authority should be set out either in the AML/CFT Law or in the sector specific laws. The supervisory authorities, except for the NBM, should place greater emphasis on the supervision of AML/CFT. This area should be monitored separately and not only in the general course of supervision. Either the AML/CFT Law or sector specific laws should be amended to introduce a legal basis for supervisory authorities powers in respect of the Post Office and leasing companies to enable the relevant supervisors to conduct inspections, including on-site inspections, to ensure compliance, which

	also should include the review of policies, procedures, books and records, and should extend to sample testing. Such powers should also include the power to compel production of records, documents and alike The necessary legal powers should be adopted to apply sanctions against entities' directors and senior management.
3.11 Money or value transfer services (SR. VI)	Legislation should be introduced prohibiting the provision of payment services without a licence. Providers of MVT services should be included amongst the reporting entities listed in the AML/CFT Law as having reporting, CDD and other obligations in AML/CFT area. The AML/CFT supervision of MVT service operators should be enhanced. A list of licensed or registered MVT service operators should be maintained by a designated competent authority. Measures should be taken to prevent MVT related activities being carried on outside the formal financial system. It is also necessary to correct all flaws and deficiencies in the AML/CFT measures in the banking and postal system, which are also applicable in the context of bank and postal money transfers. It should be ensured that sanctions are effectively applied to MVT in case of AML/CFT obligations breaches.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	Measures should be taken to clarify the status of the independents accountants. At a practical level, the Moldova authorities need to address the effectiveness of the system and establish procedures to ensure that legislation is enforced fully and properly. Awareness should be raise on the CDD obligations of the DNFBP in the AML/CFT Law in respect of: CDD measures, risk based approach, beneficial owner, record keeping and PEPs. Further training and awareness raising needs to be provided to the DNFBP sector in order to overcome the effectiveness issues. **Applying Recommendation 5** The AML/CFT Law should be amended to include provisions to cover verification of the documents for all customers, based on reliable and independent sources.

	Guidance should be adopted for the process of understanding the ownership and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements, including cases when somebody exercises ultimate effective control. The AML/CFT Law should contain a provision obliging DNFBP to check whether the customer is acting on his own behalf or on behalf of somebody else. Further guidance should be provided on the steps to be taken in respect of the identification of the beneficial owners. **Applying Recommendation 6** The AML/CFT Law should be amended to require reporting entities to establish the appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP. Further training and awareness raising needs to be provided to the DNFBP sector in relation to PEPs in order to increase effectiveness. **Applying Recommendation 8** The AML/CFT Law should be amended to include a requirement for reporting entities to have policies in place or take measures to prevent the misuse of new technologies for ML/TF purposes. The Moldovan authorities should provide guidance and awareness raising programs on the types of policies and procedures they should put in place to prevent the misuse of new technologies for ML/TF purposes. **Applying Recommendation 10** A requirement should be included in AML/CFT Law for the transaction records to be sufficient to permit reconstruction of individual transaction so as to provide, if necessary, evidence for prosecution of criminal activity should be clearly stated in Law or Regulations. Law enforcement authorities should be among the *"competent authorities"* empowered by the Law to request DNFBP to prolong the record-keeping period. **Applying Recommendation 11** Guidance on the definition and an explanation of complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose,

	should be developed in order to assist DNFBP in effective implementation.. The AML/CFT Law should be amended to include requirements for all financial institutions to examine as far as possible the background and purpose of unusual transactions and to set forth their findings in writing DNFBP should also be required to keep the findings of the examinations of the unusually large transactions for 5 years and make them available for the competent authorities.
4.2 Suspicious transaction reporting (R.16)	**Applying Recommendation 13 and SR.IV** The authorities should intensify their efforts to increase DNFBP awareness of the reporting obligations and to provide regular trainings on STR red flags and indicators. **Applying Recommendation 14** Additional training is needed on the legal protection offered by the Law against legal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision if reports are made in good faith to the FIU. **Applying Recommendation 15** Requirements should be introduced for DNFBP to take appropriate measures for the implementation of programmes against ML and FT including development of internal policies, procedures and controls and appropriate compliance managements arrangements. The FIU and the other supervisory authorities should provide guidance and control mechanisms for selection and recruitment of employees and their training for AML/CFT (where necessary). Audit functions to test the AML/CFT systems should be developed in co-operation with SROs. DNFBP should receive annual training, which should contain new typologies and measures for AML/CFT consistent with the particularities of the different groups of reporting entities. Such trainings and seminars might also include experts from the relevant supervisory authority to make trainings more effective and the presented information more complete. The recommendations and comments applicable to Recommendation 15 apply to Recommendation 16. **Applying Recommendation 21** A programme should be undertaken to increase awareness of the DNFBP sector on weaknesses in the AML/CFT systems of other countries and especially on countries that do not or insufficiently apply FATF Recommendations

	The requirement to pay special attention should be extended to transactions performed by customers from countries that do not apply or insufficiently apply FATF Recommendation not only to transactions with funds from/to those countries. A requirement should be established for all DNFBP to examine the transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations. Mechanisms should be established for DNFBP to apply counter-measures in respect of those countries that insufficiently apply the FATF Recommendations. A programme should be undertaken to increase awareness of the DNFBP sector on weaknesses in the AML/CFT systems of other countries and especially on countries that do not or insufficiently apply FATF Recommendations.
4.3 Regulation, supervision and monitoring (R.24-25)	**Recommendation 24** Either the AML/CFT Law or the sector specific laws should provide clear legal provisions on the designated supervisory authorities, powers and sanctioning regime need to be put in place in respect of each category of DNFBP. The independent accounting profession should be clearly defined by law or regulation to become subject to the AML/CFT Law and thus to be subject to appropriate regulation and supervision. The Moldovan authorities should provide for clear allocation of sanctioning powers in the area of AML/CFT to the specific supervisory authorities for AML/CFT purposes. Legal provisions should be adopted to ensure verification of the source of money or funds that constitute the initial capital used to incorporate a casino. Legal provisions should be adopted to ensure identification of the beneficial owner, as defined by the FATF standards, by DNFBP. Legal or regulatory measures should be in place to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in casinos. Checks should be performed by the supervisory authorities on the share-holders, founders or managers of the casinos and their background. The Moldovan authorities should take steps to ensure implementation of the AML/CFT regulatory or monitoring procedures by supervisory authorities of the DNFBP.

	Recommendation 25 [DNFBP] A feed-back system from the FIU to DNFBP should be put in place. Sector-specific guidance, including ML/TF trends for different types of DNFBP should be developed.
4.4 Other non-financial businesses and professions (R.20)	Measures should be taken to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	The registration of business entities process needs to ensure an adequate level of reliability of information registered and the transparency of ownership structure and to provide transparency on beneficial ownership.
5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)	Recommendation is not applicable.
5.3 Non-profit organisations (SR.VIII)	Regular, periodic reassessments of the NPO sector should be conducted so as to obtain updated information on the potential vulnerabilities from terrorist financing abuse. Measures need to be taken to ensure that the existing procedural framework is used for detecting potentially FT-related illicit activities within the NPO sector in general and that sanctions are applied against any NPO for such breaches. The Moldovan authorities should establish general control and monitoring mechanisms to ensure that funds of other assets, collected by or transferred through NPOs are not diverted to support terrorist activities, terrorists or terrorist organisations.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	**Recommendation 31** More efforts should be focussed on taking practical measures to achieving the objectives set out in the National Strategy Cooperation mechanisms between law enforcement authorities involved in investigation ML/FT should be created. Co-operation with the supervisory authorities including DNFBP should be enhanced. Law No 192-XVI on National Commission of Financial Markets should be amended in order to give the NCFM the right to exchange relevant AML/CFT information with other government authorities. In particular Article 5 of this Law should be revised.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	**Recommendation 35** The Criminal Code should be amended so as to bring its TF offence fully in line with the FT Convention. **Special Recommendation I** An effective freezing mechanism which requires criminal procedural rules for the long-term freezing of assets related to designated persons and entities should be urgently established. A series of publicly known and effective procedures must be introduced that allow for, among others, the authorised access to frozen funds. From the aspect of effectiveness, the efforts to identify terrorist assets in the Republic of Moldova should also focus on sectors other than banks.
6.3 Mutual Legal Assistance (R.36 & SR.V)	**Recommendation 36 and Special Recommendation V** The domestic legal shortcomings in respect of TF offence should be remedied to ensure that full assistance can be given in order to avoid the vagueness of certain reasons for refusal of cooperation in the MLA Law.
6.5 Other Forms of Co-operation (R.40 & SR.V)	**Recommendation 40 and Special Recommendation V** Competent authorities should be able to provide the widest range of international cooperation in a rapid, constructive and effective manner to their counterparts. Clear and effective gateways to facilitate the prompt and constructive exchange of information between counterparts should be established. ***Supervisory authorities*** The draft amendments to the NCFM law, bringing the legislative framework for international cooperation more in line with international standards and allowing for the exchange of information with foreign counterparts, should be approved. Authorities should be able to exchange information in a rapid manner. For all supervisory authorities a clear legal basis for the exchange of information in accordance with the criteria of R.40 should be established.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	**Recommendation 30** ***FIU*** The authorities should ensure that the OPFML is adequately funded to enable it to properly perform its functions without the need to rely on the resources of the CCECC.

	If additional staff is needed for OPFML to properly carry out its duties, the evaluation team recommend that the OPFML employs its own personnel rather than utilising CCECC employees. ***Law enforcement*** Specialised training on the identification and tracing of assets should be given priority by the authorities. The authorities should consider whether further resources are necessary to strengthen the CID directorates conducting ML/FT investigations. In particular, the authorities should consider introducing specialised software to assist the investigative authorities in conducting ML/FT investigations. ***Supervisory authorities*** Staffing of supervisory authorities should be enhanced; this applies especially to the NCFM, and even more so once the NCFM will be in charge of supervising the leasing companies. If the Republic of Moldova decides to follow the path of all-encompassing supervisory powers for AML/CFT with the OPFML this will have serious staff implications for the OPFML and will demand considerable increase in staff at the OPFML. Once the supervisory function of some authorities is established and internalised, staffing will be required as well as training. In the beginning this training may be provided by knowledgeable institutions such as the OPFML or the NBM, in a later and advanced stage training may be provided in-house. **Recommendation 32** Comprehensive statistics should be maintained on the ML/FT investigations initiated by the various law enforcement authorities involved in the investigation of ML/FT. Statistics should routinely distinguish between autonomous ML and self-laundering investigations. The statistics should be evaluated to determine whether ML/FT investigations are being effective in practice. The authorities should review the manner in which statistics on reporting are maintained to enable them to review the effectiveness of the reporting regime. Comprehensive statistics should be maintained on MLA requests relating to ML, predicate offences and TF.

	The authorities should implement a more structured system for the maintenance of statistics related to STRs and other threshold reports to ensure that the OPFML is in a position to provide the figures for the actual number of instances where a suspicion was reported to the OPFML. The OPFML should routinely maintain statistics on cases opened on the basis of a STR and cases opened on the basis of a cash or threshold transaction.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

10 TABLE 3. AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

The Republic of Moldova is not a member country of the European Union. It is not directly obliged to implement **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: "the Directive") and the **Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis**.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

1.	**Corporate Liability**
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF R. 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
Description and Analysis	According to Art. 21 (3) and (4) of the Criminal Code, a legal entity, except for public authorities, shall be subject to criminal liability for an act set forth in criminal law provided that one of the following conditions is applicable: a) the legal entity is guilty of failure to comply or improper compliance with direct legal provisions defining obligations or prohibitions to perform a certain activity; b) the legal entity is guilty of carrying out an activity that does not comply with its founding documents or its declared goals; c) the act causes or threatens to cause considerable damage to a person to society, or to the state and was committed for the benefit of this legal entity or was allowed, sanctioned, approved, or used by the body or the person empowered with the legal entity's administrative functions. Legal entities, except for public authorities, shall be criminally liable for crimes punishable in line with the special part of this Code applicable to legal entities. The criminal liability of a legal entity does not exclude the liability of the individual. According to Art. 243 of the CC (ML offence), in case of violation, a legal entity shall be punished by a fine in the amount of 7,000 to 10,000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity. The Moldovan Civil Code in its Art. 60, when defining the legal capacities of legal entities, provides that the profit-making legal entity may carry out any activity that is not legally prohibited, even if it is not

	provided in the constitutive act. In addition, the non-profit legal entity may carry out only the activity provided for in the law and in the constitutive act. In order to ensure the legality of the activities undertaken by the companies, similar rules can be found in other relevant laws, such as the Law on Enterprises and Entrepreneurship (Law Nr. 358-XIV of 15 April 1999) which states that the enterprise may undertake any sort of activity, except those, which are prohibited by the effective legislation.
Conclusion	The Moldovan legislation adopted the position of the 3rd EU Directive
Recommendations and Comments	Not applicable.

2.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Art. 6(7) of the AML/CFT Law, financial institutions are not allowed to keep anonymous accounts or those on fictive names. Art. 31 of the Regulation *"on bank's activity regarding prevention and combat of money laundering and terrorist financing"* clearly requires banks not to open and to maintain anonymous or fictitious accounts. There are no referrals in Moldovan legislation to passbooks.
Conclusion	The Moldovan legislation prohibits anonymous accounts or accounts in fictitious names but makes no reference to passbooks, anonymous or not
Recommendations and Comments	In order to fully comply with the 3rd EU Directive, legal provision in respect of prohibition of anonymous passbooks should be introduced.

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 the Art. 5 (1), b) of the AML/CFT, the reporting entities apply security measures regarding the natural or legal persons, as well as beneficiary owner, while carrying out occasional transactions amounting at least 50,000 lei (approx. €3,300) as well as electronic transactions amounting at least 15,000 lei (€1,000), regardless of the fact that transaction is carried out in a single operation or in several operations.
Conclusion	CDD measures apply to all transactions above €3,300 regardless of the fact that transaction is carried out in a single operation or in several

	operations. Linked transactions are covered.
Recommendations and Comments	Not applicable.

4.	**Beneficial Owner**
Art. 3(6) of the Directive (see Annex)	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF R. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
Key elements	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	According art.3 of the AML/CFT Law, the beneficial owner is a natural person who ultimately controls a natural or a legal person or the person on whose behalf a transaction is being conducted or an activity is being carried out and /or holds direct or indirect proprietary right or controls at least 25% of shares or of the right to vote of the legal person.
Conclusion	The Moldovan legislation follows the FATF definition but introduces the threshold mentioned by the 3rd Directive. The legal arrangements are not mentioned.
Recommendations and Comments	The requirement to identify the beneficial owner should extend to *"legal arrangements"* in order to be fully compliant with the 3rd Directive.

5.	**Financial activity on occasional or very limited basis**
Art. 2 (2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive. Art. 4 of Commission Directive 2006/70/EC further defines this provision.
FATF R. concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	The Moldovan legislation has no provisions for financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring. It appears that draft legislation is under preparation.

Conclusion	Section 2(2) of EU Third AML Directive is optional and therefore it is at the discretion of the Member States to implement or not. The Moldovan authorities have decided not to adopt Section 2(2) of the Third Directive and hence Section 4 does not apply.
Recommendations and Comments	Not applicable.

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	The AML/CFT Law provides for instances where persons engaged in financial or other business activities may not apply the identification and CDD measures – excluding instances where there is suspicion of ML/TF.
Conclusion	The complete exclusion of "A" license savings and credit associations from the AML/CFT regime, including CDD is another area of deep concern.
Recommendations and Comments	Moldovan authorities should take legislative measures to bring legislation in line with the international standards.

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive (see Annex)	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	According to AML/CFT Law, a politically exposed person is a natural persons, who is or have been entrusted with prominent public functions at the national and international level, as well as their direct family members and persons known as close associates.
Conclusion	Moldovan legislation covers both national and foreign PEPs and is largely in line with the Art. 13 (4) of the Directive. However no appropriate procedures to determine whether the customer is a politically exposed person are used by all reporting entities
Recommendations and Comments	Procedures to determine whether the customer is a politically exposed person should be implemented.

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	AML/CFT Law provides for ECDD for all correspondent banking relationships with all jurisdictions.
Conclusion	Moldovan legislation adopted the FATF approach.
Recommendations and Comments	Not applicable.

9.	Enhanced Customer Due Diligence (ECDD) and anonymity
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favour anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity [...].
Key elements	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	According to AML/CFT Banks' Regulation, the bank, in addition to the standard KYC measures, shall increase the precautionary measures in a series of cases, including those transactions that could favour the anonymity. Banks procedures for identification and analysis of risks related to money laundering and terrorist financing, including ways to minimize them, regarding the use of information technologies, including new ones, purchased or developed in the process of products development or services offered by the bank.
Conclusion	There is no direct requirement for the financial institutions to pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity. The ECDD limited to transactions and do not extend to products.
Recommendations and Comments	Moldovan authorities should require all financial institutions to pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity. The ECDD should extend to products 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	Laws and regulations do not allow third party introducers but they do not specifically prohibit it. The prohibition would result logically from the CDD obligations in the sense that the financial institutions are obliged to apply the identification requirements directly on their customers. Neither the prohibition nor the requirement to apply identification procedures in direct contact are stated in the law.
Conclusion	There are no general legal or regulatory provisions applicable to intermediaries and third parties in the case where financial institutions are relying on them for CDD purposes, despite evidence of it happening in practice.
Recommendations and Comments	The Moldovan authorities should consider adopting general legal or regulatory provisions applicable to third parties and intermediaries that cover the requirements of Recommendation 9 on intermediaries and introduced business.

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	According to AML/CFT Law, CDD obligations apply to auditors, independent accounts and other legal independent professionals, when preparing and carrying out the transactions, on behalf of the natural or the legal person, related to the: purchasing and selling of real estate; funds management, securities and other financial assets; managing bank accounts, the accounting and financial reporting in accordance with National Accounting Standards; creation and management of legal persons and their buying and selling.
Conclusion	The Moldovan legislation adopted the FATF approach.
Recommendations and Comments	Legislation should be amended to comply with the requirements of the Directive.

12.	High Value Dealers
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.
FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	The AML/CFT Law lists only the dealing in precious metals and precious stones.
Conclusion	Application is limited to the FATF requirement
Recommendations and Comments	Moldovan authorities should take steps to meet the 3rd Directive requirements and extend the AML/.CFT obligation to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.

13.	Casinos
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	According the provisions of art. 24 of law no. 285-IVX from 18 February 1999 the casino customers should be identified and their identity verified if they purchase or exchange gambling chips with a value of 30,000 lei (approx. €1,900).
Conclusion	The Moldovan legislation is in line with the (more restrictive) 3rd Directive.
Recommendations and Comments	Not applicable.

14.	Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	The STRs are reported directly to the FIU.
Conclusion	Moldovan legislation doesn't use the option provided by the 3rd Directive
Recommendations and Comments	Not applicable.

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	There is no requirement in the AML/CFT Law or any other law which requires reporting entities to refrain from carrying out a transaction which is suspected to involve ML/FT and to inform the OPFML of such transaction. However, the reporting entities are obliged to freeze, at the decision of the Office for prevention and fight against money laundering, the carrying out of the suspect activities or transactions, for the period specified in the decision, but for not more than 5 (five) working days.
Conclusion	The Moldovan legislation doesn't provide the requirement for the obliged persons to refrain from carrying out a transaction if knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU.
Recommendations and Comments	Legal amendments should be undertaken in order to comply with the requirements of the Directive.

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 Art.8 para.7 of AML/CFT Law, the reporting entities ensure the protection of their employees against any threats or hostile action regarding the reporting of suspect activities and other transactions.
Conclusion	The Moldovan legislation is in line with the 3rd Directive
Recommendations and Comments	Not applicable

17.	Tipping off (2)
Art. 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.

Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	According to Moldovan legislation, the reporting entities and their employees are exempted from disciplinary, administrative, civil and penal liability for submitting the information to the competent authorities for the purpose of executing the provisions of this law, even if this caused material or moral damages.
Conclusion	The Moldovan legislation follows the FATF approach.
Recommendations and Comments	Steps should be taken to bring legislation in line with the 3rd Directive.

18.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	There is no obligation in the legislation of Republic of Moldova which covers the scope of the art. 34 (2) of the Directive. The Law on Financial Institutions which is the main legal document regulating the activity of the entities operating as providers of financial services, does not specifically require all 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.
Conclusion	The requirement of art. 34 (2) of the Directive is not covered.
Recommendations and Comments	Moldovan authorities should consider the implementation of the art. 34 (2) of the Directive in their legislation.

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	There are no such provisions in Moldovan legislation. Moldovan banks do not have foreign branches in practice.
Conclusion	No measures in this respect.
Recommendations and Comments	Moldovan authorities should take legislative steps to comply with both standards.

	Supervisory Bodies
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	In case of non-observance by reporting entities of the obligations stipulated in the AML/CFT Law, the supervisory authorities can apply the remedial measures and sanctions established by the legislation, and upon the identification of sum of money laundering or financing of terrorism, inform and submit immediately the respective materials to the Office for Prevention and Fight against Money Laundering. Other measures for the purpose of combating money laundering and financing of terrorism might be taken by the supervisors.
Conclusion	The Moldovan legislation follows the Directive approach.
Recommendations and Comments	Not applicable

20.	**Systems to respond to competent authorities**
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	According the provisions of Art. 7 of the AML/CFT Law, the reporting entities keep the accounting of the information and the documents of the natural and legal persons, of the beneficial owner, the register of identified natural and legal persons, the archive of accounts and primary documents, including business correspondence, for a period at least 5 years, after the business relationship ending or bank account closing. The reporting entities keep the accounting of all the transactions for at least 5 years after the transactions are ended, but at the request of the supervisory authorities prolong the record keeping period. Furthermore, the reporting entities respond completely and promptly to the requests of the Office for prevention and fight against money laundering and other empowered authorities, on the existence of business relations and their nature, between these entities and certain natural and legal persons.
Conclusion	The Moldovan legislation doesn't require 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.

Recommendations and Comments	The Moldovan authorities should take steps to fully comply with the provisions if the 3rd Directive.

21.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	The AML/CFT Law comprise all reporting entities mentioned in art. 2 of 3rd Directive without possibilities to extend it.
Conclusion	Moldovan legislation adopted the lower standard.
Recommendations and Comments	Moldovan authorities should provide the possibility to extend the AML/CFT provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the 3rd Directive, if engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.

22.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	There are no provisions in the Republic of Moldova in respect of the equivalent third countries.
Conclusion	
Recommendations and Comments	To transpose Article 11.16 (1) (b), 28 (4), (5) of the Directive, Moldovan authorities should ensure that the equivalence of third country is judged in relation to the EU Directive.

Annex to Compliance with 3rd EU AML/CFT Directive Questionnaire

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

Article 2
Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:
(a) heads of State, heads of government, ministers and deputy or assistant ministers;
(b) members of parliaments;
(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
(d) members of courts of auditors or of the boards of central banks;
(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
(f) members of the administrative, management or supervisory bodies of State-owned enterprises.
None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.
The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:
(a) the spouse;
(b) any partner considered by national law as equivalent to the spouse;
(c) the children and their spouses or partners;
(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:
(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;

(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.

VI. LIST OF ANNEXES

Annex 1. Details of all Bodies met on the on-site mission

Ministries and other Government Authorities

Ministry of Justice

Ministry of information technology and communications

Ministry of Finance

Investigation and Law Enforcement Bodies and Public Prosecutor' Office

Centre for Combating Economic Crimes and Corruption

Office for Prevention and Fight Against of Money Laundering (FIU)

Criminal Investigation and Operative Units under the Office for Prevention and Fight Against of Money Laundering

Anti-corruption Prosecutor's Office under the General Prosecutor Office

General Prosecutor's Office

Intelligence and Security Service

Financial Sector Bodies

National Bank of the Republic of Moldova

National Commission of Financial Market

Other Government Bodies

Tax Revenue Authorities

State chamber of labeling monitoring

Licensing Chambers

State Register Chamber

Private Sector Representatives and Associations

Bank Association of the Republic of Moldova

Commercial Banks (Agroindbank, Fincombank, Mobiasbank, Energbank, BCR Chisinau)

Foreign exchange bureaus

State Property Company „Poşta Moldovei"

Cash transfer networks (Western Union, Money Gram, Lider, Contact etc.)

Securities intermediaries (brokers, dealers, security market)

Insurance companies

Auditors and accounts

Lawyers and notaries

Casinos

Real estate agents

Annex 2. Key Laws, Regulations and other Documents

See MONEYVAL(2012)28ANN

Annex 3. Status of Implementation of the Vienna Convention, the Palermo Convention and the UN International Convention for the Suppression of the Financing of Terrorism

Implementation of the Vienna Convention

Provisions of the Vienna Convention	Moldovan legislative acts and regulations that cover requirements of the Vienna Convention
Article 3 (Offences and Sanctions)	Articles 217, 217[1], 217[2], 217[3], 217[4], 217[5], 217[6], 218, 219 of the Criminal Code
Article 4 (Jurisdiction)	Articles 11, 12 of the Criminal Code, Articles 266 – 273 of the Criminal Procedure Code
Article 5 (Confiscation) - with regard to confiscation of proceeds derived from offences involving illicit trafficking of narcotic drugs or psychotropic substances; - with regard to seizure of property (assets); - with regard to rendering mutual legal assistance.	- Art. 106 of the Criminal Code - Articles 202 - 210 of the Criminal Procedure Code - Art. 540[1] of the Criminal Procedure Code, Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 6 (Extradition)	Art.18 of the Constitution of the Republic of Moldova Art. 13 of the Criminal Code, Articles 541 - 550 of the Criminal Procedure Code, Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 7 (Mutual Legal Assistance)	Articles 531 – 540[1] of the Criminal Procedure Code Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 8 (Transfer of Proceedings)	Articles 531[1], 551 – 557, 558 - 559 of the Criminal Procedure Code Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 9 (Other Forms of Cooperation and Training)	In the international MLA agreements signed by the Republic of Moldova
Article 10 (International Cooperation and Assistance for Transit States)	In the international agreements signed by the Republic of Moldova
Article 11 (Controlled Delivery)	Art. 6 of the Law No. 45-XIII of 12th April 1994 on Operative Investigations Articles 132[2], 135, 138[2], 138[3] of the Criminal Procedure Code, in force since 27 October 2012
Article 15 (Commercial Carriers)	Chapter VII of the Law on the circulation of

	narcotics drugs and psychotropic substances (Law No.382 of 6 May 1999).
Article 17 (Illicit Traffic by Sea)	Law on the circulation of narcotics drugs and psychotropic substances (Law No.382 of 6 May 1999).
Article 19 (The Use of the Mails)	Chapter VII of the Law on the circulation of narcotics drugs and psychotropic substances, Governmental Decision 798 of 18 June 2002 on approving the rules of postal services

Implementation of the Palermo Convention

Provisions of the Palermo Convention	**Moldovan legislative acts and regulations that cover requirements of the Palermo Convention**
Article 5 (Criminalization of Participation in an Organised Criminal Group)	Articles 41-49, 283, 284 of the Criminal Code
Article 6 (Criminalization of the Laundering of Proceeds of Crime)	Art. 243 of the Criminal Code
Article 7 (Measures to Combat Money-Laundering)	Law no. 190-XVI of 26 July 2007 on Prevention and combating money laundering and terrorism financing
Article 10 (Liability of Legal Persons)	Art. 21(3)-(5) and Special Part of the Criminal Code, Articles 520 - 523 of the Criminal Procedure Code
Article 11 (Prosecution, Adjudication and Sanctions)	Articles 314 - 530 of the Criminal Procedure Code
Article 12 (Confiscation and Seizure)	Art. 106 of the Criminal Code, Articles 202 - 210 of the Criminal Procedure Code
Article 13 (International Cooperation for Purposes of Confiscation)	Art. 540^1 of the Criminal Procedure Code, Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 14 (Disposal of Confiscated Proceeds of Crime or Property)	Government Decision no. 972 of September 9th 2011, for approving the Regulations regarding the mode of evidence, evaluation and sale of confiscated goods, without owner, seized or easily alterable or with a limited term of validity, seized goods during the prosecution, or goods that were passed in state property with the succession right for treasures.
Article 15 (Jurisdiction)	Articles 11, 12 of the Criminal Code Articles 266 – 273 of the Criminal Procedure Code
Article 16 (Extradition)	Art.18 of the Constitution of Republic of Moldova Art. 13 of the Criminal Code, Articles 541 - 550 of the Criminal Procedure Code Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 18 (Mutual Legal Assistance)	Articles 531 – 540^1 of the Criminal Procedure Code Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 19 (Joint Investigations)	In the international agreements signed by the Republic of Moldova

Article 20 (Special Investigative Techniques)	Criminal Procedure Code, Law No. 45-XIII of 12 April 1994 on Operative Investigations
Article 24 (Protection of Witnesses)	Law No. 105-XVI of 16 May 2008 on protection of witnesses and other participants of the criminal proceedings
Article 25 (Assistance to and Protection of Victims)	Law No. 105-XVI of 16 May 2008 on protection of witnesses and other participants of the criminal proceedings
Article 26 (Measures to Enhance Cooperation with Law Enforcement Authorities)	In the international MLA agreements signed by the Republic of Moldova
Article 27 (Law Enforcement Cooperation)	Law no. 190-XVI of 26 July 2007 on Prevention and combating money laundering and terrorism financing
Article 29 (Training and Technical Assistance)	In the legislation of the Republic of Moldova
Article 30 (Other Measures: Implementation of the Convention through Economic Development and Technical Assistance)	In the legislation of the Republic of Moldova
Article 31 (Prevention)	Law no. 190-XVI of 26 July 2007 on Prevention and combating money laundering and terrorism financing
Article 34 (Implementation of the Convention)	Law no. 15-XV of 17 February 2005 on ratification of the United Nations Convention against Transnational Organised Crime

Implementation of the UN International Convention for the Suppression of the Financing of Terrorism

Provisions of the UN International Convention for the Suppression of the Financing of Terrorism	**Moldovan legislative acts and regulations that cover requirements of the UN International Convention for the Suppression of the Financing of Terrorism**
Article 2	Art. 279 of the Criminal Code
Article 3	Art. 279 of the Criminal Code
Article 4	Art. 279 of the Criminal Code
Article 5	Art. 279 of the Criminal Code, Art. 21(3)-(5) and Special Part of the Criminal Code, Articles 520 - 523 of the Criminal Procedure Code
Article 6	Art. 279^2 of the Criminal Code
Article 7	Articles 11, 12 of the Criminal Code, Articles 266 – 273 of the Criminal Procedure Code
Article 8	Law no. 190-XVI of 26 July 2007 on Prevention and combating money laundering and terrorism financing Art. 106 of the Criminal Code, Articles 202 - 210 of the Criminal Procedure Code
Article 9	Articles 531 – 540^1 of the Criminal Procedure Code

	Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 10	Art.18 of the Constitution of the Republic of Moldova Art. 13 of the Criminal Code, Articles 541 - 550 of the Criminal Procedure Code Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 11	Art.18 of the Constitution of the Republic of Moldova Art. 13 of the Criminal Code, Articles 541 - 550 of the Criminal Procedure Code, Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 12	Articles 531 – 540[1] of the Criminal Procedure Code Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 13	Articles 531 – 540[1] of the Criminal Procedure Code Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 14	Articles 531 – 540[1] of the Criminal Procedure Code Law No. 371 of 1 December 2006 on International Legal Assistance in Criminal Matters
Article 15	Articles 531 – 540[1] of the Criminal Procedure Code Law No. 371 of 1.12.2006 on International Legal Assistance in Criminal Matters
Article 16	Article 22 of the Law No. 371 of 1.12.2006 on International Legal Assistance in Criminal Matters
Article 17	In the Criminal Procedure Code
Article 18	AML/CFT Law of the Republic of Moldova

Annex 4. Status of Implementation of the UN Security Council Resolutions

Resolution 1267 (1999)

Provisions of the Resolution 1267 (1999)	Moldovan legislative acts and regulations that cover requirements of the Resolution 1267 (1999)
subparagraph "a" of paragraph 4	
subparagraph "b" of paragraph 4	

Resolution 1333 (2000)

Provisions of the Resolution 1333 (2000)	Moldovan legislative acts and regulations that cover requirements of the Resolution 1333 (2000)
subparagraphs "a", "b", and "c" of paragraph 5	
subparagraphs "a", "b", and "c" of paragraph 7	
subparagraphs "a", "b" and "c" of paragraph 8	
subparagraphs "a" and "b" of paragraph 10	
subparagraphs "a" and "b" of paragraph 11	
subparagraphs "a" and "b" of paragraph 14	

Resolution 1363 (2001)

Provisions of the Resolution 1363 (2001)	Moldovan legislative acts and regulations that cover requirements of the Resolution 1363 (2001)
paragraph 8	

Resolution 1373 (2001)

Provisions of the Resolution 1373 (2001)	Moldovan legislative acts and regulations that cover requirements of the Resolution 1373 (2001)
subparagraphs "a", "b" and "c" of paragraph 1	
Paragraph 2	

Resolution 1390 (2002)

Provisions of the Resolution 1390 (2002)	Moldovan legislative acts and regulations that cover requirements of the Resolution 1390 (2002)
subparagraphs “a”, “b” and “c” of paragraph 2	

Resolution 1455 (2003)

Provisions of the Resolution 1455 (2003)	Moldovan legislative acts and regulations that cover requirements of the Resolution 1455 (2003)
paragraph 1	
paragraph 5	
paragraph 6	

Resolution 1526 (2004)

Provisions of the Resolution 1526 (2004)	Moldovan legislative acts and regulations that cover requirements of the Resolution 1526 (2004)
paragraph 4	
paragraph 5	
Paragraph 17	
paragraph 22	

Annex 5. International agreements signed by the Republic of Moldova

On mutual legal assistance and legal relations

1. European Convention on Mutual Legal Assistance signed in Strasbourg at 20 April 1959, ratified by Parliament Decision nr. 1332-XIII of 26 September 1997.

2. Community of Independent States Convention on Legal Assistance in criminal, civil and familiar cases signed in Minsk at 20 January 1993, ratified by Parliament Decision nr. 402a from 16 March 1995.

3. European Convention of Transfer of Proceedings in Criminal matter signed in Strasbourg at 15 May 1972, ratified by Law Nr. 320 from 3 November 2006.

4. Treaty between the Republic of Moldova and the Russian Federation on Legal Assistance in criminal, civil and familiar cases signed in Moscow at 25 February 1993, ratified by Parliament Decision nr. 260-XIII from 4 November 1994.

5. Treaty between Republic of Moldova and Ukraine on Legal Assistance in criminal and civil cases signed in Kiev at 13 December 1993, ratified by Parliament Decision nr. 261-XIII from 4 November 1994.

6. Treaty between Republic of Moldova and Lithuania on Legal Assistance in criminal, civil and familiar cases signed in Chisinau at 9.2.1993, ratified by Parliament Decision nr. 1487a-XII from 10 June 1993.

7. Treaty between Republic of Moldova and Lithuania on Legal Assistance in criminal, civil and familiar cases signed in Chisinau at 9 February 1993, ratified by Parliament Decision nr. 1487a-XII from 10 June 1993.

8. Treaty between Republic of Moldova and Latvia on Legal Assistance in criminal, civil and familiar cases signed in Riga at 14 April 1993, ratified by Parliament Decision nr. 1487a-XII from 10 June 1993.

9. Treaty between USSR and S.R.Czechoslovakia on Legal Assistance in criminal, civil and familiar cases signed in Moscow from 12 August 1982, by succession.

10. Agreement between Republic of Moldova and Turkey on Legal Assistance in criminal, civil and commercial cases signed in Ankara at 22 May 1996, ratified by Parliament Decision nr. 1017-XIII from 3 December 1996.

11. Treaty between Republic of Moldova and Romania on Legal Assistance in criminal and civil cases signed in Chisinau at 6 July 1996, ratified by Parliament Decision nr. 1018-XIII from 3 December 1996.

12. Treaty between Republic of Moldova and Republic of Azerbaijan on Legal Assistance in criminal, civil and familial cases signed in Baku at 26 October 2004, ratified by Law nr. 33-XVI from 14 April 2005.

13. Treaty between Republic of Moldova and Bosnia and Herzegovina on Legal Assistance in criminal and civil cases signed in Chisinau at 19 June 2012, not ratified yet.

On extradition

14. European Convention on Extradition signed in Paris at 13 December 1957.

On cooperation in combating organised crime, international terrorism and other especially dangerous crimes

15. The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), ratified in 1995.

16. The United Nations Convention against Transnational Organised Crime (Palermo Convention) and its two protocols, signed in 2000 and ratified on 16 September 2005.

17. The 1999 International Convention for the Suppression of the Financing of Terrorism (FT Convention), signed in 2001 and ratified in 2002.