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# Report on Fourth Assessment Visit – *Executive Summary*

Anti-Money Laundering and Combating the  
Financing of Terrorism

## BOSNIA and HERZEGOVINA

17 SEPTEMBER 2015

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## **LIST OF ACRONYMS USED**

AML	Anti-Money Laundering
ARO	Asset Recovery Office
BD	Brčko District
BiH	Bosnia and Herzegovina
BNI	Bearer negotiable instrument
CC	Criminal Code
CPC	Criminal Procedure Code
CDD	Customer Due Diligence
CFT	Combating the financing of terrorism
CPC	Criminal Procedure Code
CTRs	Cash transaction reports
DNFBPs	Designated Non-Financial Businesses and Professions
EUR	Euro
FATF	Financial Action Task Force
FBiH	Federation of Bosnia and Herzegovina
FI	Financial institution
FID	Financial Intelligence Department
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
IT	Information technologies
ITA	Indirect Taxation Authority
LEA	Law enforcement agency
MER	Mutual evaluation report
ML	Money Laundering
MLA	Mutual legal assistance
MoU	Memorandum of Understanding
MVTSPs	Money and value transfer service providers
NC	Non-compliant
NPO	Non-Profit Organisation
PC	Partially compliant
PEP	Politically Exposed Persons
RS	Republic of Srpska
SIPA	State Investigation and Protection Agency
SR	Special recommendation
STRs	Suspicious transaction reports
TF	Terrorism financing
UN	United Nations
UNSCR	United Nations Security Council Resolution

## 4<sup>th</sup> Round Mutual Evaluation of Bosnia and Herzegovina

### 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 Bosnia and Herzegovina (BiH) at the time of the 4<sup>th</sup> on-site visit (19 to 29 November 2014) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4<sup>th</sup> cycle of assessments is a follow-up round, in which Core and Key (and some other important) Financial Action Task Force (FATF) Recommendations have been re-assessed, as well as all those for which BiH received non-compliant (NC) or partially compliant (PC) ratings in its 3<sup>rd</sup> round mutual evaluation report (MER). 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 BiH.

#### 2. Key findings

2. **Bosnia and Herzegovina has taken several important steps to improve compliance with the FATF Recommendations and has made progress in several areas since the 3<sup>rd</sup> round evaluation. An action plan to remedy deficiencies was agreed between MONEYVAL and the BiH authorities in 2011** and progress against it is still being monitored by MONEYVAL under the Compliance Enhancing Procedures. Several pieces of legislation were amended and new acts and ordinances were issued to address deficiencies identified in the 3<sup>rd</sup> round evaluation and to implement the requirements of international legal instruments.

3. **Many indicators suggest that BiH is susceptible to money laundering and terrorist financing, and that it is attractive to organised criminals and tax evaders.** This is due in part to its strategic position on the Balkan route. In terms of criminal activity, drug and human trafficking and corruption account for a substantial amount of the sources of proceeds generated by organised crime in BiH. These predicate offences have also been the subject of ML prosecutions. BiH's economy remains, to a large extent, cash based and the estimated size of the shadow economy remains significant. The financial market in BiH is relatively small. The banking sector accounts for approximately 84% of the financial sector. The securities sector is the second largest. Investment products tend to be based on securities issued in the course of the privatisation process. However, there are indications that the sector is not entirely safe from abuse as one important ML investigation in the FBiH involved a number of securities brokers. Integration of laundered proceeds in real estate is a problem, which is being addressed in some criminal cases through confiscation.

4. The terrorism financing (TF) risk was not assessed by the authorities, although several terrorism cases are under investigation. During the interviews the authorities pointed out that cash in small amounts (€300-€1.000) is regularly brought into the country by BiH nationals living or working abroad. They also indicated that TF funds appear to be accumulated outside BiH and subsequently smurfed, and distributed in the country using money transfer services. The providers of these services have not been given guidance on TF risk and did not demonstrate real awareness of this issue. Given the TF risks of BiH, it is positive that most financial institutions acknowledge that non-profit organisations (NPOs), which hold bank accounts, are high risk and that enhanced measures should be applied to them. However, **overall, the public authorities throughout BiH appear to neglect the risks of terrorist financing through activities of NPOs.**

5. **The mental and physical elements of the money laundering offence in all four criminal codes are largely in line with the Vienna and Palermo Conventions. While there are some technical aspects which still need clarifying it appears that progress has been made in terms of both the number and quality of money laundering cases.** The evaluation team also noted that some parts of the country have been less successful than others in prosecuting money laundering cases.

6. **BiH has improved its ability to freeze, seize and confiscate property, and the introduction of provisions on reversed burden confiscation and their application in practice have undoubtedly reinforced the confiscation regime.** The system has begun to achieve better outcomes. However, effective implementation needs to be enhanced, in particular with regard to the routine application of provisional measures and effective enforcement of confiscation orders.

7. **A number of technical deficiencies remain in place with regard to the TF offence.** These are of a particular concern given the terrorist risks faced by BiH. Initiatives were however reported, which address the threat of terrorism and TF, in particular a new offence of joining foreign paramilitary organisations was introduced and a number of investigations are underway in this respect. **A framework has been established to enable freezing of funds of persons and entities designated under United Nations Security Council Resolution (UNSCR) 1267. It has however not yet been applied in practice. No system has yet been established to implement UNSCR 1373.**

8. The Financial Intelligence Department (FID), the financial intelligence unit (FIU) of BiH, is vested with a broad range of powers and its institutional arrangements ensure its functioning to a satisfactory level. Nevertheless, there were concerns with regard to the effectiveness of its analytical process and the quantity and quality of its output.

9. **The effectiveness of the system for control of the physical cross border transportation of currency raises serious concerns.** A comprehensive legislative framework is in place. Nevertheless, it appears that the competent authorities are not clear as to their powers which leads to inconsistencies of application. There were also concerns about the effectiveness of controls of cross-border transportation of currency and bearer negotiable instruments (BNIs) at the maritime border and land crossings.

10. **The level of compliance of the AML/CFT framework was significantly enhanced by the adoption of the AML/CFT Law** (adopted after the implementation of MONEYVAL's Compliance Enhancing Procedures in June 2014). This Law brought significant improvements to the AML/CFT preventive framework and introduced the concept of risk to be applied by obliged entities. At the time of the on-site visit new by-laws implementing the Law had not yet been issued.<sup>1</sup> The financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) met on-site showed an uneven understanding as to whether the Law was in force or if they had a period of grace of one year until the by-laws are issued before they have to revise their procedures to bring them into line with the AML/CFT Law.

11. The financial institutions broadly understand and apply the customer due diligence (CDD) measures required under the new AML/CFT Law, but the identification and verification of beneficial ownership is often limited to the first layer of companies that forms a complex legal structure. Further guidance is required for obliged entities for the identification of PEPs and to raise awareness of high-risk jurisdictions. Obligated entities met on-site were aware of the reporting obligation. Nevertheless, the level of reporting remains low, in particular in the non-banking sectors.

12. **There remain concerns about the level of implementation of the AML/CFT supervisory action by the various supervisory authorities and sanctioning for non-compliance with the requirements.** Supervisory powers on AML/CFT should be clarified. Resources of all authorities need to be increased and supervisory action strengthened to ensure that both financial and non-financial institutions are adequately implementing AML/CFT requirements. In particular, expertise on AML/CFT supervision needs to be increased and supervisory planning should be based on AML/CFT risks, and not merely accompany prudential supervision.

13. **Further efforts are also required to put in place an effective AML/CFT coordination mechanism on a policy level** and to ensure the risks and vulnerabilities of the system are appropriately identified and addressed by the policies and strategies formulated by the authorities.

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<sup>1</sup> Rulebook on the implementation of the AML/CFT Law and Guidance on the manner of reporting were adopted by the Council of Ministers on 23 April 2015.

### 3. Legal Systems and Related Institutional Measures

14. ML is criminalised at the state level, as well as in the Criminal Codes (CCs) of the Federation of BiH (FBiH), Republic of Srpska (RS) and Brčko District (BD). The mental and physical elements of the ML offence in all four CCs are harmonized. They are largely in line with the Vienna and Palermo Conventions. While there are some technical issues which still need clarifying, in particular with regard to the transfer of property and the application of the offence to the indirect proceeds of crime<sup>2</sup>, it has been demonstrated that the lack of clear or explicit wording was not a bar to convictions in such cases. The ML offence applies an “all-crimes” approach and covers therefore all the designated categories of predicate offences which are criminalised. Market manipulation was not criminalised at the time of the 3<sup>rd</sup> round assessment in BD. This deficiency has been remedied. Jurisdiction between the various levels in respect of the investigation and prosecution of ML is still not adequately demarcated in legislation or by non-legislative measures. However, the authorities have systems in place to address issues of concurrent jurisdiction that seem to work in practice.

15. The authorities under all four legal systems confirmed that there was no evidential or other bar to taking forward cases of autonomous money laundering, either as a matter of law or practice. Specifically it was confirmed that circumstantial evidence could be relied on for these purposes, although this is not expressly stated in the law. They confirmed that ML can be prosecuted also in cases involving foreign predicate criminality. Case law confirmed this in RS and at state level. Self-laundering is expressly criminalised in the criminal codes of BH and RS. The authorities of FBiH and BD during the on-site visit were of the view that the ML offence would also be applicable to self-laundering under their legal systems, although no supporting case law was provided in this respect. An additional positive development in the implementation of the ML offence is the acceptance of direct application of international conventions by domestic courts. This has been confirmed by case law from RS, where the court expressly relied on provisions of the Palermo and Warsaw Convention. Overall, it appears that progress has been made in terms of both the number and quality of money laundering cases. There have been high value cases, in which the courts have imposed significant penalties, and cases have been taken forward on the basis of a wider range of predicate offences than previously, including drug trafficking, human trafficking, and abuse of office. This corresponds to the type of criminality prevalent in the country as a whole. The evaluation team also noted that some parts of the country have been less successful than others at improving the number and quality of ML cases. It is important that work continues so that improvements of this kind are seen throughout BiH.

16. A number of factors undermined the effectiveness of prosecution of ML, in particular lack of resources and expertise of staff of involved authorities. The prosecutorial and judicial authorities whom the evaluators met under all four legal systems demonstrated a high level of knowledge and commitment. Nevertheless, representatives of all authorities referred to a lack of resources, which appears to be an issue above all in FBiH and BD, and to a lesser extent in RS and at the state level. There are some indications that the situation is beginning to improve. There has been an increase in training across the country, often provided by foreign experts.

17. At a technical level, although the legal framework for the criminalisation of TF addresses many of the requirements of the international standard, it is subject to a number of deficiencies. Some of these deficiencies appear to undermine the effective prosecution of TF, particularly the absence of incrimination of the provision of funds to a terrorist organisation or an individual terrorist other than for the purposes of a terrorist act. These deficiencies were raised at the time of the 3<sup>rd</sup> round assessment. Even though they have been addressed to a limited extent at the state level, they are still not fully covered. In addition, whilst the generic part of the TF offence as required by the TF Convention is included in corresponding language in all four CCs, some elements of the offences in the annex to the TF Convention are not covered and are not within the ambit of the TF offence in the manner required by the TF Convention.

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<sup>2</sup> The ML offence in the CC of BiH was amended on 27 May 2015.

18. Although the evaluators were informed that there were some on-going investigations into TF, at the time of the on-site visit only one indictment had been issued. Following the current developments and the identified links between some BiH citizens and the situation in the Middle East, it is considered that the TF risks in the country have increased. In addition there have been instances of terrorist acts within the jurisdiction itself, including an attack on the US embassy in Sarajevo. Due to the increasing TF risk in the country, the lack of significant enforcement activity on terrorist financing poses more serious concerns than previously.

19. Nevertheless, there are indications that the authorities are making some efforts to address the threat of terrorism and TF. According to the authorities, the Intelligence and Security Agency of BiH and all police agencies permanently monitor the activities of potentially dangerous groups, either independently or in cooperation with the Anti-terrorism Task Force of BiH. In addition, the CC of BiH was amended in 2014, introducing a new offence of joining foreign paramilitary organisations, and the evaluators were informed that there are investigations under way into TF in this respect.

20. The legal provisions setting the basic framework for confiscation and freezing of proceeds of crime remain largely as they were at the time of the last evaluation. At a technical level, the framework for confiscation, although complex, is broadly in line with international standards. Nevertheless, confiscation of instrumentalities remains subject to imprecise conditions in most cases, as was pointed out in the 3<sup>rd</sup> round MER<sup>3</sup>. Some changes were, however, introduced since the last evaluation. In particular, the CCs of BiH and FBiH have been amended to introduce the concept of extended confiscation in relation to some offences. In RS extended confiscation was introduced within dedicated asset recovery legislation, in which also an Asset Recovery Office (ARO) was established in 2010.<sup>4</sup>

21. Although there have been some notable successes in the implementation of the legal framework, particularly in RS, serious concerns remain as to the overall level of effectiveness of the confiscation regime. The continued application of high evidential standards by the courts in some parts of the country leads to an overall low number of confiscation orders. This has been partially remedied by the introduction of extended confiscation, which appears to be applied more often by the courts at the state level and in RS than in FBiH. Despite the fact that the confiscation of assets of corresponding value is permitted under all four legal systems, no cases in which this had happened in practice were identified except in the RS. In addition, limited use of provisional measures results in a high proportion of confiscation orders not being enforced. This has been partially remedied in RS by the establishment of the ARO. Nevertheless, at the state level and in FBiH and BD, the failure to apply for provisional measures at an early stage of an investigation poses a major obstacle to the successful recovery of proceeds of crime. The authorities are therefore encouraged to make more timely applications for provisional measures, and routinely instigate parallel financial investigations in major proceeds-generating cases. Finally, the lack of resources identified in the context of Recommendation 1, particularly in respect of expertise and training, would seem to be a relevant factor under this Recommendation as well.

22. At the time of the 3<sup>rd</sup> round evaluation, the team considered that there was no comprehensive and directly applicable legal framework in place that would provide a legal basis for freezing of terrorist funds. Since the adoption of the 3<sup>rd</sup> round MER, the authorities have taken a number of steps in this respect. Whilst the general legal basis remains the same, the authorities enacted an Ordinance that sets out concrete procedures which currently form the framework for freezing assets of persons and entities designated under UNSCR 1267. This framework is comprehensive and broadly complies with international requirements. It is to be noted, however, that apart from a few additional minor technical deficiencies, above all there is no mechanism for supervision of compliance by obliged

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<sup>3</sup> Amendments to the CC of BiH were adopted in this respect in May 2015.

<sup>4</sup> Legislation in this respect was approved also in FBiH. Nevertheless, this legislation entered into force in April 2015 and did not therefore enter in the two months period after the on-site visit and cannot be taken into consideration for the purposes of this assessment. In addition, the changes introduced were not yet operational by the time of the adoption of the MER.



entities. The framework is not, however, applicable for the purposes of UNSCR 1373, both with regard to designating persons on a national level, as well as to responding to requests from foreign countries.

23. In addition, there is no mechanism for relevant authorities to consider persons for potential domestic designation or for proposal of inclusion on the UN List. Considering recent developments described above with regard to terrorism and TF links to BiH, this is considered a significant shortcoming.

24. The UN Consolidated List and guidelines issued by the authorities are publicly available on the website of the Ministry of Security of BiH. Nevertheless, during the on-site visit, the private sector and the majority of the supervisory authorities were not aware of the existence of this framework. No guidance or awareness raising activities were provided by the authorities for obliged entities with regard to their obligations resulting from the Ordinance.

25. The FID is the financial intelligence unit (FIU) of BiH and is established as the national centre for receiving, collecting, recording and analysing data, information and documentation related to the prevention, investigation and detection of ML and TF. It is also responsible for promoting cooperation amongst relevant national authorities, as well as cooperating on an international level. In addition, the FID is empowered to undertake preliminary investigations in the scope of its activities, to temporarily suspend transactions and to issue orders to reporting entities for continuous monitoring of a client relationship. Guidance on the manner and procedures of reporting is in place and reporting forms are available for all the different categories of reporting entities. The FID does not publish any periodic reports on typologies and trends<sup>5</sup>.

26. The FID has broad powers to access financial, administrative and law enforcement information and to request additional information from reporting entities if it considers that there are reasonable grounds for a suspicion of ML/FT. It also has direct access to a number of databases at state level, and to some at Entity level. The evaluation team has concerns with regard to the accessibility of some information to the FID and the timeliness of access in practice (in particular with regard to information held at Entity/BD level). Appropriate safeguards are in place to ensure that information held by the FID is securely protected and disseminated.

27. Overall, the evaluation team considered that the FID has adequate operational independence. The budget of the FID in the period under assessment was considered as sufficient for it to properly undertake its functions and the evaluators welcomed the significant increase of staff of the FID over the past five years. The FID staff members met on-site appeared to be of high integrity and motivated.

28. As regards effectiveness of the work of the FID, concerns were raised by the evaluation team due to absence of a feedback mechanism regarding cases referred to entity and cantonal level law enforcement agencies, which undermines effectiveness of dissemination procedure. In addition, the evaluation team considered that the effectiveness of the work of the FID was negatively impacted by the lack of an adequate IT system which would allow for in-depth analyses.

29. In order to detect physical cross-border transportation of currency and bearer negotiable instruments (BNIs), BiH implemented a declaration system that requires all persons to declare any assets, cash and BNIs above the threshold of EUR 2,500. The legislative framework is in the Laws on Foreign Currency Exchange of both Entities (the FBiH Law is applicable on the territory of BD). Since the 3<sup>rd</sup> round assessment, both laws were harmonised, which was a welcome development. Nevertheless, not all BNIs are covered by the declaration obligation and the competent authorities are not vested with any powers to freeze terrorist assets. The principal authorities involved in implementing the framework are the Indirect Taxation Authority (ITA) and the Border Police. Whilst they appear to have a broad range of competencies for the purposes of controlling cross-border transportation of currency and BNIs, it appears that the authorities have an unclear understanding with

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<sup>5</sup> The authorities reported that steps have been taken in this respect and the FID shall start issuing periodic reports; the first report is foreseen to be published in the course of 2015.



regard to their power to stop and restrain cash and BNIs. This can cause difficulties in applying confiscation measures in a timely manner to identified currency related to ML/TF. The sanctioning framework for violation of the declaration obligation does not appear to be effective.

30. In practice, the authorities stated that control by ITA is not performed at the maritime border and that they encounter problems to undertake effective control at the land-crossings points. The number of declarations recorded by the authorities appears very low considering the number of border crossing points in BiH. Overall, it appears that in practice the competent authorities do not endeavour to assess the possibility of ML/TF connected with the transportation of cash or BNIs. The training provided to the authorities competent for the undertaking of border control do not contain ML/TF aspects and the authorities confirmed that they lack sufficient expertise in this respect.

#### **4. Preventive Measures – Financial Institutions**

31. Since the 3<sup>rd</sup> round evaluation, BiH has taken steps in order to improve the AML/CFT legal and regulatory framework, as well as the supervisory system. The new AML/CFT Law was adopted on 6 June 2014 and came into force on 25 June 2014. It applies to all FIs, as required by the FATF standards. The revised AML/CFT legislation addressed a number of deficiencies in the preventive measures and introduced a risk-based approach. The new Law foresees the issue of bylaws for its implementation by the Ministry of Security. This, however, was not done by the time of the 4<sup>th</sup> round on-site visit.<sup>6</sup> The bylaws in force at the time of the 4<sup>th</sup> round on-site visit (and within the period shortly thereafter which the evaluators can take into account) were issued prior to the adoption of the Law. With regard to preventive measures, it is considered that they were broadly harmonized with the Law. With respect to supervision, however, further harmonization is required.

32. Anonymous accounts are prohibited. There are no financial secrecy laws in place which would inhibit the implementation of the FATF recommendations. A comprehensive set of CDD and enhanced CDD measures is included in the legislation, placing non-face to face relationships under intensified monitoring of clients. The permitted use of simplified CDD measures is compliant with the standards. Measures in place related to politically exposed persons (PEPs) appear to be broadly in line with the requirements of the FATF standards and apply to both foreign and domestic PEPs. While the new AML/CFT Law adopted in 2014 seems to eliminate the deficiencies identified in 3<sup>rd</sup> round, the 4<sup>th</sup> round evaluators are of the opinion that the AML/CFT Law could stipulate more clearly that the obligation to keep records applies regardless of whether the account or business relationship is on-going or has been terminated. Also, the obligation to keep records of business correspondence still has not been introduced in the legislation. From discussions on-site it appeared that, despite the lack of an explicit legal obligation, this is done in practice.

33. FIs are largely aware of their AML/CFT obligations. An uneven understanding was however encountered as to whether the new AML/CFT Law should be applied or whether new by-laws were supposed to be issued first. This impacted seriously on the application of the legislation in practice. Doubts remain about the extent of their understanding of the application of the risk-based approach to CDD measures and the guidance provided by the authorities merely mirrors the provisions of the AML/CFT Law in this respect. Whilst basic requirements to identify and verify the identity of beneficial owners are in place, the private sector confirmed that further instructions in this respect would be needed. Insufficient guidance has also been provided to the private sector with regard to identifying PEPs. Overall, financial institutions interviewed during the 4<sup>th</sup> round on-site visit demonstrated sufficient awareness of the record keeping requirements and confirmed that records are kept in practice as required by the AML/CFT Law. Records are available to competent authorities in a timely manner. This was confirmed by both the authorities and the private sector.

34. A basic framework has been introduced to govern the operation of correspondent relationships. The requirements are however limited to correspondent relationships with banks or other credit institutions. In addition, there is no positive obligation for the credit institutions to assess the

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<sup>6</sup> Rulebook on the implementation of the AML/CFT Law and Guidance on the manner of reporting were adopted by the Council of Ministers on 23 April 2015.

respondent institution's AML/CFT controls, and to ascertain that they are adequate and effective. The authorities did not adopt a list of countries which apply internationally recognised standards in terms of preventing and detecting ML and TF activities and further guidance in this matter will be needed for the reporting entities. The deficiencies identified during the 3<sup>rd</sup> round with respect to misuse of new technology for ML/TF purposes were addressed in the new AML/CFT Law. The 3<sup>rd</sup> round evaluators also concluded that almost no measures were in place to mitigate the risk posed by reliance on third party introducers, as well as in relation to measures connected with wire transfers; a comprehensive framework has been introduced in this respect. In addition, it was confirmed during the 4<sup>th</sup> round on-site visit that reliance on third parties is not a common practice in BiH. The requirements related to the internal preventative procedures to be implemented by obliged entities do not cover all the requirements of the FATF Standards.

35. The reporting obligation as set in the AML/CFT Law is broadly compliant with the FATF standards. The by-laws, being a primary source for obligors to effectively implement the provisions from the law, however link the reporting obligation to transactions, rather than funds.

36. The evaluators maintain the concerns from the previous round of evaluations on the overall level of effectiveness of the reporting obligation. The level of reporting by all sectors is still rather low, in particular in the non-banking sectors. In addition, it appears that most STRs are not decisive in triggering an in-depth analysis or dissemination, which could reflect the low quality of the reports. Effectiveness of the reporting regime is also undermined by the lack of feedback provided by the FIU to reporting entities. This has been confirmed by the fact that, despite that the reporting entities met on-site were well aware of their reporting obligation; they did not have a full understanding of the specific sector and national ML/TF risks. There was a complete lack of filed TF related STRs, as the lists of indicators provided to the private sector by the authorities do not contain indicators in relation to terrorist financing. The evaluation team also had concerns regarding over-reliance on CTR reporting and reporting almost exclusively on the basis of the set list of indicators. Pursuant to the issued bylaws, all unusual and complex transactions are to be considered as suspicious, therefore potentially lifting the obligation to further examine the transaction or client.

37. The basic framework for AML/CFT supervision is in the AML/CFT Law. Changes have been introduced, addressing a number of shortcomings identified at the time of the 3<sup>rd</sup> round evaluation. The legislative framework for AML/CFT supervision has been aligned further with the FATF Standards. Notwithstanding, the by-laws issued prior to the adoption of the AML/CFT Law have not yet been fully harmonised with the Law, which may negatively impact on supervision in practice. The AML/CFT Law is complemented by the sectoral legislation, on the basis of which supervisory authorities are granted specific powers for supervision, including powers with regard to sanctioning. Despite the broad compliance of the legislative framework with international standards and the wide powers that the authorities are given, in some sectors (such as the insurance sector and the securities sector in FBiH), concerns remain about the clarity of the attribution of supervisory powers in the AML/CFT context. In addition, during the on-site visit, it appeared that in practice the authorities did not have a clear understanding of whether they have the competence to undertake the powers given to them by the AML/CFT Law, as well as whether they can use the powers given to them by the sectoral legislation for the purposes of AML/CFT supervision. This in practice seriously hinders the undertaking of AML/CFT supervision throughout the financial sector.

38. The banking sector continues to be supervised by the respective Banking Agencies of the FBiH and RS, the insurance sector by the Insurance Agencies of the FBiH and RS<sup>7</sup>, and the securities market by the Security Commissions of the FBiH, RS and BD. The new AML/CFT Law also gives supervisory responsibilities to the respective FBiH and RS Ministries of Finance and the BD Finance Directorate in relation to money and value transfer service providers. Legal uncertainty remains about

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<sup>7</sup> There are no specific legal provisions concerning the banking and insurance sectors in BD and evaluation team was informed during the on-site visit that there are no banks or insurance companies licensed in this entity. The branches operating on its territory are subject to supervision from the respective Banking Agency from RS or the FBiH, depending on the geographical location of the licensed headquarter.

the supervisory functions in relation to the brokerage activities of the banks. The Banking Agencies of FBiH and RS established dedicated AML/CFT supervision units and issued specific AML/CFT supervision manuals with regard to the sectors they supervise. They apply a risk-based approach, combining off-site supervision with on-site inspections, complemented by ad-hoc inspections initiated upon a request from other state authorities. Other supervisors have not established a dedicated approach to AML/CFT supervision and this is usually undertaken solely within the scope of prudential supervision activities. Lack of specialised experts and the undertaking of supervision based on prudential risks negatively impacts on its effectiveness in practice. Although, legal and natural persons performing transfer of money or values and companies engaged in electronic funds transfer are now subject to the AML/CFT Law, it has been confirmed that the Post Office and other entities (except for banks) performing transfer of money or values are still not licensed and supervised for AML/CFT compliance.

39. Since the 3<sup>rd</sup> round of evaluations, the Bosnian authorities have made some significant steps to address the identified shortcomings and to amend the legislation with regard to market entry, in particular to prevent criminals from holding management functions. Some deficiencies however remain; amongst others the measures preventing criminals from controlling FIs do not cover criminal associates, as well as the requirements in place with regard to money and value transfer service providers are not fully comprehensive.

40. The evaluators are of the opinion that the amounts of the applicable fines are dissuasive and they might be applied in a proportionate manner. However, in practice only the minimum level of fines was imposed. Even though some improvements have taken place since the previous assessment, the AML/CFT Law still does not provide sanctions for breaches of all the obligations set by the AML/CFT framework. Sanctions for managers and directors are only available to banks.

## **5. Preventive Measures – DNFBPs**

41. With the adoption of the new AML/CFT Law, the requirement to apply preventive measures has been extended to all categories of designated non-financial businesses and professions (DNFBP) defined by the FATF standard, as well as a number of other businesses and professions. The legislative framework, including the reporting obligation, is identical to that applied to the FIs. The level of awareness and understanding of AML/CFT obligations and their application in practice varies among the different sectors. Overall, DNFBPs informed the evaluation team that they were awaiting sectoral guidance to be adopted in order to start implementing the AML/CFT Law and appeared unaware of the possible ML/TF risks in their respective sectors. The number of STRs filed by the DNFBP sectors is low. Deficiencies remain with regard to preventing criminals and their associates from controlling casinos.

42. The supervisory framework mirrors the one for FIs. The basic provisions, including the sanctioning regime, are in the AML/CFT Law and the specific powers are attributed to supervisors by the respective sectoral legislation. Pursuant to the AML/CFT Law, the designated supervisors of DNFBPs are the competent ministries of Justice, of Finance, the Bar Chambers of the FBiH and RS and the FID. It is to be noted that the sectoral legislation in relation to the DNFBP sectors does not clearly attribute powers for the purpose of undertaking supervision in respect of AML/CFT compliance. At the time of the on-site visit, no supervisory action was taken in practice and no sanctions were imposed on the DNFBP sector. In addition, some supervisory authorities were yet to be appointed and the others were relatively new to the role. In this context, there are additional serious effectiveness concerns in particular due to the complete lack of specific AML/CFT expertise of the supervisors.

## **6. Legal Persons and Non-Profit Organisations**

43. As at the time of the 3<sup>rd</sup> round on-site visit, registration of legal persons remained regulated by the Laws on Registration of Business Entities of FBiH, RS and BD. In December 2013, a new Law on Registration of Business Entities entered into force in RS. Legal entities established under the legislation of BiH (or one of the Entities) are not allowed to issue bearer shares. It is to be noted in this

respect, that foreign legal persons that allow bearer shares may become shareholders in domestically registered legal persons. All legal entities established on the territory of BiH must register at a competent court. The information included in the Registers is publicly available. Nevertheless, while in the FBiH a comprehensive on-line register has been established, in RS each court can only access its own database.<sup>8</sup> There is only one court in BD. The register it maintains is however not yet electronic and available online. From the information provided during the on-site visit, whilst the Registers verify the documents filed for the purposes of the registration, no further controls are undertaken. It therefore appears that the information included in the Registers may not be accurate and fully up-to-date. Furthermore, the complexity of the framework leads to concerns about the availability of all necessary information on ownership issues in a timely manner to state authorities.

44. Whilst the new AML/CFT Law introduced a clear definition of beneficial owner, this is applicable only for the purposes of application of CDD measures, but it is not required that the registers of legal persons contain such information. The only mechanism in BiH which requires information on beneficial ownership of legal persons to be obtained, verified, kept up-to-date and stored for a period of time is therefore found within the CDD requirements set out under the AML/CFT Law. There is no obligation requiring every legal person registered in BiH to establish a business relationship or conduct an occasional transaction with a financial institution or a DNFBP operating in BiH. Additionally, the obliged entities met on-site predominantly use as their source of information the registers held by the courts. Therefore, concerns about the accessibility of beneficial ownership information formulated at the time of the 3<sup>rd</sup> round assessment remain in place.

45. With regard to shareholding companies which are publicly-traded on an organised market of securities, information on their ownership is held by the Registries of Securities. There are two Registries of Securities in BiH, established under the supervision of the Securities Commissions of FBiH and RS.<sup>9</sup> Both Registries of Securities maintain an on-line database, which contain the names of the ten shareholders with the highest shares in each shareholding company.<sup>10</sup>

46. According to the information provided on-site, more than 21,000 NPOs were registered on the territory of BiH at the time of the on-site visit. The Security Intelligence Agency (SIA) informed the evaluators that the NPO sector was vulnerable to TF abuse, no review had been undertaken in respect of the NPO sector in general, which led to a lack of an understanding of the size, characteristics and activities of the sector. This was raised as a problem at the time of the previous assessment and no developments were made since. The lack of a comprehensive overview and assessment of the vulnerabilities of NPO sector appears to be caused by the distribution of competencies with regard to NPOs between various state authorities. The relevant authorities are not familiarised with AML/CFT vulnerabilities and threats connected to NPOs and do not focus on the TF issue when undertaking supervision of NPOs. There is no mechanism in place to facilitate information exchange and cooperation in respect of NPOs between national authorities. Consequently, none of these authorities is in the position or has the responsibility to come to any conclusions about the characteristics, risks and vulnerabilities of the sector from a strategic point of view.

47. The evaluators were not informed about any outreach activity to NPOs to raise awareness on TF risks, and with a view of protecting NPOs from TF abuse.

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<sup>8</sup> Steps have been taken in order to address this issue and the Agency for Intermediary, IT and Financial Services (APIF) should maintain a global electronic register of legal persons registered in RS, the consolidation of up-to-date information is however not yet finalised. The APIF currently serves as the intermediary for purposes of obtaining information, as upon a request, it would gather the relevant information from the individual registries and provide it to the requesting person.

<sup>9</sup> Shareholding companies established in BD are registered in the Registry of Securities of FBiH or RS, depending on whether its shares are to be traded on the Stock Exchange in Sarajevo or Banja Luka.

<sup>10</sup> It is to be noted that when the securities in question are held on a custodian account, it would be noted as such in this public registry, without stating the name of the actual owner of the security.

## **7. National and International Co-operation**

48. As indicated in the previous report, the fragmented political structure of BiH and its complex legal and institutional frameworks mean that effective domestic cooperation and coordination at the policy, strategic and operational level pose considerable challenges. Mechanisms for cooperation and coordination are required not only between policy makers and various competent authorities within each of the four jurisdictions, but also between them and their counterparts in the other three jurisdictions. In some respects the mechanisms in place for cooperation and coordination are the same as at the time of the last evaluation, but certain changes have been introduced.

49. At a policy and strategic level, the main mechanism for ensuring cooperation and coordination amongst the different authorities involved in the prevention of ML and TF across BiH as a whole remains the Working Group of Institutions of BiH for the Prevention of ML and TF. In addition, a number of strategic documents were adopted since the previous assessment. At the time of the on-site visit, it was not demonstrated to what extent strategic analysis or planning takes place with a view to identifying current methods, trends, threats and vulnerabilities in order to accordingly formulate future policies and priorities. The complexities of BiH's internal structure appear to cause fewer difficulties in cooperation and coordination at an operational level. There are gateways in place to share information which appear to be used effectively. The legislative framework and concluded memorandums of understanding (MoUs) set a solid basis in this respect and it was confirmed during the on-site visit that no difficulties have been encountered by the authorities in practice.

50. It is to be noted, that despite the generally positive picture with regard to cooperation amongst law enforcement authorities, it was mentioned on a number of occasions that it was not uncommon for parallel investigations on the same case to be initiated inadvertently by different agencies, since there is no central database for the creation of a single case file, which would alert every authority of any current or past investigation on the same target. The absence of a central database also complicates the information-gathering process, since information, while generally available, is spread across a large number of authorities. This was mentioned in particular with regard to the number of different registries (on property, legal persons, etc.).

51. The authority responsible for processing incoming and outgoing requests is the Ministry of Justice of BiH and the legal framework remains largely unchanged since the 3<sup>rd</sup> round evaluation, this being the Law on Mutual Assistance in Criminal Matters (MLA Law) together with respective parts of Criminal Procedure Codes (CPCs) of the Entities and BD. The legislation is largely harmonised and maintains subsidiarity of application to international agreements concluded. The legal provisions on entity and BD level are subsidiary to the Law on MLA. Since the 3<sup>rd</sup> round assessment, BiH concluded additional bilateral agreements on the provision of MLA. The range of MLA that the authorities may provide in criminal matters is broad and covers all the requirements of the international standards, in addition, the authorities were vested with additional powers by the amendments to the MLA Law adopted in 2013. Provision of MLA is not subject to any unreasonable, disproportionate or unduly restrictive conditions and it cannot be denied due to possible involvement of fiscal matters and there are no secrecy or confidentiality laws which would negatively impact in this respect.

52. The evaluation team at the time of the 3<sup>rd</sup> round assessment concluded that timeliness of the provision of MLA may be negatively affected by the complexity of the institutional framework in place for the execution of MLA requests. Despite the fact that the authorities were confident about the applicable processes and that there was no confusion in this respect, no legal mechanisms are in place to ensure the timeliness of provision of assistance. Feedback provided by other countries pointed to a general satisfaction with the manner and timeliness of provision of MLA by the authorities of BiH.

53. The competencies of the relevant authorities with regard to international cooperation are based on the respective laws regulating their operation. The FID is empowered to exchange information with its counterparts on the basis of the AML/CFT Law, which does not require any further agreements or mechanisms to be put in place for provision of assistance and exchange of information. In addition, the FID may use a large variety of its powers on foreign request. In practice, the FID regularly exchanges information with foreign FIUs, mainly through the Egmont Secure Website. Representatives of the



police reported that they exchange information with their counterparts through the Interpol channel. Supervisors are generally empowered to exchange information. In order to apply these powers in practice, a concrete agreement is required to be concluded with the respective counterpart. A number of MoUs were signed in this respect by the various supervisors, the majority with their counterparts in the region.

54. In practice, the authorities met on-site demonstrated high commitment and dedication to international cooperation and informed the evaluation team about the quality of such cooperation. This has been confirmed by the information provided by other jurisdictions, which assessed the provision of assistance by the FID and LEAs as timely and of very high quality. Effectiveness of international cooperation of supervisory authorities has, however, not been demonstrated. The evaluation team was not provided with any statistics in this respect, nor was any information provided during the on-site about actual cases.

## **8. Resources and statistics**

55. It is considered that the FID budget and staffing are sufficient. In addition, the FID, as well as representatives of the State Investigation and Protection Agency (SIPA), participate in a large number of trainings on specific criminal-intelligence activities, analytical activities (application of analytical methods and software), countering financial crime, organised crime and terrorism, as well as on carrying out financial investigations.

56. The representatives of prosecutors' offices and the judiciary reported that problems in the effectiveness of prosecution of ML/TF are caused by a lack of resources at all levels, in particular with regard to insufficient staffing and lack of adequate training. It was confirmed that the lack of resources is more significant in FBiH and BD, with the situation being slightly better at the state level and in RS. Some efforts have been, however, undertaken in order to increase the range of assistance provided to foreign countries: for example the Court of Sarajevo was equipped with video conferencing facilities and the installation of similar facilities is foreseen for other courts as well. The representatives of the Ministry of Justice of BiH also reported that the department responsible for the receipt and sending of MLA requests needs reinforcing of its human resources. The representatives of the Ministry of Justice participated at a number of trainings with regard to provision of MLA.

57. As concerns supervisory authorities, only the banking agencies have specialised units on AML/CFT supervision and their staff have participated in relevant trainings. As regards the other supervisors of FIs, supervision is focused predominantly on prudential issues. Concerns remain with regard to the level of AML/CFT expertise as of their staff. The AML/CFT supervision of DNFBPs was recently established. It was not possible to assess the adequacy of their resources.

58. Insufficient information was provided with regard to the actual composition of the Working Group of Institutions of BiH for the Prevention of ML and TF. However, it appears that it is comprised of representatives of the relevant institutions, which take part in this forum only as a marginal activity within their overall professional duties. The fact that there is no permanent body responsible for policy making activities could be the cause of the lack of capacity to undertake broader assessments of the situation and identify key areas on which future activities should be focused (including analysis of the statistics and other data maintained by the different stakeholders).

59. The position with regard to maintaining statistics suggests improvements since the last evaluation, when there were concerns as to whether or not any meaningful statistics were collected other than for the purposes of the evaluation itself. However, the improved process for gathering statistics does not appear to have led to any systematic review of the effectiveness of systems in this area, as the different authorities indicated that there was no established practice of analysing the statistics to assess how well the legal framework is being implemented. In addition, the evaluators have some doubts as to the reliability of the statistics that are maintained.

## 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 Bosnia and Herzegovina. *It includes ratings for FATF Recommendations from the 3<sup>rd</sup> round evaluation report that were not considered during the 4<sup>th</sup> assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating <sup>11</sup>
<b>Legal systems</b>		
1. Money laundering offence	<b>LC</b>	<ul style="list-style-type: none"> <li>Despite improvements in the quality of convictions, overall numbers are modest and prosecutors in some parts of the country are still not giving sufficient priority to money laundering;</li> <li>Lack of clarity as to jurisdiction for money laundering increases the risk of legal challenge to prosecutions.</li> </ul>
2. <i>Money laundering offence Mental element and corporate liability</i>	<i><b>LC</b></i>	<ul style="list-style-type: none"> <li><i>Although such case law exists at state level, there is still uncertainty among practitioners whether the intentional element of ML may be inferred from objective factual circumstances which may well compromise the effectiveness of the AML regime;</i></li> <li><i>Despite the adequate legal framework, the prosecution only rarely targets the legal persons (shell companies etc.) involved in ML cases.</i></li> </ul>
3. Confiscation and provisional measures	<b>PC</b>	<ul style="list-style-type: none"> <li>The confiscation of instrumentalities is subject to imprecise conditions in most cases.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>The continued application of high evidential standards by the courts in some parts of the country means that the number of confiscation orders remains low overall;</li> <li>Limited use of provisional measures means that a high proportion of confiscation orders cannot be enforced;</li> <li>Value based confiscation is not being applied sufficiently.</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	<b>C</b>	

<sup>11</sup> These factors are only required to be set out when the rating is less than Compliant.



<p>5. Customer due diligence</p>	<p><b>PC</b></p>	<ul style="list-style-type: none"> <li>• No mandatory explicit obligation to apply CDD measures to all existing clients.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Relevant by-laws (e.g. Decisions and Rulebooks) on application of AML/CFT measures should give more detailed specifications (guidance) to financial sector. Shortcomings in the implementation of beneficial ownership requirements;</li> <li>• Lack of guidance and trainings on the application of risk-based approach (simplified and enhanced CDD);</li> <li>• Inconsistent implementation of measures to be taken in case of enhanced due diligence (some FI were not entirely clear on the distinction between CDD and ECDD while there was little recognition of reduced or simplified due diligence);</li> <li>• Unable to fully measure the effectiveness of implementation of the newly introduced AML/CFT Law.</li> </ul>
<p>6. Politically exposed persons</p>	<p><b>LC</b></p>	<p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Relevant by-laws (e.g. Decisions and Rulebooks) on application of AML/CFT measures regarding PEP's are not fully harmonized with the AML/CFT Law;</li> <li>• Low awareness on the detection of the source of wealth and persons related to PEPs;</li> <li>• Low awareness of application of the AML/CFT requirements in relation to PEPs by the non-banking financial institutions.</li> </ul>
<p>7. Correspondent banking</p>	<p><b>LC</b></p>	<ul style="list-style-type: none"> <li>• The correspondent relationship requirements are limited to correspondent relationships with banks or other credit institutions and not with all financial institutions as it is prescribed in Recommendation 7;</li> <li>• The special measures apply only to countries that are outside the scope of Art. 85 of the AML/CFT law;</li> <li>• No explicit requirement for assessment of the collected correspondent information.</li> </ul>

8. New technologies and non face-to-face business	<b>LC</b>	<p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Lack of guidance concerning (or low awareness of the procedures to be applied in) circumstances of non-face-to-face business and on how CDD measures should operate in non-face to face transactions;</li> <li>• Lack of awareness of risks regarding misuse of new technologies and effective compliance is not demonstrated.</li> </ul>
9. Third parties and introducers	<b>LC</b>	<ul style="list-style-type: none"> <li>• No clear requirement for the non-banking financial institutions to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29;</li> <li>• No direct requirement for the competent authorities, in determining in which countries the third parties can be based, to take into account the information available on whether those countries adequately apply the FATF Recommendations.</li> </ul>
10. Record keeping	<b>LC</b>	<ul style="list-style-type: none"> <li>• Absence of explicit obligation for liable persons to keep records of business correspondence (criteria 10.2) and low awareness of such obligation.</li> </ul>
11. Unusual transactions	<b>LC</b>	<ul style="list-style-type: none"> <li>• FID Guidelines declare all unusual and complex transactions to be suspicious, obliging the financial institution to file an STR and therefore potentially lifting the obligation to further examine the transaction or client.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Uneven understanding of internal detection mechanisms.</li> </ul>
12. DNFBPS – R.5, 6, 8-11 <sup>12</sup>	<b>PC</b>	<p><b><i>Applying Recommendation 5</i></b></p> <ul style="list-style-type: none"> <li>• No mandatory explicit obligation to apply CDD measures to all existing clients;</li> <li>• Poor implementation of beneficial ownership requirements;</li> <li>• Poor implementation of on-going due diligence;</li> <li>• Lack of guidance and trainings on the application of risk based approach;</li> <li>• Inconsistent implementation of measures to be taken when enhanced due diligence;</li> <li>• Unable to measure the effectiveness of implementation of the newly introduced AML/CFT Law.</li> </ul>

<sup>12</sup> The review of Recommendation 12 has taken into account those Recommendations that are rated in this report.

		<p><b><i>Applying Recommendation 6</i></b></p> <ul style="list-style-type: none"> <li>• No guidance on the application of PEP’s related obligations;</li> <li>• Low awareness on the detection of PEP’s and their source of wealth and persons related to PEPs.</li> </ul> <p><b><i>Applying Recommendation 8</i></b></p> <ul style="list-style-type: none"> <li>• Lack of guidance concerning (or low awareness of the procedures to be applied in) circumstances of non-face-to-face business and on how CDD measures should operate in non-face to face transactions;</li> <li>• Lack of awareness of risks regarding misuse of new technologies and effective compliance is not demonstrated.</li> </ul> <p><b><i>Applying Recommendation 9</i></b></p> <ul style="list-style-type: none"> <li>• No clear requirement for the DNFBPs to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29;</li> <li>• No direct requirement for the competent authorities, in determining in which countries the third parties can be based, to take into account the information available on whether those countries adequately apply the FATF Recommendations.</li> </ul> <p><b><i>Applying Recommendation 10</i></b></p> <ul style="list-style-type: none"> <li>• Absence of explicit obligation for liable persons to keep records of business correspondence (criteria 10.2);</li> <li>• Absence of explicit obligation for liable persons to keep records regardless of whether the account or business relationship is on-going or has been terminated (criteria 10.1).</li> </ul> <p><b><i>Applying Recommendation 11</i></b></p> <ul style="list-style-type: none"> <li>• Low level of and uneven awareness about unusual and complex transactions.</li> </ul>
<p>13. Suspicious transaction reporting</p>	<p><b>PC</b></p>	<ul style="list-style-type: none"> <li>• By-laws do not cover funds but rather transactions.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Large amount of STRs are only reported in the aftermath of supervisory action;</li> <li>• Defensive reporting undermines the quality of STRs and reduces their actual number even further;</li> <li>• Overreliance on CTR reporting in practice leads to disregard of STR reporting;</li> <li>• Subjective test of suspicion is rarely applied in</li> </ul>

		practice, leading to overreliance on list of indicators provided by the authorities.
14. <i>Protection and no tipping-off</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• <i>Protection from criminal and civil liability not extended to directors, and officers of obliged entities;</i></li> <li>• <i>Loopholes in the new legislation for the prohibition of tipping off;</i></li> <li>• <i>Effectiveness.</i></li> </ul>
15. Internal controls, compliance and audit	<b>PC</b>	<ul style="list-style-type: none"> <li>• No requirement for an authorised person of financial institution (different than banks, MCOs and leasing companies) with more than four employees to be appointed at management position;</li> <li>• No independence requirements for the internal auditing of the securities companies;</li> <li>• No sample testing abilities in the work of the audit of the securities and insurance companies;</li> <li>• No information on the application of criterions 15.2 and 15.4 for financial institutions registered in BD of BiH;</li> <li>• No employees screening procedures in the securities sector.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Concerns related to the effectiveness of the internal and external audit;</li> <li>• Concerns related to the internal procedures quality.</li> </ul>
16. DNFBPS – R.13-15 & 21 <sup>13</sup>	<b>PC</b>	<p><b><i>Applying Recommendation 13</i></b></p> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Varying awareness of reporting obligation throughout the DNFBP sector;</li> <li>• Client interest overrules reporting obligations in the case of lawyers;</li> <li>• Overall continuous low reporting by DNFBPs.</li> </ul> <p><b><i>Applying Recommendation 15</i></b></p> <ul style="list-style-type: none"> <li>• No requirement for the authorised person of DNFBP with more than four employees to be appointed at management position.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Concerns related to the effectiveness of the internal and external audit;</li> <li>• Concerns related to the quality of the internal programs and procedures.</li> </ul>

<sup>13</sup> The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3<sup>rd</sup> round report on Recommendation 14.

		<p><b><i>Applying Recommendation 21</i></b></p> <ul style="list-style-type: none"> <li>• No enforceable requirement for DNFBPs to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations;</li> <li>• No effective measures in place to ensure that DNFBPs are advised of concerns about weaknesses in the AML/CFT systems of other countries;</li> <li>• No mechanisms in place that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply FATF recommendations;</li> <li>• No requirement to examine, as far as possible, the background and purpose when transactions have no apparent economic or visible lawful purpose, and to make available written findings to assist competent authorities and auditors.</li> </ul>
17. Sanctions	<b>PC</b>	<ul style="list-style-type: none"> <li>• The sanctioning regime under the AML/CFT Law does not cover all the possible breaches;</li> <li>• There is no clear possibility for sanctioning the directors and senior management.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• The effectiveness of the sanctioning regime provided by the new AML/CFT Law not demonstrated; confusion among the authorities on sanctioning competences and on applicable law for sanctions;</li> <li>• Overreliance of the written warnings in the banking sector of RS which are not effective, proportionate and dissuasive enough;</li> <li>• The imposed sanctions for the banking sector of the FBiH are at the minimum level and therefore are not effective, proportionate and dissuasive enough;</li> <li>• No AML/CFT sanctions imposed to non-banking financial institutions.</li> </ul>
18. Shell banks	<b>C</b>	
19. Other forms of reporting	<b>C</b>	
20. <i>Other DNFBPS and secure transaction techniques</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• <i>No documented strategy to reduce the use of cash;</i></li> <li>• <i>There are strong concerns on the effectiveness of the extended scope of the law particularly as there are no means of monitoring the added DNFBPs.</i></li> </ul>
21. Special attention for higher	<b>PC</b>	<ul style="list-style-type: none"> <li>• No enforceable requirement for non-banking financial institutions to pay special attention to</li> </ul>

risk countries		<p>business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations;</p> <ul style="list-style-type: none"> <li>• No effective measures in place to ensure that non-banking financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries;</li> <li>• No mechanisms in place that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply FATF recommendations;</li> <li>• No requirement to examine, as far as possible, the background and purpose when transactions have no apparent economic or visible lawful purpose, and to make available written findings to assist competent authorities and auditors.</li> </ul>
22. Foreign branches and subsidiaries	<b>LC</b>	<ul style="list-style-type: none"> <li>• There is no requirement to notify the Banking Agencies of FBiH and RS as primary supervisory authorities if the regulations of a foreign country do not allow the implementation of AML/CFT measures.</li> </ul>
23. Regulation, supervision and monitoring	<b>PC</b>	<ul style="list-style-type: none"> <li>• Legal uncertainty about the supervisory functions in relation to the brokerage activities of the banks;</li> <li>• Failure to include criminal associates into the scope of the measures aimed at prevention of criminals from holding a controlling interest or management function in financial institutions;</li> <li>• The requirements of criterion 23.3 in relation to the leasing activities are not met;</li> <li>• No clear requirements for clean criminal records in relation to the Directors and the Management Board of a banks registered in RS;</li> <li>• The measures to prohibit persons with a criminal record from being shareholders or board members of securities intermediaries does not extend to all criminal liabilities;</li> <li>• Lack of requirement for professional qualifications and expertise of the directors and senior managers for investment funds;</li> <li>• No licencing or registration requirements the FI referred to in EC 23.7.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Lack of effective on-going supervision and monitoring in the non-banking financial institutions;</li> <li>• Effectiveness concerns in relation to the threshold approach in licensing in the banking and securities sector.</li> </ul>

<p>24. DNFBPS - Regulation, supervision and monitoring</p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• No adequate powers of the authorities to perform its functions, including powers to monitor and sanction;</li> <li>• No evidence for the existence of legal obligations or regulatory measures in the FBiH and BD to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino;</li> <li>• No clear requirements for the casinos registered in RS to ensure that all beneficial owners with significant and controlling interest are not criminals or their associates;</li> <li>• No clarity if the term <i>authorised persons</i> covers the persons holding management function in a casino.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• No AML/CFT on-site and off-site inspections have been performed over the activity of the DNFBP sector;</li> <li>• The authorities do not have sufficient level of training in order to perform their AML/CFT obligations;</li> <li>• Uncertainty over the existence of casinos in BD.</li> </ul>
<p>25. Guidelines and Feedback</p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• Provisions of the new AML/CFT Law have not been fully implemented in practice by the financial and DNFBP sectors;</li> <li>• The Guidelines and the Rulebook had not been up-dated at the time of the on-site evaluation;</li> <li>• Deficiencies with regard to case by case feedback to FIs;</li> <li>• Lack of guidance from supervisory authorities;</li> <li>• Low level awareness amongst supervisory authorities of competencies and obligations;</li> <li>• Low level of training.</li> </ul>
<p><b>Institutional and other measures</b></p>		
<p>26. The FIU</p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The FIU does not publicly release periodic reports including trends and typologies;</li> </ul> <p><b><u>Effectiveness:</u></b></p> <ul style="list-style-type: none"> <li>• Dissemination procedure regarding cases referred to entity and cantonal level law enforcement agencies could not be assessed;</li> <li>• Doubts whether in practice the FID has timely access to all necessary administrative, financial and law enforcement information and data held on an entity level;</li> </ul>



		<ul style="list-style-type: none"> <li>• Lack of adequate IT system to allow in-depth analysis;</li> <li>• Lack of explanations in relation to statistics undermines assessment of effectiveness.</li> </ul>
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> <li>• <i>Low effectiveness as ML rarely investigated as an offence when not related to tax evasion;</i></li> <li>• <i>Perception of corruption may have an impact on effectiveness of the system;</i></li> <li>• <i>No clear national strategy geared to increase the effectiveness of action taken against the proceeds of crime.</i></li> </ul>
28. Powers of competent authorities	LC	Concerns over effectiveness
29. Supervisors	PC	<ul style="list-style-type: none"> <li>• Lack of adequate supervisory powers in the insurance market to monitor and ensure compliance with AML/CFT requirements and to take enforcement measures and sanction both the institutions/businesses and their directors/senior management for with AML/CFT breaches;</li> <li>• No direct AML/CFT supervisory powers for the Securities Commission of the FBiH.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Effectiveness of supervisory powers not demonstrated.</li> </ul>
30. Resources, integrity and training <sup>14</sup>	PC	<ul style="list-style-type: none"> <li>• A higher number of employees should participate in activities aiming at increasing the expertise of FID staff;</li> <li>• The information gathered during the supervisory activities of the competent authorities but not forwarded to the FID is not subject to confidentiality;</li> <li>• No information concerning professional standards, integrity and skills for the Securities Commission from BD;</li> <li>• No data on trainings has been provided by the Securities Commissions from FBiH, RS and BD;</li> <li>• Lack of resources all over the supervisory authorities.</li> </ul>
31. National co-operation	PC	<p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Significant delays in the enactment of legislation due to lack of agreement between policy makers;</li> <li>• Insufficient analysis of ML/TF issues by policy makers and competent authorities, resulting in</li> </ul>

<sup>14</sup> 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 3<sup>rd</sup> round report on resources integrity and training of law enforcement authorities.

		<p>absence of effective strategy to address those issues;</p> <ul style="list-style-type: none"> <li>• Inconsistencies between the four legal frameworks create risk of exploitation by third parties.</li> </ul>
32. Statistics <sup>15</sup>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is no process for reviewing of the effectiveness of the system for investigating and prosecuting money laundering;</li> <li>• Discrepancies between the statistical data and the information provided during the onsite visit calls into question the effectiveness of the systems for collecting data on ML and TF cases;</li> <li>• Lack of comprehensive statistics undermines the effectiveness of FIU assessment;</li> <li>• No mechanism in place for the assessment of effectiveness of the AML/CFT framework;</li> <li>• Lack of statistics maintained by the supervisory and law enforcement authorities with regard to the exchange of information with foreign counterparts and non-counterparts;</li> <li>• Lack of necessary breakdowns of statistical evidence regarding international cooperation in relation to TF.</li> </ul>
33. Legal persons – beneficial owners	<b>PC</b>	<ul style="list-style-type: none"> <li>• The mechanism in place to ensure adequate transparency concerning the beneficial ownership and control of legal persons is not sufficiently comprehensive;</li> <li>• Concerns about the extent and accuracy of the information included in the Court Registries;</li> <li>• Limited accessibility and possibility for search for information in the various databases, mainly due to the fact that some are still maintained only in a paper form and they are overall not interconnected.</li> </ul>
34. <i>Legal arrangements – beneficial owners</i>	<i>N/A</i>	<ul style="list-style-type: none"> <li>• <i>Bosnia and Herzegovina is not a signatory to the Hague Convention;</i></li> <li>• <i>The concept of trusts or other similar legal arrangements (other than corporates) is not known under the laws of Bosnia and Herzegovina – although reference to the term ‘trust’ is used under the new AML Law.</i></li> </ul>
<b>International Co-operation</b>		
35. Conventions	<b>LC</b>	<ul style="list-style-type: none"> <li>• Shortcomings of the criminalisation of TF negatively impact on the implementation of the</li> </ul>

<sup>15</sup> 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 3<sup>rd</sup> round report on Recommendations 20, 27, 38 and 39.

		TF Convention.
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> <li>Lack of clear procedures to ensure the timeliness of the execution of the requests;</li> <li>Concerns about the power to execute MLA requests related to confiscation when there is no international convention in place.</li> </ul>
37. Dual criminality	LC	<ul style="list-style-type: none"> <li><i>The existing legal deficiencies related to criminalisation of ML and FT could potentially impede effective co-operation.</i></li> </ul>
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> <li><i>The shortcomings related to confiscation regime may have a negative impact on the ability of rendering MLA in such cases;</i></li> <li><i>No information on arrangements for coordinating seizure and confiscation actions.</i></li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li><i>In the absence of proper statistics relating to ML, the predicate offences and FT, and information whether extradition requests are handled within timeframes it has not been possible to establish the overall effectiveness of the system in place.</i></li> </ul>
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> <li>Effectiveness of international cooperation of the supervisory authorities was not demonstrated due to the lack of statistical evidence.</li> </ul>
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> <li>Minor deficiencies with regard to the implementation of S/RES/1267(1999);</li> <li>No legal basis for the application of freezing measures under UNSCR 1373;</li> <li>Deficiencies in the criminalisation of TF.</li> </ul>
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> <li>The terrorist financing offences in the four Criminal Codes are not wide enough to encompass the provision of funds to terrorist organisations or individual terrorists other than for the purposes of a terrorist act;</li> <li>Some elements of the treaty offences in the annex to the TF Convention are not covered by the CC BiH and so are not within the ambit of the terrorist financing offence;</li> <li>The legislation is insufficiently clear as to whether the offence of terrorism in the CC FBH, CC RS and CC BD, and therefore the offence of terrorist financing, applies in relation to acts that may cause damage solely to the Entities and Brčko District themselves.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>The absence of any significant enforcement</li> </ul>

		activity to date in the context of the known risks of terrorist financing, and lack of clarity in some quarters as to the legal framework, raise serious concerns as to effective implementation.
SR.III Freeze and confiscate terrorist assets	<b>PC</b>	<ul style="list-style-type: none"> <li>• No prescribed procedure to create a national list of terrorists under UNSCR 1373 or to make or to respond to third country requests that meet the criteria set out in UNSCR 1373;</li> <li>• Lack of a clear framework for supervision of compliance with the obligations under the current mechanism to freeze funds and assets used for TF and the sanctioning of its potential violations;</li> <li>• Insufficient outreach to the private sector and other key stakeholders;</li> <li>• Conditions for accessing frozen funds are not fully in line with the requirements of UNSCR 1452.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• The Consolidated List is not published without delay;</li> <li>• Lack of awareness of the existence of the Consolidated List and the related obligations.</li> </ul>
SR.IV Suspicious transaction reporting	<b>PC</b>	<ul style="list-style-type: none"> <li>• By-laws do not cover funds but rather transactions.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Lack of STR reporting in relation to TF although high risk of terrorism in the context of BiH;</li> <li>• Lack of specific indicators in by-laws contributes to lack of awareness in terms of TF issues among private sector, despite high vulnerability to terrorism.</li> </ul>
SR.V International co-operation <sup>16</sup>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The deficiencies described under R. 36-38 have a negative impact on the rating of this Recommendation.</li> </ul>
SR.VI AML requirements for money/value transfer services	<b>PC</b>	<ul style="list-style-type: none"> <li>• No registration or licensing requirements for all MVTs (except for those operating through banks);</li> <li>• Absence of monitoring measures for MVTs;</li> <li>• No obligation to maintain a current list of its agents which must be made available for the designated competent authorities;</li> <li>• Sanctions for failure to comply with the SR.VI requirements should be introduced.</li> </ul>

<sup>16</sup> The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3<sup>rd</sup> round report on Recommendations 37, 38 and 39.

SR.VII Wire transfer rules	<b>LC</b>	<ul style="list-style-type: none"> <li>• No monitoring of the activities of the Post Office;</li> <li>• No obligation for beneficiary financial institutions to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</li> </ul>
SR.VIII Non-profit organisations	<b>NC</b>	<ul style="list-style-type: none"> <li>• No review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes was undertaken;</li> <li>• No review of the size, characteristics and activities of the NPO sector;</li> <li>• Lack of outreach to the NPO sector;</li> <li>• Shortcomings of the framework with regard to registration and access to information on NPOs;</li> <li>• Lack of clarity with regard to the supervisory competencies;</li> <li>• No particular mechanism established for responding to international requests regarding NPOs.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Lack of an overall understanding of the size, characteristics and activities of the NPO sector;</li> <li>• Supervision of NPOs is undertaken only for tax purposes;</li> <li>• No mechanism in place to facilitate information exchange and cooperation in respect of NPOs between national authorities, lack of a proactive approach to information sharing in this respect.</li> </ul>
SR.IX Cross Border and declaration disclosure	<b>PC</b>	<ul style="list-style-type: none"> <li>• Not all bearer negotiable instruments are covered by the declaration obligation;</li> <li>• The declaration obligation does not seem to apply to shipment of currency through containerised cargo;</li> <li>• Customs authorities do not have any powers with regard to the implementation of the regime under SR.III;</li> <li>• Insufficient mechanisms to ensure coordination of competent authorities at policy level;</li> <li>• Statistics are not maintained on cases when a suspicion of ML/TF is identified, but the assets involved are below the threshold for declaration.</li> </ul> <p><b><u>Effectiveness:</u></b></p> <ul style="list-style-type: none"> <li>• Lack of clarity with regard to the power to stop and restrain cash and bearer negotiable instruments;</li> </ul>

		<ul style="list-style-type: none"><li>• The system of control of cross-border transportation of cash and bearer negotiable instruments is not implemented at the maritime border and is not effective at the land crossing points;</li><li>• Concerns about the dissuasiveness of the sanctioning regime;</li><li>• Lack of AML/CFT expertise of the staff of competent authorities;</li><li>• The statistics maintained show minor inconsistencies.</li></ul>
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